Reducing barriers to business dynamism

ARITA Submission

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ARITA
ACN 002 472 362
Suite 2, Level 5, 66 Clarence Street, Sydney NSW 2000 Australia
t +61 2 8004 4344 | **e** admin@arita.com.au | **arita.com.au**

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Reducing barriers to business dynamism inquiry
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Commissioners

Productivity Commission's inquiry into reducing barriers to business dynamism

The Australian Restructuring Insolvency & Turnaround Association (**ARITA**) welcomes the opportunity to contribute to the Productivity Commission's inquiry into reducing barriers to business dynamism.

ARITA is Australia's leading representative body for insolvency and restructuring professionals. ARITA has more than 2,360 members and subscribers, including around 84% of Australia's Registered Liquidators and Registered Trustees, together with accountants, insolvency lawyers and other specialists working across restructuring, financial distress and recovery. ARITA's contribution to this inquiry is informed by the experience of members working across Australia's personal and corporate insolvency systems, as well as its policy, advocacy and stakeholder engagement activities across the restructuring, insolvency and turnaround profession.

This submission focuses on the role of Australia's insolvency framework in supporting business dynamism and productivity. An effective insolvency framework helps viable businesses restructure, enables unviable businesses to exit efficiently, supports the reallocation of capital and labour to more productive uses, and promotes confidence among creditors, investors, directors and employees. When the framework is overly complex, costly or difficult to use, restructuring opportunities may be lost, insolvency appointments become more expensive, returns to creditors are reduced, and resources remain tied up in unproductive activity for longer than necessary.

Many of the issues raised in this submission have been the subject of extensive review over many years, including the Productivity Commission's 2015 inquiry on business set up, transfer and closure (Inquiry Report No. 75) (**PC Inquiry 2015**) and the Parliamentary Joint Committee on Corporations and Financial Services 2022 (**PJC**) inquiry into corporate insolvency. ARITA is supportive of the recommendations made by the PJC and encourages the Commission to have regard to the work done by that inquiry.

ARITA considers that the key challenges affecting Australia’s insolvency framework are well established. The immediate priority should be implementing the desired reforms previously identified (PC Inquiry 2015 and PJC), while continuing to develop and consult on the broader structural reforms required to modernise the insolvency system. This inquiry provides an opportunity to focus on practical reforms that improve how the framework operates in practice, rather than immediately undertaking an extended review of issues that have already been extensively examined. For the avoidance of doubt, ARITA's position remains that substantial review is generally preferred over piecemeal reform to legislation, however the issues for insolvency practitioners has become so dire that ARITA has prioritised these issues based upon member feedback.

Further, a consistent theme throughout this submission is that many of the barriers to restructuring, recovery and business exit are not simply problems of legislative design. They arise because existing laws, processes and regulatory settings are often difficult, costly or impractical to use, and because different regimes interact in ways that create uncertainty, delay and unnecessary complexity. The priority is targeted law reform and practical implementation that make the framework clearer, more accessible and more effective in practice.

The submission also highlights the cost and delay that can arise where routine matters require unnecessary procedural steps or court involvement. Courts play an important role in resolving disputes, supervising contested or high risk matters and providing certainty where required. However, in many SME appointments, particularly those with limited available funds, court applications can consume scarce resources and delay restructuring, recovery or orderly business exit. ARITA therefore supports reforms that preserve appropriate judicial oversight, while reducing unnecessary reliance on court processes, where appropriate.

ARITA's recommendations address funding, enforcement, information access, evidentiary barriers, unnecessary cost and complexity, SME restructuring and liquidation pathways, creditor priorities, legislative interaction, data integration and greater alignment between corporate and personal insolvency systems. Collectively, these reforms are intended to support timely restructuring, efficient business exit, fairer and more transparent creditor outcomes, effective deterrence and a more dynamic and productive economy.

We would welcome the opportunity to engage further with the Commission as the inquiry progresses.

Should you require any further information, please contact us.

Yours sincerely

John Melluish
Chief Executive Officer

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Glossary of terms

Acronym / Term	Meaning
ACCC	Australian Competition and Consumer Commission
AFSA	Australian Financial Security Authority
ALRC	Australian Law Reform Commission
Anti Phoenixing Act	*Treasury Laws Amendment (Combating Illegal Phoenixing) Act* 2020 (Cth)
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
Assetless administration	An external administration with insufficient assets to fund all necessary investigation, reporting, recovery or enforcement tasks
ATO	Australian Taxation Office
B-READY	Business Ready framework
Bankruptcy Act	*Bankruptcy Act* 1966 (Cth)
BAS	Business Activity Statement
Business Dynamism Impact Statement	Proposed assessment statement for material insolvency reforms, directed to impacts on timely restructuring, efficient exit, creditor outcomes, enforcement and productivity
CAMAC	Corporations and Markets Advisory Committee
Corporations Act	*Corporations Act* 2001 (Cth)
Cth	Commonwealth
CVL	Creditors' Voluntary Liquidation

DEWR	Department of Employment and Workplace Relations
DIN	Director identification number
DOCA	Deed of Company Arrangement
DPN	Director Penalty Notice
External administrator	A collective term used in this submission for liquidators, voluntary administrators, deed administrators, restructuring practitioners, receivers and trustees, as relevant to the appointment. The submission predominately refers to insolvency practitioners given its inclusivity of both corporate and personal insolvency.
FEG	Fair Entitlements Guarantee
FIRB	Foreign Investment Review Board
GST	Goods and Services Tax
Harmer Report	Australian Law Reform Commission, General Insolvency Inquiry, Report No 45, 1988
ILRA	*Insolvency Law Reform Act* 2016 (Cth)
Insolvency appointments	generic reference to all formal corporate insolvency appointments (with the exclusion of some Members Voluntary Liquidations) and formal personal insolvency appointments, as described in Annexure E.
Insolvency Data Gateway	Proposed mechanism linking ASIC, ATO, AFSA, PPSR and related datasets to support insolvency appointments and system level policy evaluation
Insolvency Interaction Review	Proposed review to map points at which adjacent laws affect insolvency outcomes and identify practical reforms
Insolvency practitioners	A collective term used in this submission for liquidators, voluntary administrators, deed administrators, restructuring practitioners,

	receivers and Registered Trustees, as relevant to the appointment (see Annexure E)
IPR (Corporations) IPR (Bankruptcy)	*Insolvency Practice Rules (Corporations*) 2016 (Cth); *Insolvency Practice Rules (Bankruptcy*) 2016 (Cth)
IPS (Corporations) IPS (Bankruptcy)	Insolvency Practice Schedule (Corporations) (Schedule 2 to the *Corporations Act* 2001 (Cth)) Insolvency Practice Schedule (Bankruptcy) (Schedule 2 to the *Bankruptcy Act* 1966 (Cth))
Inspector-General	Inspector-General in Bankruptcy
MVL	Members' Voluntary Liquidation
NDIS	National Disability Insurance Scheme
OECD	Organisation for Economic Cooperation and Development
Official Receiver	Official Receiver under the Bankruptcy Act (section 5 and related provisions)
Official Trustee	Official Trustee in Bankruptcy under the Bankruptcy Act (section 18 and related provisions)
PC	Productivity Commission
PJC	Parliamentary Joint Committee on Corporations and Financial Services
PPSA	*Personal Property Securities Act* 2009 (Cth)
PPSR	Personal Property Securities Register
Public Interest Administration Fund	Proposed public interest funding model to support investigation, enforcement and recovery in insolvency appointments with insufficient assets, where public interest considerations would otherwise warrant action

R&D	Research and development
Registered Liquidator	A natural person registered as a liquidator under the Corporations Act. Only a Registered Liquidator can act as a liquidator (except in some MVLs), voluntary administrator, deed administrator, restructuring practitioner, receiver or scheme administrator
Registered Trustee	A natural person registered as a trustee under the Bankruptcy Act. A Registered Trustee may take an appointment as trustee of a bankruptcy, personal insolvency agreement or as a controlling trustee.
ROCAP	Report on Company Activities and Property
SBR	Small Business Restructuring
SCVL	Simplified Creditors' Voluntary Liquidation
SME	Small and medium sized enterprise
ToR	Terms of Reference
UNCITRAL	United Nations Commission on International Trade Law
VA	Voluntary Administration

1. Recommendations and proposed implementation

Given the breadth of issues affecting the current insolvency framework, ARITA has prioritised the reforms most likely to support business dynamism and, through this submission, identifies practical pathways for their implementation. The recommendations are intended to help move the reform conversation from diagnosis to implementation, specifically directed to improving the operation, integrity and accessibility of Australia's insolvency system. Each recommendation identifies a barrier to restructuring, recovery, orderly exit or system integrity, and outlines reform action that could address it. Where relevant, an implementation pathway is included to show how the reform could operate in practice.

The recommendations address immediate operational issues before turning to longer term system considerations.

R1	Recommendation 1: Strengthen public interest funding for assetless insolvency appointments	**WHO CAN ASSIST** Treasury, ASIC and government funding decision makers.

Why it matters	**Proposed implementation pathway**
• Unfunded misconduct can become a market integrity problem. • The appointments most in need of investigation are often those least able to fund it. Suspected phoenix activity, asset dissipation, creditor-defeating conduct, breaches of directors' duties and failures to maintain books and records can occur in circumstances where little or no funding remains available to investigate the conduct. Without targeted funding, such behaviour may escape meaningful scrutiny, weakening deterrence and undermining confidence in the insolvency system. • If investigations and recoveries cannot be funded, misconduct in appointments with limited available funds may go	• Improve and rename the Assetless Administration Fund as a Public Interest Administration Fund. • The funding application process should be proportionate to the value, complexity, urgency and public interest significance of the matter. • Clear eligibility and assessment criteria, standard application templates and online lodgment should enable practitioners to rely, where appropriate, on information already available to them and minimise unnecessary additional work. • Defined assessment timeframes should provide greater certainty, with expedited consideration where delay may jeopardise evidence, assets or recovery opportunities. • A simplified process should apply where the cost of preparing an application may be disproportionate to the funding sought, particularly where suspected misconduct, creditor recoveries or broader public interest concerns are involved. • The overall objective should be to ensure that the cost, effort and uncertainty of seeking funding do not prevent insolvency

unchecked and creditor recoveries may be lost.	practitioners from investigating misconduct, pursuing recoveries or protecting creditors' interests.

R2	Recommendation 2: Strengthen enforcement and reduce evidentiary barriers	WHO CAN ASSIST Treasury, ASIC, AFSA, courts and regulators through legislative amendment and guidance.

Why it matters	Proposed implementation pathway
• Funding constraints, incomplete records and information controlled by directors or related parties can prevent otherwise viable recovery actions from being pursued. • Even where misconduct is identified, the deterrent effect of the framework depends on effective enforcement by both insolvency practitioners and regulators. • Enforcement outcomes can also be constrained by practical difficulties in obtaining evidence and establishing knowledge or involvement, particularly where relevant information remains under the control of directors, related parties or third parties. • Without practical recovery pathways and credible regulatory enforcement, misconduct may go unaddressed, creditor confidence may be reduced and the cost of enforcement may fall disproportionately on individual insolvency appointments.	• Improve access to information and reduce evidentiary barriers that prevent viable recovery actions from being pursued. • Introduce a streamlined statutory mechanism enabling insolvency practitioners to require directors, related parties and third parties to produce and preserve relevant information, documents and property, supported by appropriate enforcement mechanisms for non-compliance. This should apply to records held by banks, accountants, advisers, cloud accounting platforms and others holding information relevant to the insolvency appointment. • Insolvency practitioners should also have clearer access to relevant ASIC and ATO records and digital pre-appointment books and records. Where records are missing, incomplete or controlled by those with direct self-interest, a, targeted burden shifting provisions[1] should apply to ensure otherwise viable claims are not defeated by information asymmetry. • ASIC and AFSA should be provided with dedicated funding and resources to investigate serious misconduct identified in the course of an appointment, particularly where the appointment has insufficient funds for private litigation. Regulators should be expected to use material already provided by insolvency practitioners, exercise their own investigative and enforcement powers, and fund any additional evidentiary work they require rather than imposing further unfunded work on insolvency practitioners.

[1] "Targeted burden-shifting provisions" mean legislative provisions that create a (rebuttable) presumption about specified facts where a person has failed to maintain, preserve or provide records that were within their possession or control. The person best placed to explain the relevant transaction or conduct would then be required to produce evidence rebutting that presumption. Any such provisions should be confined to clearly defined circumstances and should preserve procedural fairness.

R3	Recommendation 3: Strengthen SBR and simplified liquidation pathways	WHO CAN ASSIST Treasury and ASIC, with practitioner and creditor consultation.

Why it matters	Proposed implementation pathway
• SBRs and simplified liquidation pathways will only succeed if they are genuinely accessible in practice. If eligibility requirements, reporting obligations and creditor processes remain too complex or costly, distressed small businesses may not use them early enough for restructuring or orderly exit to be effective. • SBR and SCVL should be simpler and lower cost than ordinary insolvency processes, while preserving appropriate safeguards for misconduct, recoveries and creditor protection. • Safe harbour raises a related accessibility issue: while it can support earlier restructuring, its cost, complexity and reliance on early professional advice means it may be harder for SMEs to use in practice than for larger or better resourced businesses.	• Simplify SBR and SCVL eligibility settings and remove technical barriers that prevent otherwise suitable SMEs from accessing the processes. • Allow outstanding lodgements or other compliance matters to be brought up to date within a defined period where employee entitlements are met and a viable restructuring or exit proposal is available. • Standardise SBR plan documents, creditor reports and SCVL adoption steps to reduce cost and make practitioner obligations clearer. • Reduce default reporting, meeting and approval requirements in uncomplicated matters, with escalation where misconduct, potential recoveries, creditor disputes or public interest concerns justify additional work. • Clarify creditor participation, debt verification, voting and conditional responses, including the role of the ATO in restructuring proposals. • Improve SME access to safe harbour through clearer guidance, greater awareness and implementation of the Independent Review[2] recommendations, including consideration of whether the cost, complexity and practical accessibility of the regime are limiting uptake by SMEs.

[2] Sexton G, Chesser L and Parbery S, Review of the Insolvent Trading Safe Harbour (Final Report, Australian Government Treasury, 23 November 2021)

R4	Recommendation 4: Simplify and streamline insolvency processes and reduce unnecessary court dependence	WHO CAN ASSIST Treasury, courts and regulators.

Why it matters

- Process costs can destroy value before restructuring, recovery action or meaningful creditor engagement occurs. Routine reliance on court applications in appointments with limited assets or available funds, and appointments involving companies operating as trustees of trading trusts, can consume funds that would otherwise be available for creditors. A significant proportion of insolvency appointments have limited or no funds available to support investigations, recovery actions and other work that may benefit creditors or serve the public interest.. Applying the same procedural requirements to appointments with limited available funds can increase costs, reduce creditor returns and discourage formal appointments where public interest outcomes may still exist.

Proposed implementation pathway

- Review and remove unnecessary reporting, creditor approval and court requirements where the resulting cost and delay are disproportionate to any benefit for creditors, stakeholders or the integrity of the insolvency process.
- Examples could include simplifying and increasing the minimal remuneration process for appointments with limited available funds (ie ensuring the increase to a capped amount does not require creditor approval or costly court applications), reducing duplicative ASIC reporting and lodgment requirements, streamlining creditor meeting and communication requirements where engagement is low, removing obsolete procedural steps in finalising appointments, reducing reliance on court applications for routine directions, and providing statutory pathways for trust asset administration.
- Court involvement should be reserved for contested, high risk or novel issues.
- Consider a more proportionate framework for insolvency appointments with limited available assets. The framework should recognise that many appointments have insufficient resources to support the full procedural requirements that would otherwise apply to the appointment. Streamlined reporting, approval, meeting and court requirements could apply where available resources are limited, while preserving core public interest functions including investigation, misconduct reporting, record preservation and regulator referrals. More comprehensive requirements should apply where assets, recoveries, disputes or public interest concerns justify additional work. This would be in addition to an improved simplified liquidation process.

R5	Recommendation 5: Strengthen creditor priorities and address institutional creditor conduct	WHO CAN ASSIST Treasury, ATO, DEWR/FEG and ASIC.

Why it matters

- Institutional creditor behaviour can significantly influence restructuring outcomes and creditor distributions.
- Mechanisms such as garnishee notices, DPNs, set-offs and FEG interactions can affect whether viable businesses restructure; how value is distributed; and whether the statutory priority framework is operating effectively and producing its intended policy outcomes.

Proposed implementation pathway

- Conduct a targeted Creditor Priority and Distribution Integrity Review to assess how institutional creditor practices interact with insolvency outcomes.
- This should include priority impact statements for key mechanisms such as garnishee notices, DPNs, set-offs and FEG interactions, together with published insolvency conduct protocols for institutional creditors, including the ATO, which should reflect, where relevant, its model litigant obligations.
- The review should consider whether these mechanisms affect restructuring viability, creditor distributions and the practical operation of statutory priorities.

R6	Recommendation 6: Address legislative interaction and improve data integration	WHO CAN ASSIST Treasury, ASIC, ATO, AFSA (including PPSR administration) and relevant State/Territory agencies.

Why it matters

- Information relevant to insolvency appointments is spread across multiple regulators, registers and legal frameworks.
- Better integration and more consistent settings would reduce duplication, improve transparency and support more efficient insolvency appointments.

Proposed implementation pathway

- Map Commonwealth, State and Territory laws that directly affect insolvency outcomes and prioritise reforms where legislative interaction creates unnecessary cost, delay or complexity. Develop an Insolvency Data Gateway linking relevant ASIC, ATO, AFSA and PPSR datasets, with appropriate access and privacy protections, to improve information sharing, support insolvency appointments and reduce duplication.
- ARITA would welcome the opportunity to assist the Commission to identify inconsistent legal interactions, including by reference to the examples in Annexure B.

R7	Recommendation 7: Harmonise corporate and personal insolvency and apply a business dynamism lens to future insolvency reform	WHO CAN ASSIST Treasury, AFSA, ASIC and any standing law reform or advisory body.

Why it matters	Proposed implementation pathway
• Reduce unnecessary differences and promote greater consistency between corporate and personal insolvency laws. Ensure future insolvency reforms and related policy initiatives are assessed against their impact on restructuring, business recovery, creditor outcomes and efficient business exit. • Small business distress frequently involves both corporate and personal liabilities. • Differences between corporate and personal insolvency laws can increase cost, complexity and uncertainty, making it more difficult to achieve efficient restructuring, rehabilitation and business exit outcomes.	• As an initial step, consideration should be given to consolidating responsibility for corporate and personal insolvency by a single regulator or coordinated insolvency agency. This would improve consistency in administration, policy development, data collection, guidance and stakeholder engagement across the two regimes. • Once greater operational alignment is achieved, a staged reform program could identify and align equivalent corporate and personal insolvency provisions, processes and powers where the policy objectives are substantially the same. • Future reforms to insolvency legislation should be subject to post-implementation review against measurable outcomes such as restructuring success, creditor recoveries, business continuity and process costs.

2. Executive summary

Australia’s insolvency framework underpins business dynamism, productivity and economic renewal. It affects whether viable businesses can be restructured, whether unviable businesses can exit efficiently, and whether capital, labour and entrepreneurial effort can be reallocated to more productive uses.

The framework has sound legal and policy foundations, but its practical operation is constrained by funding limitations, enforcement challenges, unnecessary complexity, evidentiary barriers, creditor behaviour, limited data integration, and the growing incidence of financial distress being managed outside formal insolvency processes.

On behalf of our members, ARITA's recommendations focus on practical and implementable reforms to improve the operation of the insolvency framework. They address funding, enforcement, court dependence, small business restructuring and liquidation pathways, creditor priorities, legislative interaction, data integration, and greater alignment between corporate and personal insolvency.

Taken together, ARITA's recommendations are intended to support timely restructuring, enforcement, efficient business exit and fairer and more predictable creditor outcomes, while contributing to broader productivity and business dynamism objectives.

3. Recommendations and Terms of Reference roadmap

The following table maps ARITA's recommendations to the relevant Terms of Reference and the main sections of this submission. This structure is intended to assist the Commission to assess each recommendation against the inquiry's focus on the design, operation and integrity of insolvency frameworks, barriers to business entry, expansion and exit, creditor priority, the targeted review of the Anti Phoenixing Act and broader economic impacts.

Item	Terms of Reference	Relevant recommendation(s)	Submission sections
1(a) ENTRY / EXPANSION / EXIT	**Identify and evaluate key processes and barriers to business entry, expansion and exit, including but not limited to:** a. regulatory and administrative burdens, including access to capital markets, business registration and industry-specific licensing.	• **Recommendation 3**: Strengthen SBR and simplified liquidation pathways • **Recommendation 4**: Simplify and streamline insolvency processes and reduce unnecessary court dependence • **Recommendation 6**: Address legislative interaction and improve data integration	Sections 5.1, 5.3, 5.4, 7.1, 7.2 and 8
1(b) INSOLVENCY FRAMEWORKS	**Identify and evaluate key processes and barriers to business entry, expansion and exit, including but not limited to:** b. the design, operation and integrity of corporate and personal insolvency frameworks, encompassing consideration of:	• **Recommendation 1**: Strengthen public interest funding for assetless insolvency appointments • **Recommendation 2**: Strengthen enforcement and reduce evidentiary barriers • **Recommendation 3**: Strengthen SBR and simplified liquidation pathways • **Recommendation 4**: Simplify and streamline insolvency processes and reduce unnecessary court dependence • **Recommendation 5**: Strengthen creditor priorities and address institutional creditor conduct • **Recommendation 6**: Address legislative interaction and improve data integration • **Recommendation 7**: Harmonise corporate and personal insolvency and apply a business dynamism lens to future insolvency reform	Sections 4 - 9

Item	Terms of Reference	Relevant recommendation(s)	Submission sections
1(b)(i) HARMONISATION	Whether there are net benefits of greater harmonisation, particularly for small business owners who may need to navigate both systems simultaneously	• **Recommendation 7**: Harmonise corporate and personal insolvency and apply a business dynamism lens to future insolvency reform	Sections 5.2 and 9.1-9.3.
1(b)(ii) INTEGRITY / DETERRENCE	Whether they support the efficient allocation of resources across the economy in a manner that preserves system integrity and deters corporate misconduct.	• **Recommendation 1**: Strengthen public interest funding for assetless insolvency appointments • **Recommendation 2**: Strengthen enforcement and reduce evidentiary barriers • **Recommendation 3**: Strengthen SBR and simplified liquidation pathways • **Recommendation 7**: Harmonise corporate and personal insolvency and apply a business dynamism lens to future insolvency reform	Sections 4.1-4.4, 5.2-5.3 and 9.1-9.3
2 ECONOMIC IMPACTS	Examine the economic impacts of these processes and barriers, including effects on productivity, innovation, investment, and employment.	• **Recommendations 1-7** collectively	Section 10
Review ANTI-PHOENIXING ACT	In undertaking the inquiry, the Commission should conduct a review of the operation of Schedules 1, 3 and 4 of the *Treasury Laws Amendment (Combatting [sic] Illegal Phoenixing) Act* 2020.	• **Recommendation 1**: Strengthen public interest funding for assetless insolvency appointments • **Recommendation 2**: Strengthen enforcement and reduce evidentiary barriers	Sections 4.1 - 4.4

4. Funding, enforcement and deterrence

4.1 Public interest funding and assetless insolvency appointments

Recommendation 1: Strengthen public interest funding for assetless insolvency appointments

- Expand public interest funding by improving and renaming the Assetless Administration Fund as a Public Interest Administration Fund.
- The fund should support investigation, enforcement and recovery action where an appointment has insufficient assets to fund that work, but public interest issues, suspected misconduct or potential recoveries warrant action.
- Funding decisions should consider the size and public interest significance of the matter. The process should be simpler where the cost of applying for funding may be out of proportion to the claim, and faster where delay could put assets, evidence or recovery opportunities at risk.

Implementation:

The following outlines a possible approach to implementation from ARITA's perspective:

- The Public Interest Administration Fund should be supported by a sustainable funding model, with primary funding from a modest levy collected across registered companies, for example through existing annual review or registration processes.
- The fund could also be supplemented by recoveries from funded actions, civil penalties, costs orders (where appropriate) and targeted government funding where appropriate, allowing the fund to be partly replenished over time.
- Access to the fund should be supported by clear eligibility criteria, standard application templates and online lodgement, so that practitioners can rely on information already available in the appointment rather than undertaking significant additional work simply to seek funding.
- Funding decisions should be guided by clear and transparent assessment criteria and specified timeframes. Relevant considerations should include the nature of the suspected misconduct or recovery opportunity, the likely public interest benefit, the expected recovery or enforcement outcome, and whether delay could affect evidence, assets or recovery prospects.
- The application process should be proportionate to the size and public interest significance of the matter. It should be streamlined where application costs may otherwise be disproportionate, and allow faster assessment where delay could jeopardise evidence, assets or recovery opportunities.
- The objective should be to ensure that the cost, effort and uncertainty of seeking funding do not themselves prevent misconduct from being investigated, recoveries from being pursued or creditor interests from being protected.

ARITA recommends expanding public interest funding, including by improving and renaming the Assetless Administration Fund as a Public Interest Administration Fund. The purpose of the fund would be to enable proper investigation and enforcement action where an appointment has insufficient assets, but public interest issues, suspected misconduct or potential recoveries make action warranted.

Funding reform is central to effective deterrence. Without funding to investigate misconduct and pursue claims, even well-designed enforcement mechanisms may have limited practical effect in appointments with limited available funds, particularly where relevant information is controlled by directors, related parties or other third parties.

A targeted pilot model for public interest recoveries could also be considered. Under that model, the Public Interest Administration Fund could support a portfolio of claims across multiple insolvency appointments, rather than requiring each appointment to carry the full cost and risk of recovery action on its own. The pilot could focus on matters involving suspected misconduct, repeat director behaviour, potential phoenix activity, related party transactions or recoveries that are unlikely to be pursued because the appointment has limited available funds.

Claims could be assessed against transparent criteria, including the public interest in pursuing the matter, the likely recovery or enforcement outcome, the availability of evidence, the proportionality of funding sought and the extent to which the matter may improve deterrence or creditor confidence. Funding could be provided on a staged basis, starting with preliminary investigation and evidence preservation, with further funding approved where the prospects of recovery or enforcement justify continued action.

Any recoveries from funded matters could be used to reimburse the fund before distribution according to the ordinary statutory priority framework, with appropriate safeguards to ensure that creditor entitlements are not unfairly displaced. The pilot should be evaluated against practical measures such as the number and value of recoveries pursued, recoveries achieved, misconduct identified, referrals made to ASIC, time taken to make funding decisions, and whether matters that would otherwise have been abandoned were investigated or pursued.

This model should be considered across both corporate and personal insolvency, recognising that misconduct, asset dissipation and recovery opportunities are not confined to one system.

4.2 Practical enforceability

Recommendation 2: Strengthen enforcement and reduce evidentiary barriers

- Strengthen practical enforcement against phoenixing, creditor-defeating conduct and other misconduct by improving information access, reducing unnecessary evidentiary barriers and supporting more effective recovery action.
- Strengthen ASIC's role in insolvency enforcement by supporting more timely and visible action where misconduct is identified. Greater use of regulatory enforcement powers could reduce reliance on insolvency practitioner funded litigation, improve deterrence and provide a more efficient response than lengthy court proceedings.
- Effective enforcement also depends on timely access to information. Reform should consider whether liquidators require more efficient access to relevant ASIC, ATO and other government-held information where misconduct investigations are being undertaken.
- Reform the voidable transaction provisions by considering whether related party preference payments should be treated as unfair preferences in the first instance, with the evidential burden then shifting to the related party to establish otherwise.
- Consider whether proportionate burden shifting mechanisms are appropriate across the broader voidable transaction framework, including for uncommercial transactions and creditor-defeating dispositions, where similar information asymmetry and evidentiary constraints arise.
- The review of Schedules 1, 3 and 4 of the Anti Phoenixing Act should focus on practical operation, including funding, information access, evidentiary barriers, enforcement activity, recoveries and deterrence in appointments with limited available funds.

Implementation

Information access

Improved access to information could be supported through targeted amendments to strengthen existing notice and statutory information gathering powers. In practice, this could include:

- standardised third party notice processes, allowing liquidators to issue a single form notice to banks, accountants and digital platforms, with defined response timeframes and formats for production of records;
- a clearer statutory pathway for obtaining pre-appointment financial records, including defined access to relevant ATO and ASIC data, such as running balance accounts, BAS information and director penalty history, to support solvency and transaction analysis;
- ensuring insolvency practitioners can access and obtain digital accounting records and platform data once control of the business has passed to them, including the ability to preserve records and export information without altering historical data;

- streamlining existing examination and information gathering powers by reducing procedural steps, limiting duplication, and allowing more efficient use of examinations in smaller appointments.

Reducing evidentiary barriers

Reducing evidentiary barriers could be supported through targeted clarification of how insolvency and transaction related elements may be established in practice. This could include:

- clarifying that courts may rely on incomplete financial records, patterns of transactions and the absence of contemporaneous documentation, particularly where records are controlled by directors or related parties;
- building on existing legislative settings which recognise the evidentiary impact of deficient record keeping, including the presumption of insolvency where proper books and records have not been maintained; and
- applying similar approaches more consistently across the voidable transaction framework, where comparable information asymmetry and evidentiary constraints arise.

Schedules 1, 3 and 4 of the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act* 2020 a review could provide clarity on:

- the extent to which the provisions are resulting in recoveries for creditors, including the number, value and timeliness of outcomes;
- whether evidentiary barriers, funding constraints or information gaps are limiting the ability to pursue viable claims;
- how the provisions are being used in practice by regulators and practitioners, including whether enforcement activity is timely and effective; and
- whether the current framework is operating to deter creditor-defeating conduct in practice.

Structural funding constraint

At its core, the insolvency system operates within a structural constraint. It is expected to deliver investigation, enforcement, creditor returns and broader public interest outcomes, but in many appointments there are insufficient assets to fund those functions.

In practice, limited funds can require difficult choices between investigating misconduct, pursuing recoveries and preserving funds for creditor distributions. As a result, some matters that warrant investigation or recovery action cannot be fully pursued.

Regulatory intervention only after insolvency

Much of Australia's corporate enforcement framework is concentrated at the point of insolvency. Insolvency practitioners are frequently expected to investigate and report on misconduct after business failure has already occurred, despite often having limited funds, incomplete records and reduced prospects of recovery.

Practical enforceability and evidentiary barriers

The primary limitation is practical enforceability. In appointments with limited available funds, or where records and cooperation are limited, insolvency practitioners often lack the funding and access to information needed to investigate and pursue viable claims.

However, aspects of the current legislative framework also contribute to these outcomes. In particular, the requirement for the liquidator to establish insolvency as a precondition to pursuing recovery actions operates as a structural barrier where relevant financial information is incomplete or held by directors or related parties. In appointments with limited available funds, the cost and difficulty of satisfying this evidentiary requirement prevents otherwise viable claims from being pursued.

As a result, recovery actions are not brought even where causes of action exist, reducing the deterrent effect of the regime and encouraging opportunistic behaviour where enforcement is unlikely in practice. This is particularly evident in potential phoenixing matters, where funding and evidentiary constraints often prevent the investigation and pursuit of recovery claims, with the result that even where creditor-defeating conduct is identified, it remains untested. A rebuttable presumption of insolvency in appropriate contexts would better align the evidentiary burden with information asymmetry and support more effective enforcement.

In practice, funding and evidentiary constraints can also encourage commercial resolution of potentially meritorious claims rather than judicial determination. While settlement may be commercially efficient, it can reduce transparency, limit the development of legal principles and weaken the broader signalling effect that enforcement action is intended to achieve, undermining the structural integrity of the framework.

Recent enforcement proceedings have also highlighted the practical challenges involved in proving knowledge, involvement and decision making where relevant information is dispersed across directors, management, advisers and corporate records. Even where concerns about conduct may exist, successful enforcement can depend on access to contemporaneous information and evidence. This reinforces the importance of information access, record preservation and evidentiary settings that enable insolvency practitioners and regulators to investigate and pursue misconduct effectively in practice. It also highlights the continuing importance of visible regulatory enforcement, particularly where misconduct may not be capable of being addressed through private recovery action alone.

Deterrence in practice

ARITA considers that insolvency enforcement should not depend solely on the willingness and ability of insolvency practitioners to fund litigation from the limited resources available within an insolvency appointment, particularly where those resources would otherwise be available for creditor returns. In many matters, particularly appointments with limited available funds, viable claims are not pursued because the cost, risk and evidentiary burden outweigh the likely return.

Effective deterrence depends not only on the availability of legal remedies, but also on their practical enforcement. In many insolvency matters, particularly appointments with limited available funds, the cost and evidentiary burden of pursuing recovery action can exceed the likely return to creditors. A more active enforcement role for ASIC, particularly where serious misconduct or public interest concerns are identified through insolvency appointments, would complement private recovery action, reduce reliance on appointment funded litigation and provide a more visible and cost-effective enforcement pathway. This would strengthen deterrence, promote accountability and market integrity, and help ensure that the insolvency framework operates consistently with its policy objectives.

Recent public reporting highlight the practical consequences of a lack of enforcement in Australia's corporate insolvency framework.

An ABC investigation reported[3] that ASIC had not successfully prosecuted any builder for insolvent trading in circumstances where misconduct had significant adverse impacts on consumers, including homeowners. This illustrates a broader systemic issue, where enforcement activity is limited, the deterrent effect of insolvency law is weakened, and misconduct risks being seen as a low probability event rather than a meaningful regulatory constraint.

By contrast, where enforcement action is taken, the courts continue to emphasise the seriousness of corporate misconduct and the importance of deterrence. In *Commonwealth Director of Public Prosecutions v Fairfull* [2026] FCA 748, the Court imposed a substantial custodial sentence for sustained dishonest conduct involving false financial representations and misuse of corporate position. The Court emphasised that white collar offending undermines market integrity and public confidence, and that general deterrence is a central sentencing consideration in such cases.

Further, recent ASIC enforcement activity also demonstrates that the existing legislative framework can be used effectively where appropriate resources and regulatory attention are applied. In July 2026 ASIC announced[4] what it described as its first criminal prosecution involving creditor-defeating disposition provisions, alleging that substantial business sale proceeds had been diverted to the detriment of creditors. The matter highlights the importance of enforcement activity and reinforces the proposition that effective utilisation of existing powers is often as important as the creation of additional legislative measures.

Gap between legislative intent and outcomes

These dynamics highlight a critical gap between legislative intent and practical outcomes. Where misconduct is not consistently investigated and pursued, the system may not deliver credible deterrence in practice, even where the statutory framework is robust.

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[3] Amy Greenbank, 'ASIC fails to prosecute a single builder suspected of insolvent trading, despite "devastating" impact on home owners', ABC News, 26 October 2023.

[4] Australian Securities and Investments Commission, 'NSW restaurateur Giuseppe DeFrancesco first person charged by ASIC with creditor defeating criminal offences' (Media Release 26-139MR, 30 June 2026).

This reinforces the need for reform to focus not only on the design of enforcement provisions, but also on their practical operation, including funding, evidentiary settings, information access and regulator capability.

4.3 Evidentiary reform and information access

Consistent with the practical enforcement limitations outlined in section 4.2, there is a strong case for targeted evidentiary reform to support effective enforcement in practice.

ARITA submits that targeted reform should support recovery action for the benefit of creditors, improve access to relevant information and introduce specific presumptions (rebuttable) where key information is unavailable or remains under the control of directors, related parties or third parties. This would better align evidentiary burdens with practical access to information and reduce the risk of otherwise viable claims failing because critical records are unavailable to the insolvency practitioner. There is a strong case for evidentiary settings that better reflect who holds the relevant information in some related party claims. Where company records are missing, incomplete or controlled by directors or related parties, liquidators can face significant difficulty proving insolvency, even where there are genuine concerns about a transaction. In these circumstances, consideration could be given to a rebuttable presumption of insolvency, requiring the director or related party to demonstrate that the company was solvent, rather than requiring the liquidator to prove insolvency without access to the relevant information.

This reflects the practical reality that information concerning the company's financial position and the transaction is often held by directors or related parties. It should also be recognised that, in the current business environment, business books and records are predominantly maintained electronically. Directors and advisers are commonly able to retain copies of relevant information independently of any records ultimately provided to the liquidator, reducing the practical burden of record production and supporting a stronger expectation that relevant information should be made available when required. Aligning evidentiary requirements with that information asymmetry would improve practical enforceability without displacing substantive defences or ordinary arm's length creditor protections. Consistent with the practical enforcement and evidentiary limitations identified in section 4.2 of this submission, similar issues arise across the broader voidable transaction framework, including uncommercial transactions and creditor-defeating dispositions, where comparable information asymmetry and evidentiary constraints are present. Similar issues may arise in other voidable transaction claims. Where key information is held by directors, related parties or third parties, limited burden shifting may be appropriate so that valid claims are not defeated by lack of access to information.

A rebuttable presumption of insolvency already exists where books and records are not provided to the liquidator, or insolvency is proved in another recovery matter (refer section 588E of the Corporations Act). We submit that further presumptions of insolvency could be provided for, such as non-payment of PAYG or superannuation for a period of time.

4.4 Review of Schedules 1, 3 and 4 of the Anti Phoenixing Act

ARITA submits that the Commission's review of Schedules 1, 3 and 4 of the Anti Phoenixing Act should focus not only on the formal adequacy of the provisions, but on whether they operate effectively in practice. Relevant considerations include whether the provisions have improved recoveries, strengthened deterrence and supported timely enforcement in appointments with limited available funds.

In ARITA's view, the key challenge is often not the design of the statutory provisions, but the practical ability to investigate misconduct, obtain relevant information, fund recovery action and establish involvement or knowledge by relevant parties. Recent enforcement matters demonstrate that, even where concerns about conduct are identified, investigations and proceedings may be constrained by evidentiary challenges and information asymmetry.

A practical review should therefore consider the interaction between the legislation, funding, information access, evidentiary settings and ASIC enforcement activity. Measures that improve access to information, reduce investigation costs, support recovery actions and encourage more visible regulatory enforcement are likely to have a greater impact on deterrence than legislative reform alone.

5. Operation of insolvency frameworks

The effectiveness of Australia's insolvency framework depends in large part on whether its restructuring and liquidation processes are accessible and workable in practice. ARITA's recommendations in this section focus on two related issues.

This section first considers SBRs and SCVLs (Recommendation 3), before turning to the broader issues of proportionality, process simplification and court dependence addressed in Recommendation 4.

Recommendation 3 can be viewed as a practical example of the broader principles considered in Recommendation 4. Together, these reforms are intended to support earlier engagement with financial distress, more efficient administration of insolvency appointments and improved restructuring and business exit outcomes.

5.1 Access to restructuring, recovery and orderly exit processes

Evidentiary burden and recovery constraints

This section addresses the practical pathways available once a business is in financial distress, including access to formal restructuring or liquidation processes, the ability to pursue recovery claims after appointment, and the extent to which business exit occurs outside the formal insolvency system. A significant portion of business exit occurs outside formal insolvency. Many companies are deregistered through ASIC's administrative deregistration process, including where directors stop lodging returns or fail to pay annual review fees. That process does not involve any structured assessment of outstanding liabilities, including unpaid tax debts, the impact on creditors, or whether potential misconduct warrants further scrutiny.

As a result, the formal insolvency system captures only a subset of business failure, while a substantial volume of liabilities may remain unaddressed. This creates a gap between the legal framework and the practical reality of business exit, with implications for creditor protection, enforcement and system integrity.

Director behaviour and phoenixing risk

This gap also has implications for illegal phoenixing and repeat director behaviour. Where deregistration occurs without scrutiny, there is limited visibility of patterns of failure across entities. Greater integration of director identification data with deregistration and insolvency systems would improve transparency, support enforcement activity and strengthen the ability to detect and respond to repeated non-compliance.

Pre-appointment activity and regulatory gap

A related issue arises in the pre-appointment phase, where distressed businesses increasingly engage advisers outside the regulated insolvency profession. These engagements can materially affect when, and how, a business enters formal insolvency or restructuring processes. Unlike insolvency practitioners, pre-appointment advisers are not subject to equivalent statutory duties, independence requirements or regulatory oversight.

In practice, this may result in decisions being taken prior to a formal appointment that affect creditor positions, asset availability and restructuring viability, without the transparency and accountability that apply once an insolvency practitioner is appointed. This can include the management of cash flow, the sequencing of creditor payments, and engagement strategies with key institutional creditors.

From a system perspective, this creates a structural tension. The insolvency framework is designed to provide an orderly and transparent process for resolving financial distress, but key aspects of that process may be shaped before the framework formally applies. This has implications for efficiency of entry, integrity of outcomes and the effectiveness of legislation as a mechanism supporting business dynamism. This reinforces the importance of information access, enforcement capability and data integration across the full lifecycle of business distress.

Safe harbour and early restructuring

Safe harbour is an important component of Australia's insolvency framework because it seeks to balance two objectives that are central to this inquiry: maintaining the integrity of the insolvent trading regime while encouraging directors to pursue restructuring and turnaround options where a viable business may be capable of being preserved. ARITA continues to support the safe harbour framework and its underlying policy intent. In ARITA's view, the balance between integrity and rehabilitation is broadly appropriate.

ARITA's previous submission to the Independent Review of the Insolvent Trading Safe Harbour identified broad support for the regime among members and no evidence of systemic misuse. Members considered that safe harbour was generally achieving its intended purpose of supporting genuine restructuring efforts while preserving appropriate safeguards against misconduct. However, members also identified opportunities to improve the practical operation of the regime, including clarification of key concepts and increased awareness among SMEs and their advisers.

Member experience suggests that safe harbour has been utilised more readily by larger and more sophisticated businesses than by SMEs. For many SME directors, concerns about personal guarantees, tax liabilities, cash flow pressures and the cost of obtaining professional advice often have a greater influence on decision making than potential insolvent trading liability. As a result, the cost, complexity and practical accessibility of restructuring advice may limit the use of safe harbour, even where a business may be capable of recovery.

The challenge is therefore less one of legislative design and more one of practical operation. Insolvent trading claims can be costly and difficult to pursue, particularly where appointments have limited available funds, records are incomplete or key information remains under the control of directors or related parties. Establishing insolvency at the time debts were incurred can involve significant evidentiary and forensic work, while limited enforcement activity may affect the practical deterrent effect of the prohibition. In ARITA's view, the priority should be implementation of the Independent Review recommendations and improving awareness, accessibility, information access, evidentiary settings and practical enforcement outcomes, rather than undertaking further fundamental redesign of the framework.

Simplification and proportionate reform

ARITA considers there is a strong case for simplifying pathways into formal insolvency appointment processes and improving recovery processes after appointment. This should include reconsideration of statutory defences that may make commercially viable recovery action harder to pursue, and adoption of a rebuttable presumption of insolvency in appropriate related party contexts. This reflects a broader principle that failure is not always misconduct, and that risk is inherent in commercial activity. A clear distinction between good faith failure and misconduct is critical to ensuring that the system supports risk-taking rather than discouraging it.

5.2 Personal insolvency and director behaviour

Interaction between corporate and personal insolvency

Personal insolvency settings play a critical role in shaping director behaviour and business outcomes in financial distress. In SMEs, corporate and personal insolvency cannot be considered in isolation because directors are often exposed through personal guarantees, tax liabilities and DPNs.

These interactions can materially influence whether restructuring is attempted, when formal insolvency processes are accessed, and whether a viable business is preserved or moves to liquidation.

Personal financial recovery where there is cooperation yet limited return to creditors

A personal insolvency framework should support rehabilitation where there is cooperation, no evidence of misconduct and limited prospect of recoveries, while preserving stronger consequences for failure to cooperate, obstruction or other misconduct. This better distinguishes good faith failure from conduct warranting stronger enforcement.

Consideration could be given to more streamlined discharge processes in appropriate cases, particularly where there is full cooperation, no evidence of misconduct, no meaningful realisable assets and no realistic prospect of income contributions beyond an appropriate threshold. In those circumstances, earlier discharge or streamlined appointment processes may better support the renewal or recovery purpose of bankruptcy while reducing unnecessary process costs.

Alignment with corporate restructuring outcomes

Even where a corporate restructuring is implemented, its intended business dynamism benefits may be limited if personal liabilities arising from the same business distress continue to prevent the director from participating in economic activity. For example, where a company debt is compromised through SBR, but corresponding personal exposure remains, such as under a DPN, the director may remain focused on managing personal insolvency risk rather than supporting the ongoing business.

This may weaken the renewal or recovery purpose of restructuring and create inconsistent incentives between corporate recovery and personal financial recovery.

Information access and efficient insolvency processes

Greater practical access to relevant ATO and other verified data would assist trustees and advisers to understand tax liabilities, income positions and contribution settings, verify the bankrupt’s Statement of Affairs, confirm tax liabilities, identify assets and income, and administer personal insolvency appointments more efficiently, subject to appropriate privacy and use safeguards. This would reduce delay, cost and risk in personal insolvency appointments.

These issues show that personal insolvency settings are not an adjunct to corporate insolvency. They are part of how the system works in practice. Greater alignment between personal and corporate insolvency, including behavioural incentives, information access and recovery settings, is important to improving restructuring outcomes, supporting efficient exit and strengthening business dynamism.

Engagement incentives and discharge settings

The personal insolvency framework also influences engagement with formal corporate processes. The duration of bankruptcy under sections 149 and 149A of the Bankruptcy Act, together with the ability to extend bankruptcy through objection by the Official Receiver (section 149B of the Bankruptcy Act) can result in outcomes where the period and consequences of bankruptcy are uncertain in practice.

Where the consequences of personal insolvency are perceived as prolonged or uncertain, individuals may defer engagement with formal processes or delay seeking advice, reducing the effectiveness of available restructuring and insolvency pathways. Consideration could be given to whether discharge settings remain fit for purpose, including whether greater flexibility could better support rehabilitation while maintaining appropriate safeguards against misconduct.

Institutional design and independence

The way administrative, regulatory and oversight functions are allocated within the personal insolvency system also warrants consideration. Several key personal insolvency functions sit within the same system. The Official Trustee may administer personal insolvency appointments, while the Inspector-General and Official Receiver perform regulatory and administrative roles. Although this is how the Bankruptcy Act is structured, it can raise questions about perceived independence where these functions overlap.

Provisions enabling administration by the Official Trustee, affect how work is allocated between public and private administration of personal insolvency appointments. This matters because the mix of personal insolvency appointments administered by the Official Trustee and Registered Trustees can influence cost, efficiency, consistency of outcomes, market capacity and the development of private trustee capability.

Operational and recovery constraints

Practical constraints may also arise in recovering superannuation contributions made to defeat creditors under sections 128B and 128C of the Bankruptcy Act. Although section 128D permits a trustee to commence an action at any time, delayed identification of relevant contributions may make recovery more difficult where records are incomplete, the superannuation interest has been transferred or rolled over, or evidence of the bankrupt’s purpose is no longer readily available. Timely access to information and effective preservation mechanisms are therefore important to ensuring that the recovery provisions operate effectively in practice.

Similarly, the operation of income contribution and notice provisions, including section 139ZQ of the Bankruptcy Act, introduces procedural requirements that depend on timely and accurate financial information, which may not be available in practice.

In appointments with limited available funds, these features can prevent otherwise viable recovery action from being pursued, reducing creditor returns and weakening the deterrent effect of the framework.

System alignment and behavioural outcomes

These issues show that personal insolvency settings are not an adjunct to corporate insolvency, but a core part of how the system operates in practice. Greater alignment between personal and corporate insolvency, including behavioural incentives, enforcement settings and institutional design, is important to improving restructuring outcomes, supporting efficient exit and strengthening overall business dynamism.

5.3 Small business restructuring and simplified liquidation

Recommendation 3: Strengthen SBR and simplified liquidation pathways

- SME restructuring and simplified liquidation pathways will only succeed if they are genuinely accessible in practice. If eligibility requirements, reporting obligations and creditor processes remain too complex or costly, distressed small businesses may not use them early enough for restructuring or orderly exit to be effective.
- SBR and SCVL should be simpler and lower cost than ordinary insolvency processes, while preserving appropriate safeguards for misconduct, recoveries and creditor protection.
- Safe harbour raises a related accessibility issue: while it can support earlier restructuring, its cost, complexity and reliance on early professional advice mean it may be harder for SMEs to use in practice than for larger or better resourced businesses.
- Restructuring pathways should operate as part of a continuum that includes both formal and informal restructuring options. Improving awareness, accessibility and practical utilisation of safe harbour may encourage earlier engagement with financial distress and increase the likelihood of successful restructuring outcomes, particularly for SMEs.

Implementation:

The following outlines a possible approach to implementation from ARITA's perspective.

- Simplify SBR and SCVL eligibility settings and remove technical barriers that prevent otherwise suitable SMEs from accessing the processes.
- Allow outstanding lodgements or other compliance matters to be brought up to date within a defined period where employee entitlements are met and a viable restructuring or exit proposal is available.
- Standardise SBR plan documents, creditor reports and SCVL adoption steps to reduce cost and make practitioner obligations clearer.
- Reduce default reporting, meeting and approval requirements in straightforward matters, with escalation where misconduct, potential recoveries, creditor disputes or public interest concerns justify additional work.
- Clarify creditor participation, debt verification, voting and conditional responses, including the role of the ATO in restructuring proposals.
- Improve SME access to safe harbour through clearer guidance, greater awareness and implementation of the Independent Review recommendations, including consideration of whether the cost, complexity and practical accessibility of the regime are limiting uptake by SMEs.

Small Business Restructuring

Eligibility and access

ARITA supports reforms that simplify eligibility, clarify the role of the restructuring practitioner and reduce avoidable court and creditor process costs. SBR should remain a small business process, but the debt threshold should be calculated in a way that reflects the liabilities relevant to restructuring outcomes for ordinary creditors. Certain debts, such as secured creditor shortfalls, future lease liabilities under continuing leases and related party debts, can distort eligibility assessments without increasing the exposure of ordinary arm's length creditors.

Creditor position and debtor-in-possession model

Secured creditors, owners and lessors should generally stand outside the SBR plan for secured debts and post-appointment future lease amounts, while being prevented from enforcing merely because a restructuring practitioner has been appointed. This would preserve the debtor-in-possession purpose of SBR and give the restructuring an opportunity to succeed while retaining enforcement rights for non-payment or other appropriate grounds. Where a receiver is appointed over all or substantially all of the company's assets, the restructuring should end because, at least without their support, there is unlikely to be any meaningful business left to restructure.

Debt verification and creditor participation

The proposal period should include a simple creditor verification process so that debts and claims are confirmed before voting and before the schedule of debts and claims becomes operative. Creditors who do not verify their claims by the required date could remain bound by the plan but not participate in plan payments, subject to an appropriate court pathway for genuine disputes or exceptional circumstances. This would reduce disputes, avoid payments to creditors whose claims are overstated or unconfirmed, and reduce the need to extend the period for creditors to consider and accept the restructuring plan.

Plan flexibility and variation

The plan mechanism should also be more flexible after a plan is made. A creditor approved variation process should be available, with the company proposing the variation, the restructuring practitioner explaining it to creditors, and creditors voting on whether it should be accepted. This would allow viable plans to be adjusted where circumstances change without forcing unnecessary termination or court applications.

A clearer and more proportionate description of the restructuring practitioner's investigation and reporting obligations would also assist. This could include prescribed reporting content or a checklist style report so that creditors, including the ATO, understand the information provided without creating open-ended costs associated with information requests.

Targeted procedural refinements

Further targeted changes should include:

- an automatic stay of winding up applications during the proposal and acceptance period;
- clearer statutory recognition that the restructuring practitioner acts with the company and its directors before and during the restructuring;
- restrictions on the restructuring practitioner later becoming liquidator or voluntary administrator of the same company;
- the ability for related party creditors to accept different treatment or no return to improve the return to arm's length creditors;
- limiting SBR plans to cash contributions (whether over time, from trading or from third party sources) and distributions; and
- prescribed reporting content so creditors, including the ATO, know what information should be provided without creating open-ended information request costs.

Pathway where plan not accepted

If a restructuring plan is not accepted, the legislation should provide a clearer post vote pathway. A practical approach would be to require the company, within a defined (short) period, to notify creditors whether it will submit a revised proposal, appoint a voluntary administrator, enter creditors' voluntary liquidation or allow the restructuring process to end. This would give creditors greater certainty without imposing automatic liquidation in every case. Any pathway should preserve creditor rights, avoid unnecessary additional cost and maintain confidence in the restructuring process.

Creditor behaviour and market outcomes

One of the key data trends is that fewer proposals are being accepted and that is not simply about viability; it reflects changing creditor expectations. We have seen a shift from early acceptance levels around 10 cents in the dollar to expectations now more commonly 20 to 30 cents or higher, with some higher return proposals still not accepted.

The ATO's approach to unsecured tax debt may also have broader system effects where employee entitlements would otherwise be paid through a restructuring, but liquidation results in FEG exposure. This interaction should be considered as part of any review of creditor behaviour, restructuring incentives and priority outcomes.

The data may indicate that the current regimes remain too complex and are not yet sufficiently different from ordinary processes to deliver meaningful cost savings or improved uptake.

ARITA is developing specific reform proposals directed to simplifying eligibility, reducing cost, improving creditor engagement and increasing the practical accessibility of these pathways.

More broadly, restructuring pathways should operate as part of a continuum that includes both formal and informal restructuring options. Consideration should be given to improving SME access to safe harbour through clearer guidance, greater awareness and implementation of the Independent Review recommendations, including whether the cost, complexity and practical accessibility of the regime are limiting uptake by SMEs.

Simplified Creditors' Voluntary Liquidation

Entry and eligibility

ARITA's work in this area indicates that the process should be simplified at commencement and made available where it can reduce liquidation costs. Adoption of the simplified process should be based on the liquidator's assessment that: considering:

- directors have cooperated;
- the necessary books and records have been provided;
- initial investigations do not identify material voidable transactions, insolvent trading claims or other recovery actions warranting a full liquidation process;
- assets available for realisation are limited; and
- any dividend process is expected to be straightforward and capable of being administered through a simplified process.

Adoption should occur within a clear timeframe, with creditors then given a defined opportunity to object by value threshold, excluding related creditors. ASIC should also have power to require termination of the simplified process but should be required to provide reasons. The adoption and notification process should be simplified so that timing requirements do not themselves become a disincentive to using SCVL.

Scope of application

The simplified process should also be available in appropriate court liquidations, not only creditors' voluntary liquidations. Court liquidations can incur similar cost pressures as voluntary liquidations, and the availability of SCVL should not depend solely on the mode of appointment. Use of SCVL should also be separated from SBR, so that use of one process does not unnecessarily limit access to the other where the processes serve different policy purposes.

Creditor control and litigation limits

Creditors should retain the ability to end a simplified liquidation where they consider that a full liquidation would produce a better outcome, for example because litigation or more extensive recovery investigation is warranted. Conversely, litigation should generally not be undertaken within SCVL, except for proof of debt issues. If litigation is required, the simplified process should end, and the matter should proceed as an ordinary liquidation.

Dividend and proof of debt process

The dividend process should also be streamlined. Multiple dividends should be permitted for priority employee creditors so that entitlements can be paid promptly. Formal proof of debt requirements should be reduced where an informal claim can be adjudicated and rejected if necessary. The requirement for ATO clearance before declaring a dividend should be removed in SCVL, particularly where tax lodgements are already a condition of entry and the ATO has the same opportunity as other creditors to submit a claim. This would reduce delay and cost in matters where ATO clearance can otherwise take many months.

Investigation and information requests

Finally, investigation, reporting and information request obligations should be clarified. Creditors should retain the practical ability to engage with the liquidator, but the statutory information request process can impose material costs where a small number of creditors make multiple or extensive requests that do not benefit creditors as a whole. Clarifying the level of investigation and reporting required in SCVL would also reduce uncertainty about whether liquidators need to undertake work that is primarily for regulatory purposes, rather than for the benefit of the creditor body.

These SBR and SCVL reforms would make Recommendation 3 more operational. They would reduce cost and uncertainty, improve creditor engagement, preserve integrity safeguards and make SME restructuring and low cost exit pathways materially more distinct from other insolvency appointments.

Recent member experience evidence

Recent member queries received by ARITA illustrate that the barriers identified in this submission arise in practical, everyday appointments, not only at a policy level. Members have sought guidance on SBR eligibility and termination consequences, creditor responses to restructuring plans, procedural steps required to finalise appointments with limited available funds, and trust asset issues. These enquiries demonstrate that practitioners continue to encounter uncertainty in applying technical requirements to SME matters, often where cost, timing and creditor engagement are critical to whether restructuring or orderly exit remains viable.

- Practitioners have sought guidance on whether an SBR process can be recommenced where an earlier restructuring was terminated after eligibility concerns emerged. This highlights the practical significance of technical eligibility rules and the consequences of the current restriction period where a process has commenced but has not resulted in a plan being put to creditors.
- Practitioners have also raised questions about what steps need to be taken where an SBR plan terminates because of an unremedied contravention, but the directors do not provide the required notice or are not contactable. This illustrates how the current framework can

create uncertainty around timing, lodgement obligations and interaction with ASIC processes in circumstances where prompt action is required.

- ARITA has received queries concerning creditor responses to SBR proposals where a creditor appears to accept a plan while also seeking additional reporting or conditions not contained in the circulated proposal. This demonstrates the need for clearer processes around creditor participation, plan terms and the treatment of conditional or qualified responses, particularly where a major creditor’s position may affect the viability of the restructuring.
- Members have queried whether procedural forms remain necessary to finalise court liquidations, even where ASIC’s processes appear to initiate deregistration through the end of appointment return. This reflects the broader concern that routine procedural requirements should be clear, current and proportionate to the size and complexity of the appointment.

5.4 Cost, proportionality and court dependence

Recommendation 4: Simplify and streamline insolvency processes and reduce unnecessary court dependence.

- Reduce unnecessary reporting, approval and court requirements that add cost and delay without improving outcomes.
- Introduce a more proportionate approach to insolvency appointments, particularly in appointments with limited available funds.
- Simplify remuneration approvals, reduce duplicative reporting and lodgement requirements and streamline creditor engagement requirements where appropriate.
- Consider whether a more proportionate approach should apply to insolvency appointments with limited available assets. Where available realisations are insufficient to support the procedural requirements of the appointment; reporting, meeting, approval and court requirements could be streamlined while preserving public interest requirements, including misconduct reporting, record preservation and regulator referrals. This would be in addition to an improved simplified liquidation process.
- Appointments with little or no realisable assets often require the same reporting, meeting and approval requirements as larger appointments, despite having limited prospects of recoveries or creditor returns. A more proportionate framework would allow resources to be directed towards investigation, recovery and misconduct reporting rather than procedural compliance.
- Reduce reliance on court applications for routine matters, including trust asset administration where no dispute or material risk exists.

Implementation:

- Review and remove unnecessary reporting, approval and court requirements that add cost and delay without improving outcomes.
- Examples could include simplifying remuneration approvals for appointments with limited available funds, reducing duplicative ASIC reporting and lodgement requirements, streamlining creditor meeting and communication requirements where engagement is low, removing obsolete procedural steps in finalising appointments, reducing reliance on court applications for routine directions, and providing statutory pathways for trust asset administration.
- Court involvement should be reserved for contested, high-risk or novel issues.

Proportionality is central to the practical operation of insolvency processes. In smaller appointments and appointments with limited available funds, statutory, reporting, approval and court-related requirements can consume limited funds before substantive restructuring, recovery or enforcement work can occur. This affects business dynamism by reducing creditor returns, discouraging viable recovery action, increasing reliance on court processes and limiting the capacity to preserve value.

Disproportionate costs in small appointments

A recurring concern in SME insolvencies is that the statutory obligations to undertake administrative tasks, statutory reporting, and any court related costs can be disproportionate to the available asset pool. Requirements that may be appropriate and manageable in larger appointments can materially reduce net returns in smaller appointments, particularly where the costs of compliance, investigation, creditor engagement or court approval exceed the value likely to be preserved or recovered.

Complexity and enforceability

Complexity in regulatory and legislative settings not only increases compliance costs; it also reduces enforceability. Where rules are difficult to understand or apply in practice, both compliance and enforcement outcomes are weakened.

Recent regulatory simplification initiatives undertaken by ASIC also reflect a broader recognition that regulatory complexity and procedural burden can increase costs, delay outcomes and create unnecessary barriers. While these initiatives sit outside the insolvency framework, they demonstrate the value of simplifying administrative requirements and reducing duplication where equivalent policy outcomes can be achieved more efficiently.

Impact in appointments with limited available funds

These issues are most evident in appointments with limited available funds, where insolvency practitioners need to make early decisions about whether there are sufficient funds to trade on, pursue recoveries, seek directions or undertake further investigations. In those matters, routine procedural requirements can consume limited resources before substantive restructuring, recovery or enforcement work can be undertaken. The result is that otherwise worthwhile investigations or recovery actions may not proceed, creditor returns may be reduced, and businesses that could have been restructured or sold as a going concern may instead move more quickly to liquidation.

Many insolvency appointments commence with little or no available funding. In these matters, the costs of complying with the full suite of administrative, reporting and procedural requirements can quickly outweigh any benefit to creditors. A more proportionate approach for appointments with limited available funds would allow routine matters to be administered efficiently while preserving appropriate investigation, reporting and enforcement mechanisms. This would improve access to formal insolvency processes, reduce costs and enable resources to be directed towards matters where recoveries, misconduct investigations or other public interest outcomes are most likely to be achieved.

Remuneration approval

A key cost driver is remuneration approval. ARITA supports increasing the maximum statutory remuneration amount to $15,000, indexed. This would reduce the cost of preparing remuneration reports and seeking creditor or court approval where the amount involved is modest and the reporting cost is disproportionate to the available asset pool.

The current maximum default remuneration amount is $6,767 for appointments between 1 July 2026 and 30 June 2027. This amount is indexed annually and applies to both liquidations and bankruptcies.

The existing statutory threshold is intended to reduce approval costs in smaller appointments. However, the present amount no longer adequately reflects the cost of performing mandatory duties in many low asset appointments. Increasing the threshold would better align the approval process with realistic costs and reduce expenditure that may otherwise diminish returns to creditors.

Court involvement and procedural costs

While judicial oversight is important where there is dispute, uncertainty or risk, routine applications can impose significant cost and delay in small appointments. This is evident in matters involving trust asset administration, remuneration approval, including applications under section 477(2B) of the Corporations Act and section 90-15 of the IPS (Corporations), or uncertainty about the insolvency practitioner's powers. In practice, the need to obtain court orders can consume funds that would otherwise be available for creditors or for steps directed to preserving realisable value.

Strict liability and practical operation

This issue is not limited to court applications. Strict liability offences introduced under the Insolvency Law Reform Act 2016 have, in some cases, produced outcomes that are technically compliant but commercially impractical. In particular, these settings can require insolvency practitioners to seek court directions or relief simply to carry out routine activities without risking inadvertent breach, increasing cost and delay and diverting limited funds away from creditor returns.

A clear example arises in relation to funds handling under Division 65 of the IPS (Corporations). The requirement to deposit all money received into an appointment account within prescribed timeframes, and not to pay in money not received "in relation to the company", can create unworkable outcomes in practice. In trading appointments involving primarily cash businesses, such as hospitality venues, strict compliance may require cash floats to be physically banked and reissued, creating cost, operational disruption and unnecessary risk without improving creditor protection. In group structures, treasury arrangements may also require court relief to maintain ordinary operating practices.

A review of strict liability provisions should focus on whether they are achieving a meaningful policy objective in practice. Where compliance costs, court applications or procedural complexity are disproportionate to the risk being addressed, consideration should be given to more practical alternatives. The objective should be to maintain appropriate safeguards and accountability while reducing unnecessary cost, delay and court involvement.

Towards a more proportionate framework

These outcomes illustrate how rigid compliance settings can impose disproportionate costs and increase reliance on court processes, even where no substantive dispute or misconduct concern arises. A more proportionate, risk-based approach would preserve appropriate safeguards while reducing unnecessary cost and court dependence.

ARITA therefore supports reforms that reduce unnecessary court involvement, streamline remuneration approval where appropriate, and introduce more proportionate reporting and administrative requirements. The objective should be to preserve appropriate oversight and creditor protection, while ensuring that procedural requirements are calibrated to the size, complexity and risk profile of the appointment. A more proportionate framework would allow insolvency practitioners to focus limited resources on preserving value, investigating misconduct, pursuing viable recoveries and achieving timely restructuring or orderly exit outcomes.

6. Creditors, priorities and ATO interaction

Australia’s statutory priority framework establishes the order in which creditors are paid. In practice, however, outcomes are also being shaped by creditor behaviour.

The conduct of large institutional creditors, particularly the ATO, can be highly influential in whether a business restructures or moves into liquidation.

The increasing significance of unpaid tax liabilities in small business financial distress reinforces the importance of institutional creditor conduct, timely engagement and practical restructuring pathways. In June 2026, the Auditor-General reported[5] that small business collectable tax debt had increased by $19.4 billion between 2018–19 and 2024–25 and represented 66.1% of the ATO's total collectable debt book. The report identified approximately 1.34 million small businesses with collectable tax debt and concluded that the ATO's management of small business collectable debt was only partly effective. These findings reinforce the importance of timely creditor engagement, restructuring pathways and effective administration of tax debts in supporting viable businesses and facilitating efficient market exit where recovery is no longer possible.

[5] Auditor-General, Management of Small Business Tax Debt, Auditor-General Report No. 50 2025–26, Australian National Audit Office, 30 June 2026.

Recommendation 5: Strengthen creditor priorities and address institutional creditor conduct

- Ensure the statutory priority framework operates transparently, consistently and as intended, and review practical mechanisms that may affect insolvency distributions, creditor outcomes or restructuring incentives.
- This could include consideration of, where relevant to insolvency outcomes, ATO garnishee notices, DPNs and lockdown DPNs, set-off practices, post-appointment refunds, employee entitlement interactions, FEG related priority effects, circulating security interests, and insolvency practitioner remuneration and expenses.

Implementation:

- Conduct a targeted Creditor Priority and Distribution Integrity Review to assess whether statutory priority rules are being affected by external mechanisms or major institutional creditor practices.
- The review should focus on whether mechanisms such as ATO garnishee notices, DPNs and lockdown DPNs, set-off practices, post-appointment refunds, FEG related priority effects, circulating security interests and practitioner remuneration rules distort restructuring incentives, reduce predictability or alter insolvency distributions in ways not clearly intended by the statutory priority framework.
- Although tax collection remains an important public policy objective, insolvency settings should not unnecessarily impede viable restructurings, distort restructuring incentives or reduce returns available for distribution to creditors.
- The review should examine whether current institutional creditor practices support early engagement with restructuring options and timely business recovery, particularly for SMEs.
- Practical reform options should include priority impact statements for major institutional mechanisms and published insolvency conduct protocols for key institutional creditors.

Confidence in the insolvency system depends on creditor priorities operating transparently, consistently and in accordance with the statutory framework. ARITA is concerned that the interaction between employee entitlements, circulating security interests, and insolvency practitioner remuneration and expenses can create uncertainty and undermine the predictable operation of that framework. Those concerns are heightened where the conduct of major institutional creditors, including the ATO, produces outcomes that effectively confer priority outside the statutory scheme.

These mechanisms may serve legitimate statutory functions. The practical question is how they interact with insolvency processes, including whether their operation affects restructuring viability, predictable creditor outcomes or the efficient allocation of value in an insolvency appointment.

ARITA’s members have identified a number of concerns in relation to the ATO’s role as creditor, including the operation of garnishee notices around insolvency appointments, DPNs and lockdown DPNs, and the set-off of post-appointment refunds against pre-appointment debts until release events occur.

Recent member queries also indicate uncertainty about how conditional or qualified creditor responses to SBR proposals should be treated. This reinforces the need for clearer rules around creditor participation, plan terms and reporting requests so that creditor engagement supports, rather than complicates, the practical operation of restructuring proposals.

Garnishee notices

Where ATO garnishee notices remain in effect after the commencement of an insolvency appointment, they may divert key working capital from a distressed business at precisely the point when a restructuring proposal is being explored. In practice, this may prevent an otherwise viable restructuring from proceeding, leading to liquidation and reducing recoveries and employment outcomes.

Director Penalty Notices

The issue of a DPN shortly before or during attempts to pursue a restructuring can materially affect director behaviour. Faced with personal liability exposure, directors may prioritise immediate cessation or the rapid appointment of an insolvency practitioner over further exploration of a restructuring proposal, even where that proposal may otherwise maximise realisable value and employment.

A company may successfully complete a restructuring process and continue trading while the director remains personally exposed for liabilities arising from the same underlying debt. This may weaken the recovery purpose of restructuring and create inconsistent incentives between corporate recovery and personal financial recovery.

Lockdown Director Penalty Notices

Lockdown DPNs can remove the utility of a later formal appointment as a means of remitting a director’s personal penalty exposure. This can materially affect director behaviour by reducing the incentive to continue exploring restructuring options (including any formal insolvency appointment) once personal liability has already crystallised. In practice, this may increase the likelihood that businesses enter formal insolvency only after business value has materially deteriorated, reducing the prospects of a timely restructuring or going-concern outcome.

Tax refund set-offs and post-appointment credits

Where post-appointment BAS or GST credits are applied against pre-appointment tax debts rather than refunded to the insolvency practitioner while a restructuring is being pursued, cash that might otherwise support trading may be unavailable when most needed. This can impair the ability to meet wages, pay critical suppliers, preserve going-concern value or support a sale or recapitalisation process.

The Commissioner’s discretion to offset refunds and credits

An issue arises from the Commissioner's discretion to offset refunds and credits against taxation liabilities. The June 2026 update to administrative guidance confirms that refundable tax offsets and other credits may be applied against outstanding or legacy tax debts before any cash payment is made.

In practice, this can affect the cash flow position of small and early-stage businesses that rely on refundable credits, including R&D offsets, as a source of working capital. Where historic liabilities exist, refunds that might otherwise support continued trading or restructuring can be absorbed without direct visibility at the point of receipt.

This has implications for restructuring viability and timing. Cash that could support a restructuring process may not be available when needed, increasing the likelihood of formal insolvency and reducing the prospects of an orderly or value preserving outcome.

As with other ATO creditor actions, the issue is not the legitimacy of recovery. The issue is how these mechanisms interact with insolvency outcomes and business dynamism.

These settings also have broader implications for business dynamism. Creditor behaviour by large institutional creditors affects the willingness of other creditors and lenders to support restructuring. Uncertainty around priority outcomes and enforcement risk can therefore translate into higher cost or reduced availability of credit.

These dynamics also reflect information asymmetry and bargaining power imbalances between institutional creditors and smaller businesses, which can materially affect restructuring outcomes in practice.

7. Legislative interaction and trust asset administration

7.1 Adjacent regimes affecting insolvency outcomes

Recommendation 6: Address legislative interaction and improve data integration

- Review and align insolvency law with adjacent Commonwealth, State and Territory regimes where those regimes directly affect insolvency outcomes, including asset availability, creditor priority, restructuring viability, insolvency practitioner conduct, and the cost and timing of insolvency appointments.
- The review should include, to the extent relevant to insolvency outcomes, tax administration, environmental obligations, PPSA issues, construction trust and security of payment regimes, compensation and employee entitlement schemes, licensing, approvals and other regimes that may delay or distort restructuring, sale or orderly exit outcomes.
- Priority should be given to areas where legal uncertainty routinely affects insolvency outcomes, creates unnecessary court dependence or increases costs.

Implementation:

- ARITA submits that greater clarity could be achieved by considering the interaction between insolvency law and adjacent legal regimes in a more structured way, particularly given the breadth of legislation that can affect insolvency outcomes (as outlined in **Annexure B**).
- One possible approach would involve mapping the points at which adjacent laws affect insolvency outcomes, including identifying the relevant jurisdiction, the practical impact on insolvency appointments, and options to address those impacts.
- In practice, this could assist in developing a clearer picture of where interactions between regimes are creating cost, delay or uncertainty, and where reform could simplify insolvency processes and support more effective restructuring or exit.
- Where State and Territory regimes are involved, this may also support more coordinated consideration of reform options across jurisdictions.
- The data integration aspects of Recommendation 6 are addressed in section 8. Together, the legislative interaction review and data reforms would reduce duplication, improve information access and support more efficient insolvency appointments.

A major issue for business dynamism is the way insolvency law interacts with other Commonwealth, State and Territory regimes. In practice, insolvency outcomes may be affected by taxation, employment, property, environmental, regulatory, trust and other statutory frameworks that operate alongside the Corporations Act and Bankruptcy Act, but were not designed as part of a single integrated system. These interactions can affect asset availability, creditor priority, restructuring options, the transferability of licences or approvals, and the conduct expected of insolvency practitioners. They can also increase complexity, create uncertainty and add costs that are ultimately borne by creditors, businesses and the broader economy.

These issues arise across a range of regimes, including environmental regulation, PPSA registration and priority rules, construction security of payment and retention trust schemes, employee and consumer compensation schemes, and licensing, approval and regulatory consent regimes affecting the sale of businesses or assets. Greater attention to legislative interaction and consistency across related regimes would support more efficient administration and reduce unnecessary friction in restructuring and insolvency processes.

The ACCC merger clearance regime provides one of many examples of a regulatory framework capable of affecting urgent distressed business sales. Where the best purchaser is a competitor, notification and clearance timing may affect whether a going concern sale can proceed before value is lost.

In addition, the recent Treasury consultation proposal[6] concerning discretionary trusts provides another example of how reforms developed outside insolvency legislation may have significant insolvency consequences. The consultation considers issues including the liability of corporate trustees, potential personal liability of directors of corporate trustees and access to trust assets. These issues have implications for creditor recoveries, trust administration and insolvency risk allocation.

These regimes pursue important public policy objectives. The issue is not whether those objectives should be displaced. It is whether their interaction with the insolvency framework is clear, timely and predictable enough to allow insolvency practitioners to preserve value, allocate loss transparently, and achieve restructuring or orderly exit where possible.

Three examples are set out below. Annexure B of this submission provides a broader list of legislation that operates adjacent to insolvency law and may affect insolvency outcomes.

Example	Legislative interaction	Illustrative cases
ATO- de facto super priority creditor	ATO enforcement powers can operate outside the ordinary insolvency distribution framework, with the practical effect that funds may be recovered before they become available for distribution to other unsecured creditors. In practice, this can reduce the asset pool available to creditors by diverting cash flows and applying credits that might otherwise contribute to realisations and hence pari passu distributions to unsecured creditors in accordance with the Corporations Act.	*Hudson Global Resources (Aust) Pty Ltd (Administrators Appointed)* [2026] NSWSC 535 *Bruton Holdings Pty Ltd (in liq) v Commissioner of Taxation* [2009] HCA 32 *Commissioner of Taxation v Steelfix Pty Ltd* [2010] FCAFC 33
Environmental obligations	Environmental obligations arising under Commonwealth and State environmental legislation may continue to affect insolvent companies notwithstanding liquidation,	• *Linc Energy Ltd (in liq); Longley v Chief Executive, Department of*

[6] Treasury, Tax integrity — discretionary trusts: exposure draft legislation and explanatory materials, consultation paper, July 2026.

Example	Legislative interaction	Illustrative cases
	disclaimer powers or other insolvency processes. In practice, clean up notices, prevention notices and remediation obligations can require expenditure, affect asset realisation strategies, reduce asset value and constrain sale options.	*Environment and Heritage Protection* [2017] QSC 53; • *Linc Energy Ltd (in liq) v Chief Executive, Department of Environment and Heritage Protection* [2018] QCA 32; • *The Australian Sawmilling Company Pty Ltd (in liq) v Environment Protection Authority* [2021] VSCA 294; • *Re Fordex Pty Ltd (in liq)* [2025] VSC 180; • *Hudson, in the matter of ACB Group Pty Ltd (in liq)* [2025] FCA 90
PPSA disputes and verification issues	Multiple competing PPSR registrations over the same assets often require time consuming verification and engagement with secured parties. This increases appointment time, delays asset realisation and can deplete returns where value depends on prompt sale or clear title. Relevant provisions include ss 12, 19-21, 55-62, 153, 164-165 and 267 of the PPSA, and ss 441A-441G and ss 588FL-588FM of the Corporations Act.	• *Forge Group Power Pty Ltd (in liq) (Receivers and Managers Appointed) v General Electric International Inc* [2016] NSWSC 52; • *In the matter of OneSteel Manufacturing Pty Ltd (Administrators Appointed)* [2017] NSWSC 21.
Construction trust, retention and security of payment schemes	Construction regimes can quarantine funds from the company, create urgent payment rights or affect set-off and priority outcomes. Relevant provisions include ss 12A, 13, 14, 17, 22, 26A-26B and 32B of the *Building and Construction Industry Security of Payment Act* 1999 (NSW); and ss 11-12, 14, 19-20C, 35-36 and 51A of the *Building Industry Fairness (Security of Payment) Act* 2017 (Qld)	• *Façade Treatment Engineering Pty Ltd (in liq) v Brookfield Multiplex Constructions Pty Ltd* [2016] VSCA 247; • *Seymour Whyte Constructions Pty Ltd v Ostwald Bros Pty Ltd (in liq)* [2019] NSWCA 11.

ARITA's focus is limited to those aspects of adjacent regimes that have a direct impact on insolvency outcomes, including asset availability, creditor priority, restructuring viability, practitioner conduct, and the cost and timing of insolvency appointments. This necessarily includes aspects of the taxation framework, including the role of the ATO, where these directly influence insolvency outcomes and the efficient operation of the system.

7.2 Trust asset administration

Trust asset administration provides a practical example of the broader issues addressed by Recommendation 4. In many appointments involving trading trusts, insolvency practitioners must obtain court orders to exercise powers that would ordinarily arise in a corporate insolvency, creating cost, delay and uncertainty that can be disproportionate to the value available in the appointment. The issue also illustrates the type of legislative interaction reform addressed by Recommendation 6, as outcomes are influenced by the interaction between insolvency law and trust law.

In the matter of *Killarnee Civil & Concrete Contractors Pty Ltd (in liq) [*2016] NSWSC 195, and later in *Jones (Liquidator) v Matrix Partners Pty Ltd*; in the matter of *Killarnee Civil & Concrete Contractors Pty Ltd (in liq)* [2018] FCAFC 40, the courts recognised the practical difficulty faced by liquidators of insolvent corporate trustees.

While section 477 of the Corporations Act gives a liquidator power to sell or otherwise dispose of property of the company, it does not give an automatic power to sell trust assets held by the company as trustee. Accordingly, liquidators generally need to seek court directions, judicial sale orders or appointment as receiver of trust assets before trust property can be realised and distributed. This creates cost and delay in appointments that often involve limited asset pools.

Further, the trustee's right of indemnity or exoneration is, however, capable of being treated as property of the company for relevant insolvency purposes. The High Court confirmed in *Carter Holt Harvey Woodproducts Australia Pty Ltd v Commonwealth* [2019] HCA 20 (**Amerind**) that the statutory priority regime can apply to proceeds available through the trustee's right of indemnity.

While this authority has provided important clarification, it does not resolve the broader structural issue that the insolvency framework does not operate directly on trust assets or trust funds. In practice, insolvency law continues to recognise the trustee as the relevant legal entity without adequately accounting for the separate economic reality of the trust fund, including its distinct assets, liabilities and creditor base. This disconnect contributes to uncertainty in relation to asset realisation, creditor rights and the operation of the indemnity, and can produce inconsistent outcomes across otherwise comparable insolvency appointments.

ARITA's prior work in this area has consistently identified the absence of a clear legislative framework as the central issue. In the absence of statutory guidance, courts have been required to adapt general insolvency principles to trust structures in a way that is often fact-specific, indirect and dependent on court intervention. As a result, insolvency practitioners are frequently needed to seek judicial advice or orders simply to exercise powers that would ordinarily arise as a matter of course in a corporate insolvency.

The practical consequences are significant, particularly in the SME context. Trading trusts are a common feature of Australian business structures, yet their treatment in insolvency introduces additional cost, delay and uncertainty that is not present in equivalent corporate structures. Insolvency practitioners may be required to obtain court orders to deal with trust assets, confirm their powers, or address issues arising from the removal or limitation of the trustee's authority. Those applications impose costs that can be disproportionate to the value of the underlying assets and may materially reduce, or in some cases eliminate, any return to creditors.

These inefficiencies are not confined to the appointment phase. Uncertainty as to how trust assets will be treated in insolvency can influence behaviour earlier in the distress cycle, including the timing of appointments, the willingness of creditors to support restructuring, and the ability of insolvency practitioners to preserve and realise value. Where the cost and complexity of dealing with trust assets is high relative to available value, otherwise viable restructuring or recovery action may not be pursued.

The absence of a clear legislative mechanism also interacts with other features of the insolvency framework in a way that further constrains efficient outcomes. The need to rely on indirect mechanisms to access and realise trust assets can delay recovery actions, complicate creditor engagement and reduce transparency around the allocation of proceeds. It may also increase reliance on court processes in circumstances where there is no substantive dispute, but where legal certainty is required before actions can be taken.

ARITA's position remains that these issues can be addressed by legislative reform that enables the existing insolvency framework to operate effectively in respect of trust structures. This would involve recognising, for insolvency purposes, the trust or trust fund as a distinct economic unit and enabling insolvency practitioners to exercise appropriate powers in relation to trust assets without the need for separate court appointment. Such an approach would not introduce a separate insolvency regime for trusts but would allow existing processes to apply in a manner that reflects how business is conducted in practice.

From a business dynamism perspective, reform in this area would support more timely restructuring, more efficient exit and more predictable creditor outcomes. Clarifying the treatment of trust assets would reduce unnecessary cost and delay, improve insolvency practitioners effectiveness and support confidence in insolvency processes, particularly for SMEs. Consistent with Recommendations 4 and 6, this is an area where targeted legislative reform could deliver immediate and practical benefits to the operation and integrity of the insolvency system.

ARITA recommends a statutory regime that permits insolvency practitioners of insolvent corporate trustees to administer trust assets without separate court appointment, and clarifies the operation of the right of indemnity, priority of claims and remuneration. In this regard, ARITA has previously undertaken targeted policy advocacy, member information-gathering and consultation on trust asset administration to remove routine court dependence and clarify indemnity, priority and remuneration issues for insolvent corporate trustees.

Recent member enquiries continue to raise the question of whether a liquidator of a corporate trustee needs to obtain court appointment as receiver, or other court orders, before realising trust assets through the trustee's right of indemnity. This supports ARITA's recommendation for a clear statutory pathway for trust asset administration, with court involvement preserved for contested, high-risk or unusual matters rather than required as a routine precondition.

8. Data, information access and institutional capability

Recommendation 6: Address legislative interaction and improve data integration

- Improve access to timely and integrated data across ASIC, ATO, AFSA, PPSR and related systems to support efficient insolvency processes, asset identification, misconduct detection, recovery action, policy evaluation and regulator coordination.
- Provide insolvency practitioners with practical access to relevant information about assets, transactions, related entities and compliance history, subject to appropriate safeguards.
- Data reform should support both individual insolvency appointments and future evaluation of whether insolvency reforms are improving restructuring, enforcement and system efficiency outcomes.

Implementation:

- Develop the Insolvency Data Gateway in stages, starting with core ASIC, ATO, AFSA and PPSR datasets that are most relevant to asset identification, related entity searches, compliance history, prior insolvency appointments and recovery action.
- Provide authorised insolvency practitioners with controlled, read-only access to relevant records, including director and related entity history, tax and lodgement data, PPSR registrations, prior insolvency appointments, asset indicators, compliance history and relevant regulator notices, without the need to make separate requests to each agency.
- Establish clear data standards, permitted use rules and responsibility for maintaining the gateway, including consistent definitions and reporting periods across participating agencies.
- Use aggregated, system-level data to publish regular reporting on restructuring outcomes, creditor returns, costs, SBR and SCVL performance, appointments with limited available funds, enforcement activity and recovery rates.
- Apply appropriate safeguards, including role-based access, audit logs, privacy protections, data minimisation and limits on use, so information is used only for insolvency appointments, regulatory coordination and policy evaluation.

Government agencies increasingly rely on data matching and analytics to identify risk, detect non-compliance and support regulatory decision-making. Similar principles could be applied in the insolvency context through improved data integration and controlled information sharing across ASIC, ATO, AFSA, PPSR and related systems.

Better use of existing data would assist insolvency practitioners to identify assets, transactions, related entities, compliance history, repeat failures, misconduct indicators and recovery opportunities more quickly. It would also reduce duplication by limiting the need for separate information requests to multiple agencies.

Improved data integration would also support policy design and system oversight. Aggregated, system-level data could help the Commission and government assess whether reforms are improving restructuring outcomes, enforcement outcomes, creditor recoveries and overall system efficiency over time.

Existing initiatives such as ASIC's RegistryConnect program demonstrate the practical benefits of improved digital infrastructure and data accessibility. Similar principles could be applied across insolvency-related datasets to improve information access, reduce duplication and support more efficient insolvency process.

Success could be evaluated by reduced information request times, earlier identification of relevant assets and related entities, improved recovery outcomes, enhanced regulator coordination, increased visibility of repeat non-compliance and improved availability of system-level insolvency performance data. ARITA continues to support a more coherent and dedicated insolvency regulatory framework. Even absent full structural reform, more coordinated regulator engagement and a stronger focus on education and turnaround capability would improve outcomes.

9. Design of the insolvency framework

9.1 Objectives of insolvency law

Recommendation 7: Harmonise corporate and personal insolvency and apply a business dynamism lens to future insolvency reform

- Future insolvency reforms could be assessed against whether they support timely restructuring, efficient exit, productive capital reallocation, fair creditor outcomes and system integrity.
- This recommendation should operate as an implementation principle across the reform program, ensuring that insolvency law is treated as part of Australia's productivity and business dynamism architecture rather than only as an end-of-life framework.
- This could help government assess whether reforms can be implemented in practice, identify key risks and information gaps, and support ongoing evaluation of their impact on productivity, innovation, investment and employment.

Implementation:

- In practice, this could operate by incorporating business dynamism considerations into the development and evaluation of insolvency reforms, distinguishing between indicators of business dynamism and the underlying settings that can be acted on in practice.
- This could include assessing, at an early stage, how proposed reforms would affect the timing and viability of restructuring, the efficiency of business exit, the reallocation of labour and capital, creditor outcomes, accessibility for small and medium enterprises, and the deterrence of misconduct.
- The same approach could also support post-implementation evaluation, by providing a consistent basis for assessing whether reforms are improving outcomes in practice, including impacts on productivity, innovation, investment and employment.

ARITA supports the development of a clear and modern statement of objectives for Australia's insolvency laws. Building on the Harmer framework and ARITA's earlier policy work, those objectives could include a genuine opportunity to restructure economically viable businesses, efficient realisation of value where restructuring is not possible, fair treatment of creditors, proper identification and response to misconduct, and support for best practice regulation of the insolvency profession.

A clearer objectives framework would improve policy discipline by allowing new proposals to be tested against criteria such as timeliness, efficiency, equitable treatment, value preservation and commercial certainty.

While these objectives remain appropriate, ARITA's experience is that the current system does not consistently achieve them in practice. In particular, cost, complexity and legislative interaction issues can limit access to restructuring pathways, delay exit and reduce recoveries, resulting in outcomes that fall short of the system's intended objectives.

9.2 Harmonisation and unification

Recommendation 7: Harmonise corporate and personal insolvency and apply a business dynamism lens to future insolvency reform.

- Progress towards a single, harmonised insolvency regime covering corporate and personal insolvency, including companies, partnerships, trusts and individuals, consistent with growing international practice. This should reduce duplication, complexity and cost, particularly for SME insolvencies where business and personal financial affairs commonly intersect.
- Establish a single, standalone government agency committed to best practice regulation of businesses and individuals experiencing financial difficulty and insolvency, and of the insolvency profession.

Implementation:

- In practice, greater alignment between corporate and personal insolvency regimes could be progressed in stages.
- An initial step could involve identifying areas where provisions already operate similarly but are expressed or administered differently, including terminology, creditor processes, reporting, practitioner obligations, remuneration and forms, and aligning those settings where this can be achieved without structural change. This staged approach could allow more immediate alignment in relatively straightforward areas, while supporting longer term consideration of structural reform.
- Over time, this could support more consistent legislative settings across the Corporations Act and Bankruptcy Act, together with more integrated regulatory and administrative arrangements.
- In the longer term, this may also support consideration of more unified approaches to regulation, legislation and supporting systems, including shared reporting, lodgement and data frameworks.

ARITA supports further harmonisation of corporate and personal insolvency and, in the longer term, a more unified insolvency framework. In practice, small business distress frequently spans both company and personal affairs, yet Australian legislation treats them through separate and increasingly divergent regimes. This duplication increases cost, reduces accessibility and weakens efficient resolution.

In jurisdictions like Australia, insolvency law has evolved from an English-derived model, transitioning from State legislative power to a constitutional framework where insolvency is a Commonwealth responsibility, supporting national consistency.

Personal and corporate insolvency often intersect, particularly for SMEs, highlighting the need for early advice and clear distinctions between good faith failure and misconduct.

This fragmentation does not reflect the economic reality of small business. SME financial affairs typically involve a combination of company liabilities, personal guarantees, director obligations and tax exposures. Separating corporate and personal insolvency regimes can result in duplication, increased cost and fragmented outcomes, particularly where resolution requires coordinated treatment across both regimes.

Small business distress frequently involves both corporate and personal liabilities, requiring directors to navigate multiple systems with different processes, thresholds and outcomes. Greater alignment of equivalent concepts, powers and processes would reduce complexity, improve accessibility and support more coherent policy development over time.

At a minimum, harmonisation could extend to creditor processes, recoveries, priorities, reporting, professional standards and definitions. Alignment across these areas is important because inconsistencies can lead to duplication, increased cost and divergent outcomes in otherwise comparable matters.

For example, differences between ASIC (corporate) and AFSA (personal) regulated regimes in areas such as practitioner registration, reporting obligations and the treatment of creditor rights can result in practitioners being subject to different requirements when administering otherwise comparable insolvency appointments, increasing complexity and compliance burden.

More broadly, differences in creditor processes can affect participation and decision-making, inconsistencies in recovery mechanisms and priorities can result in different outcomes for creditors, misalignment in reporting obligations can increase regulatory burden and differences in professional standards and definitions can drive inconsistent interpretation, expectations and outcomes. Improved alignment across these areas would reduce complexity, support comparability, and provide clearer guidance to practitioners, creditors and regulators.

Member queries also indicate that uncertainty can arise in creditor participation and distribution processes, including the authority required for representatives or intermediaries to receive dividends on behalf of creditors. While fact-specific, these issues support clearer and more consistent creditor process settings across insolvency contexts.

In addition, flexibility could be enhanced between the respective insolvency regimes (corporate and personal) to better accommodate cases where the most appropriate outcome may change over time.

Harmonisation would deliver practical benefits by reducing duplication, lowering cost and improving accessibility for small business owners, whose financial affairs typically span both corporate and personal structures.

9.3 Institutional structure and regulation

ARITA supports the development of a more coherent and dedicated insolvency regulatory framework. The present difference between corporate and personal insolvency regulation reflects the fragmentation of the underlying regimes and can produce duplication, inconsistent approaches and reduced clarity for stakeholders.

A single, standalone government agency committed to the best practice regulation of businesses and individuals experiencing financial difficulty and insolvency, and the insolvency profession, would support a more coherent system. Even absent full structural reform, more coordinated regulator engagement and a stronger focus on education and turnaround capability would improve outcomes.

In personal insolvency, an equitable framework includes settings that support early engagement, appropriate thresholds, and access to resolution pathways before bankruptcy.

There have also been calls for the establishment of a standing expert advisory body on corporate law, similar to the former Corporations and Markets Advisory Committee (**CAMAC**). Proponents have emphasised the value of an independent, non partisan body capable of undertaking longer term, evidence-based reform work, particularly in the context of increasing legislative complexity.

ARITA acknowledges that there may be merit in a body of this kind, particularly where it strengthens the independence, depth and continuity of policy development. Any such body should adopt a cross disciplinary, systems based approach and focus on how the law operates in practice, rather than solely on legislative form.

In this context, it is important that any standing advisory body is not confined to corporate law in isolation. In practice, insolvency outcomes, particularly for SMEs, are shaped by the interaction between corporate and personal insolvency regimes, including the influence of personal liability settings on director behaviour and restructuring decisions. A modern reform body should therefore be capable of addressing these systems in an integrated manner.

In the context of insolvency law, recent work undertaken by the Parliamentary Joint Committee on Corporations and Financial Services provides a detailed and relevant reform roadmap, including the need for clearer policy objectives, better use of data and a more holistic, systems based approach to reform.

Accordingly, if a standing advisory body were to be established, its role should be complementary. It should build on, rather than revisit, recent insolvency inquiries, and focus on implementation, system performance and emerging issues, rather than undertaking de novo reviews of areas where substantive reform pathways have already been identified.

This is consistent with the institutional considerations identified in the personal insolvency system, where the concentration and interaction of functions can influence both system operation and confidence.

These issues highlight the importance of governance arrangements that support independence, transparency and well-informed decision-making.

10. Business dynamism and productivity outcomes

10.1 Insolvency and business dynamism

Australia's insolvency framework is a core part of the economy's entry, growth and exit cycle. Insolvency is often seen narrowly as dealing only with failed businesses. In practice, its design influences business formation, access to credit, innovation, and the efficient reallocation of labour and capital across the economy.

Efficient exit is not only a consequence of business failure. It is also a core mechanism of productivity. It allows labour and capital to move from unviable or underperforming businesses to more productive uses. Where exit processes are delayed, costly or uncertain, resources can remain locked in unproductive activity, reducing overall economic performance.

Insolvency should not be viewed solely as the end point of business failure. In many cases it is a symptom of broader financial, operational or market pressures that have developed over time. The effectiveness of an insolvency framework therefore depends not only on how it deals with failure once it occurs, but also on whether it supports early engagement, practical restructuring options and efficient business exit where recovery is not viable. In a dynamic economy, both successful restructuring and efficient business exit are important mechanisms through which capital and labour are reallocated to more productive uses.

Where insolvency systems do not facilitate timely restructuring or exit, labour, capital and management effort can remain tied up in businesses that are no longer economically viable. This delays the reallocation of resources to more productive uses and may reduce competitive pressure on better performing businesses.

In practice, small businesses may not enforce their legal rights due to cost, uncertainty or fear of commercial consequences, meaning that formal protections do not always translate into practical outcomes.

An effective insolvency framework supports business dynamism by enabling the timely restructuring of viable but distressed businesses and the efficient exit of unviable firms, while strengthening confidence in the availability of credit, capital formation and investment. Conversely, where frameworks are complex, costly or uncertain in operation, they discourage risk-taking and entrepreneurial activity (particularly in the SME market), increase the cost and reduce the availability of credit, delay exit, and allow inefficient businesses to persist.

Business formation depends on creditor confidence, and that confidence depends on both the framework and the avoidance of misconduct.

ARITA's submission proceeds on the basis that insolvency reform is not a standalone technical exercise, but a core lever of microeconomic reform with direct implications for productivity and business dynamism. In that context, structural fragmentation, legislative complexity, cost, and misalignment with adjacent legal regimes should be assessed accordingly.

This means insolvency reform should focus less on headline indicators of entry or exit, and more on whether the system reduces avoidable friction, supports viable restructuring, enables efficient exit and helps resources move when businesses are no longer productive.

A system that effectively imposes permanent consequences for failure risks undermining economic renewal by discouraging risk-taking and delaying engagement with restructuring processes.

In practice, poorly functioning systems delay exit, increase transaction costs, reduce recoveries and weaken confidence in enforcement, undermining effective competition by permitting inefficient or non-compliant businesses to remain in the market longer than they should.

There is also an inherent policy tension between restructuring objectives and competitive neutrality. While restructuring frameworks aim to preserve viable businesses, they may in some cases allow underperforming firms to continue operating where market exit might otherwise occur. If not appropriately calibrated, this can affect competitive dynamics by allowing inefficient or noncompliant businesses to remain in the market, with consequences for more efficient firms and overall productivity.

ARITA’s members observe these effects most acutely among small businesses, where directors and advisers need to navigate multiple regimes, incomplete records and significant cost constraints. As a result, businesses that might otherwise be restructured are wound down too late, while businesses that should exit earlier remain in the market until value has largely dissipated.

11. Implementation priorities

The implementation roadmap below reflects ARITA's suggested sequencing of reforms. While a number of initiatives could proceed concurrently, earlier reforms are intended to support and enable later reforms by strengthening funding, enforcement, restructuring pathways and the broader legislative framework.

Reform Priority	Why it Matters	Key Implementation Actions	Agencies
STAGE 1 – IMMEDIATE PRIORITIES	• Unfunded misconduct weakens market integrity and limits practical deterrence in appointments with limited available funds.	• Establish a Public Interest Administration Fund. • Simplify funding applications and eligibility criteria. • Introduce expedited pathways where delay may jeopardise assets, evidence or recovery opportunities. • Support funding through recoveries, penalties, costs orders and targeted public funding.	Treasury and ASIC
STAGE 1 – IMMEDIATE PRIORITIES	• Information gaps and evidentiary barriers reduce recoveries and weaken deterrence.	• Improve access to ASIC, ATO and third party information. • Clarify access to digital records. • Reduce evidentiary barriers and information asymmetry. • Review Anti Phoenixing Act outcomes against recoveries, timeliness and deterrence.	Treasury, ASIC and relevant regulators
STAGE 1 – IMMEDIATE PRIORITIES	• SME pathways need to be genuinely accessible and materially simpler than ordinary insolvency processes.	• Simplify SBR and SCVL eligibility settings. • Standardise plan documentation and creditor reporting requirements. • Improve debt verification and voting processes. • Simplify SCVL adoption requirements. • Improve awareness and practical accessibility of safe harbour.	Treasury, ASIC, ATO and stakeholders
STAGE 1 – IMMEDIATE–SHORT TERM	• Priority settings and institutional creditor behaviour can materially affect restructuring viability and creditor returns.	• Conduct a Creditor Priority and Distribution Integrity Review. • Examine garnishee notices, DPNs, tax refund set-offs and post-appointment credits. • Review FEG and circulating security interest impacts.	Treasury, ATO, DEWR/FEG and ASIC

Reform Priority	Why it Matters	Key Implementation Actions	Agencies
		• Develop institutional creditor conduct protocols. • Introduce priority impact assessments for major institutional mechanisms.	
STAGE 2 – SYSTEM EFFICIENCY	• Procedural requirements can absorb limited funds before restructuring, recovery or creditor engagement occurs. • Court dependence can be disproportionate in appointments with limited available funds.	• Remove unnecessary reporting and approval requirements. • Streamline remuneration approval processes. • Reduce duplicative reporting and lodgement requirements. • Reduce routine court applications. • Provide a statutory pathway for trust asset administration.	Treasury, courts and regulators
STAGE 3 – FRAMEWORK	• Unclear legal interactions and limited data integration can increase cost, delay and uncertainty in insolvency appointments.	• Conduct an Insolvency Interaction Review. • Map adjacent laws affecting insolvency outcomes (see **Annexure B** as an example) • Prioritise reforms where legal interactions routinely delay appointments, increase costs, affect asset realisations or create uncertainty about practitioner powers. • Develop an Insolvency Data Gateway linking ASIC, ATO, AFSA and PPSR datasets.	Treasury-led interagency program with State and Territory coordination
STAGE 4 – LONG-TERM SYSTEM ALIGN	• Fragmented corporate and personal insolvency systems increase complexity and cost, particularly for SMEs.	• Progress staged harmonisation of corporate and personal insolvency settings. • Improve alignment of regulatory and administrative arrangements. • Apply a business dynamism lens to future insolvency reforms.	Treasury, ASIC, AFSA and any standing advisory body

Reform Priority	Why it Matters	Key Implementation Actions	Agencies
		• Evaluate reforms against restructuring, exit, creditor outcomes and productivity measures.	

12. Conclusion

ARITA's Position

The immediate priority is improving the practical operation of existing frameworks, while also identifying areas where significant structural deficiencies continue to impede insolvency outcomes and warrant more substantial legislative reform.

The Productivity Commission's inquiry provides an opportunity to shift from repeated diagnosis to practical implementation. Australia's insolvency framework contains many of the fundamental legal and policy settings needed to support restructuring, recovery, deterrence and orderly business exit. However, its practical operation is often constrained by funding limitations, enforcement challenges, unnecessary complexity, evidentiary barriers, creditor behaviour, fragmented legal frameworks, limited data integration and the growing use of informal or unregulated pathways to manage financial distress before any formal appointment.

ARITA's recommendations provide a staged pathway for reform. Immediate priorities include strengthening public interest funding, improving enforcement and information access, enhancing SME restructuring and simplified liquidation pathways, and reviewing creditor priority settings and institutional creditor conduct. Subsequent reforms could simplify insolvency processes, reduce unnecessary court dependence, address legislative interaction issues and improve data integration. Longer-term reform could support greater harmonisation, consideration of a single regulator, and a more coherent national insolvency framework.

The objective is not reform for its own sake. It is an insolvency framework that supports timely restructuring, efficient business exit, fair and predictable creditor outcomes, effective deterrence and the productive reallocation of capital and labour.

ARITA's recommendations reflect the experience, commitment and professional purpose of its members. They are directed to ensuring that insolvency practitioners can perform their role efficiently, independently and in the interests of creditors, while supporting a clearer, better funded and more coherent framework for all stakeholders. In that way, insolvency reform can contribute to business dynamism, productivity and economic renewal across the Australian economy.

ANNEXURE A – ABOUT ARITA

The Australian Restructuring Insolvency &Turnaround Association (**ARITA**) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have 2,370 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring. Around 84% of Registered Liquidators and Registered Trustees choose to be ARITA members.

We are a not-for-profit, incorporated professional association run for the benefit of our members. ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large.

ARITA delivers a comprehensive professional education pathway that supports members at every stage of their careers. In 2025, ARITA completed its transition to a Registered Training Organisation (**RTO**), enabling it to deliver the nationally accredited 11319NAT Graduate Diploma of Restructuring, Insolvency and Turnaround. This qualification represents the most comprehensive postgraduate-level insolvency training available in Australia and provides advanced and specific education for professionals working in restructuring, insolvency and turnaround.

ARITA also delivers a broad range of professional development programs, including the Introduction to Insolvency Program, which provides foundational training for new entrants to the profession, and the Essential Skills online learning platform, which supports the ongoing development of approximately 860 staff across 45 firms. Additional education offerings include advanced technical courses, conferences, expert series programs, forums and specialist seminars designed to support lifelong learning and professional excellence.

In 2025, ARITA delivered approximately 90 professional development, technical and networking events, attracting more than 6,800 attendees across Australia. These programs provide practical learning opportunities and ensure members remain informed about legislative, regulatory and market developments affecting the profession.

We also undertake extensive thought leadership and public policy advocacy on behalf of the restructuring, insolvency and turnaround profession. Drawing on the expertise and practical experience of our members, ARITA works closely with government, regulators and other stakeholders to improve Australia's insolvency framework, support economic recovery, strengthen regulatory effectiveness and promote confidence in the administration of financially distressed businesses.

During 2025, ARITA made 12 public submissions to government and regulatory consultations, covering matters including corporate insolvency, bankruptcy, AML/CTF reforms, tax debt management, regulatory simplification, employee entitlements, financial abuse and competition policy. ARITA also participated in a range of confidential consultations, stakeholder engagements and follow-up policy discussions on behalf of the profession.

ANNEXURE B: Examples of legislative interaction with insolvency law

Category	Legislative reference	How it may interact or compete with insolvency law
Corporate insolvency framework	*Corporations Act* 2001 (Cth), including Part 5.3A, Part 5.6, sections 556, 560, 561, 588FA-588FF and 588FL-588FM.	Establishes the core corporate insolvency framework, including administration, liquidation, voidable transactions, priority payments and employee priority over circulating security interests. Adjacent regimes may affect the assets available for realisation, the order of payment, or the ability of an administrator or liquidator to sell assets efficiently.
Personal insolvency framework	*Bankruptcy Act* 1966 (Cth), including sections 58, 82 and 109.	Establishes vesting of property in the trustee, provable debts and priority distributions. State or Commonwealth statutory claims may affect what property is available, whether claims are provable, and the priority treatment of particular liabilities.
Tax collection and recovery powers	*Taxation Administration Act* 1953 (Cth), including Schedule 1, Division 260 (garnishee notices), Division 269 (Director Penalty Notice regime) and related collection and recovery provisions.	Tax collection and recovery powers can affect cash flow, restructuring viability, post-appointment recoveries and creditor distributions. The interaction between revenue collection mechanisms and insolvency processes may influence restructuring outcomes and the practical operation of statutory priority settings.
Tax treatment of restructures and business continuity	*Income Tax Assessment Act 1997* (Cth), including provisions relating to carried forward tax losses, continuity of ownership and business continuity requirements.	Tax outcomes associated with restructures, business sales and ownership changes may influence restructuring options, transaction structures and business recovery prospects.
Environmental approval and remediation obligations	*Environment Protection and Biodiversity Conservation Act* 1999 (Cth), including Part 3 protected matters, Part 7 referrals, Part 9 approvals, section 145B transfer of approvals and section 480A remediation orders.	Environmental duties, clean up notices, prevention notices, remediation obligations and related cost recovery powers may continue to operate notwithstanding insolvency. The interaction between environmental law and insolvency law can affect asset realisation strategies, creditor recoveries, the allocation of remediation costs and whether insolvency practitioners are willing to accept or continue appointments involving contaminated or environmentally sensitive sites.

This annexure identifies examples of legislative interaction only. It is not intended to be exhaustive. The purpose is to illustrate how Commonwealth, State and Territory different legal regimes may affect certain provisions of the Corporations Act 2001 (Cth) and Bankruptcy Act 1966 (Cth).

		Illustrative authorities include *The Australian Sawmilling Company Pty Ltd (in liq) v Environment Protection Authority* [2021] VSCA 294; *Linc Energy Ltd (in liq); Longley v Chief Executive, Department of Environment and Heritage Protectio*n [2017] QSC 53; *Linc Energy Ltd (in liq) v Chief Executive, Department of Environment and Heritage Protection* [2018] QCA 32; *Re Fordex Pty Ltd (in liq)* [2025] VSC 180; *Hudson, in the matter of ACB Group Pty Ltd (in liq*) [2025] FCA 90.
NSW pollution and clean up obligations	Protection of the *Environment Operations Act* 1997 (NSW), including sections 91, 96, 101 and 104 concerning clean up notices, prevention notices, prohibition notices and compliance cost notices.	A clean up or prevention notice may require urgent expenditure, restrict site operations, or affect the value and saleability of land or business assets. Compliance costs can compete with funds available in the appointment and may affect whether trading or restructuring is viable.
NSW contaminated land regulation	*Contaminated Land Management Act* 1997 (NSW), including sections 10, 12, 14, 28 and 30 concerning investigation orders, declaration of significantly contaminated land, management orders, ongoing maintenance orders and public authority step in powers.	Contaminated land obligations can reduce realisable value, delay sales, require purchaser risk allocation and raise questions about whether remediation costs are appointment expenses, secured creditor costs or public costs.
Victorian environmental duties and notices	*Environment Protection Act* 2017 (Vic), including section 25 general environmental duty and notice powers such as improvement and prohibition notices.	The general environmental duty and statutory notices may require ongoing risk management even where the insolvent company has limited funds. This can affect trading, asset sale strategy and whether an administrator can safely abandon or cease operations.
Queensland environmental protection and related person liability	*Environmental Protection Act* 1994 (Qld), including environmental protection orders and related person provisions, including sections 363ABA, 363AC and 363AD.	Related person liability can extend environmental obligations beyond the insolvent company. This may affect group structures, secured creditor enforcement, director conduct and the assessment of who bears environmental loss when the primary company is insolvent.

This annexure identifies examples of legislative interaction only. It is not intended to be exhaustive. The purpose is to illustrate how Commonwealth, State and Territory different legal regimes may affect certain provisions of the Corporations Act 2001 (Cth) and Bankruptcy Act 1966 (Cth).

WA contaminated sites and remediation responsibility	*Contaminated Sites Act* 2003 (WA), including Part 3, Division 1 concerning responsibility for remediation, including insolvent bodies corporate and orphan sites.	The remediation hierarchy can affect whether the insolvency appointments, landowner, mortgagee, State or another responsible person bears remediation costs. This directly affects asset value, sale timing and loss allocation in insolvency.
Personal property security interests	*Personal Property Securities Act* 2009 (Cth), including sections 12, 19-21, 55-62, 267 and 275-280.	PPSA issues may determine whether assets form part of the assets available in the insolvency appointment, are subject to perfected security interests, vest in the grantor upon insolvency, or can be sold free of claims. Verification issues can delay asset realisation and increase process costs.
PPSA	*Corporations Act* 2001 (Cth), including sections 441A-441G and sections 588FL-588FM.	These provisions interact with PPSA rights during administration and liquidation, including enforcement by secured parties and vesting of late registered security interests. They can affect whether assets remain available for restructuring or are removed from the assets available in the appointment.
State PPSA referral legislation	State referral legislation, including Personal *Property Securities (Commonwealth Powers) Act* 2009 (NSW), *Personal Property Securities (Commonwealth Powers) Act* 2009 (Vic) and *Personal Property Securities (Commonwealth Powers) Act* 2009 (Qld).	State referral legislation supports the national PPSA scheme. The interaction is relevant because PPSA outcomes can override traditional title concepts and affect the assets available to creditors.
NSW construction retention money	*Building and Construction Industry Security of Payment Act* 1999 (NSW), including section 12A, and the *Building and Construction Industry Security of Payment Regulation* 2020 (NSW).	Retention money trust requirements may quarantine money from the general creditors in the insolvency appointment. This can protect subcontractors but may reduce cash available for trading, restructuring or general creditor distributions.
Queensland project trust and retention trust regime	*Building Industry Fairness (Security of Payment) Act* 2017 (Qld), including Chapter 2	Project trust and retention trust obligations can require funds to be held for particular beneficiaries rather than treated as ordinary company assets. This

This annexure identifies examples of legislative interaction only. It is not intended to be exhaustive. The purpose is to illustrate how Commonwealth, State and Territory different legal regimes may affect certain provisions of the Corporations Act 2001 (Cth) and Bankruptcy Act 1966 (Cth).

	project trust and retention trust arrangements, and Chapter 3 progress payment processes.	may affect cash flow, control of funds, administrator reporting and creditor equality.
WA retention money trusts	*Building and Construction Industry (Security of Payment) Act* 2021 (WA), including Part 4, sections 70-78, especially sections 71 and 74-76.	Retention money trust requirements can remove funds from the general assets available in the appointment and impose specific administration obligations on funds that would otherwise appear to be business cash.
Security of payment adjudication regimes	State and Territory security of payment legislation, including *Building and Construction Industry Security of Payment Act* 2002 (Vic) and equivalent regimes in NSW, Qld, WA, SA, Tasmania, ACT and NT.	Adjudication determinations may create urgent payment obligations or judgment debts. In an insolvency context, this can affect cashflow, creditor strategy, set-off issues and whether construction projects can be continued or sold.
Employee entitlement safety net	*Fair Entitlements Guarantee Act* 2012 (Cth), including sections 15 and 29-30, and Corporations Act 2001 (Cth) sections 556, 560 and 561.	FEG protects employees where entitlements are unpaid due to liquidation or bankruptcy. It interacts with insolvency priorities because advances may translate into priority claims or subrogated recovery positions, affecting distributions from circulating assets.
Workers compensation schemes	State schemes, including *Workers Compensation Ac*t 1987 (NSW), including uninsured employer provisions such as section 140, and *Workers' Compensation and Rehabilitation Act* 2003 (Qld), including sections 46, 48 and related insurance obligations.	Workers' compensation obligations may create statutory liabilities, insurance claims, recovery rights or uninsured employer liabilities. These can compete with ordinary creditor claims and affect whether claims are treated as employee, injury compensation, insurance or statutory recovery claims.
Home building compensation and warranty schemes	*Home Building Act* 1989 (NSW), including Part 6 and Part 6A; *Queensland Building and Construction Commission Act* 1991 (Qld); *Domestic Building Contracts Act* 1995 (Vic);	These schemes protect homeowners where a builder becomes insolvent or fails to complete or rectify work. They may create statutory recovery claims against the insolvent builder or related parties, affecting claims adjudication and creditor recoveries.

This annexure identifies examples of legislative interaction only. It is not intended to be exhaustive. The purpose is to illustrate how Commonwealth, State and Territory different legal regimes may affect certain provisions of the Corporations Act 2001 (Cth) and Bankruptcy Act 1966 (Cth).

	Home Building Contracts Act 1991 (WA), including Part 3A.	
Foreign investment approval	*Foreign Acquisitions and Takeovers Act* 1975 (Cth), including significant action and notifiable action provisions, and associated FIRB notification and approval processes.	FIRB approval requirements can affect the timing and certainty of sales to foreign purchasers. In insolvency, delay can materially reduce value, particularly where assets are deteriorating, trading losses are ongoing or a going-concern sale is time sensitive.
Merger control and ACCC approval	*Competition and Consumer Act* 2010 (Cth), as amended by the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act* 2024 (Cth). From 1 January 2026, certain acquisitions need to be notified to the ACCC and cannot proceed without clearance.	Merger control can affect urgent business sales, particularly where the best purchaser is a competitor. Approval timing may affect whether a going-concern sale is possible or whether value is lost through trading delay.
Aged care business transfers	*Aged Care Act* 2024 (Cth), including provider registration, residential care home approval and transfer provisions, including sections 98, 104-112, 123-140 and 263.	Aged care approvals, provider registration and residential care home approvals can affect whether an aged care business can be transferred. In insolvency, regulatory timing and suitability assessments may affect continuity of care, going-concern value and purchaser selection.
NDIS provider regulation	*National Disability Insurance Scheme Act* 2013 (Cth), including registered provider provisions and NDIS Rules.	NDIS registration and compliance obligations can affect whether a disability services business can continue trading or be sold. Regulatory issues may reduce purchaser appetite or require conditions before a transfer or restructure can proceed.
Liquor licensing	State liquor licensing legislation, for example *Liquor Act 2007* (NSW), including section 60 transfer of licence.	Liquor licences may be essential to the value of a hospitality or retail business. If a licence cannot be transferred quickly, a going-concern sale may fail or value may shift from creditors in the insolvency appointment to the purchaser through a reduced sale price.

This annexure identifies examples of legislative interaction only. It is not intended to be exhaustive. The purpose is to illustrate how Commonwealth, State and Territory different legal regimes may affect certain provisions of the Corporations Act 2001 (Cth) and Bankruptcy Act 1966 (Cth).

Mining and resources titles	State mining legislation, including *Mining Act* 1992 (NSW), section 121 transfer approval applications, and *Mineral Resources Act* 1989 (Qld).	Mining tenements, leases and authorities may require regulatory consent before transfer. Environmental bonds, rehabilitation obligations and transfer approval timing can materially affect asset realisation and whether a sale can occur before value is lost.
Early childhood education and care approvals	Education and Care Services National Law, as applied by State and Territory application Acts, including service approval transfer provisions such as section 58.	Childcare businesses depend on provider and service approvals. Transfer approval processes can affect continuity of care, employee retention, purchaser eligibility and the timing of a going-concern sale.

This annexure identifies examples of legislative interaction only. It is not intended to be exhaustive. The purpose is to illustrate how Commonwealth, State and Territory different legal regimes may affect certain provisions of the Corporations Act 2001 (Cth) and Bankruptcy Act 1966 (Cth).

ANNEXURE C - KEY REFERENCES AND SOURCES CONSIDERED

The following authorities, reports, inquiries, regulatory materials, submissions, practitioner evidence and other resources informed ARITA's consideration of the issues addressed in this submission. Inclusion does not necessarily indicate endorsement of all findings or recommendations contained in the source material. This annexure identifies the principal materials considered in preparing the submission and is not intended to be an exhaustive bibliography of every source reviewed during ARITA's consultation, research and drafting process.

A. Government Inquiries, Reviews and Reports

- Australian Law Reform Commission, General Insolvency Inquiry (Report No 45, 1988) (Harmer Report).
- Parliamentary Joint Committee on Corporations and Financial Services, Corporate Insolvency in Australia (November 2023).
- Productivity Commission, Business Set-up, Transfer and Closure (Inquiry Report No 75, 30 September 2015).
- Productivity Commission, Reducing Barriers to Business Dynamism – Terms of Reference, Issues Papers, Consultation Materials and Inquiry Publications.
- Sexton G, Chesser L and Parbery S, Review of the Insolvent Trading Safe Harbour (Final Report, Australian Government Treasury, 23 November 2021).
- Cork Report (UK, 1982) and comparative insolvency reform materials.

B. Regulatory and Government Publications

- ASIC Report 813 – Regulatory Simplification (2025).
- ASIC Report 829 – ASIC Enforcement and Regulatory Update: July to December 2025 (2026).
- ASIC Report 830 – Regulatory Simplification Progress Report (2026).
- ASIC Insolvency Statistics Series and Annual Reports.
- ATO guidance on DPNs, garnishees, SBR, insolvency administration and refund offsets.
- AFSA Personal Insolvency Statistics, Annual Reports and guidance materials.
- Fair Entitlements Guarantee operational guidance and policy materials.

C. Legislation

- *Corporations Act* 2001 (Cth).
- *Bankruptcy Act* 1966 (Cth).
- *Personal Property Securities Act* 2009 (Cth).
- *Taxation Administration Act* 1953 (Cth).

- *Income Tax Assessment Act* 1997 (Cth).
- *Fair Entitlements Guarantee Act* 2012 (Cth).

D. Judicial Authorities

- *In the matter of Killarnee Civil & Concrete Contractors Pty Ltd (in liq*) [2016] NSWSC 195.
- *Jones (Liquidator) v Matrix Partners Pty Ltd; in the matter of Killarnee Civil & Concrete Contractors Pty Ltd (in liq)* [2018] FCAFC 40.
- *Carter Holt Harvey Woodproducts Australia Pty Ltd v Commonwealth* [2019] HCA 20 (Amerind).
- *Forge Group Power Pty Ltd (in liq) (Receivers and Managers Appointed) v General Electric International Inc* [2016] NSWSC 52.
- *In the matter of OneSteel Manufacturing Pty Ltd (Administrators Appointed)* [2017] NSWSC 21.
- *Linc Energy Ltd (in liq); Longley v Chief Executive, Department of Environment and Heritage Protection* [2017] QSC 53.
- *Linc Energy Ltd (in liq) v Chief Executive, Department of Environment and Heritage Protection* [2018] QCA 32.
- *The Australian Sawmilling Company Pty Ltd (in liq) v Environment Protection Authority* [2021] VSCA 294.
- *Re Fordex Pty Ltd (in liq*) [2025] VSC 180.
- *Hudson, in the matter of ACB Group Pty Ltd (in liq*) [2025] FCA 90.
- *Bruton Holdings Pty Ltd (in liq) v Commissioner of Taxation* [2009] HCA 32.
- *Commissioner of Taxation v Steelfix Pty Ltd* [2010] FCAFC 33.
- *Hudson Global Resources (Aust) Pty Ltd (Administrators Appointed*) [2026] NSWSC 535.
- *Commonwealth Director of Public Prosecutions v Fairfull* [2026] FCA 748.

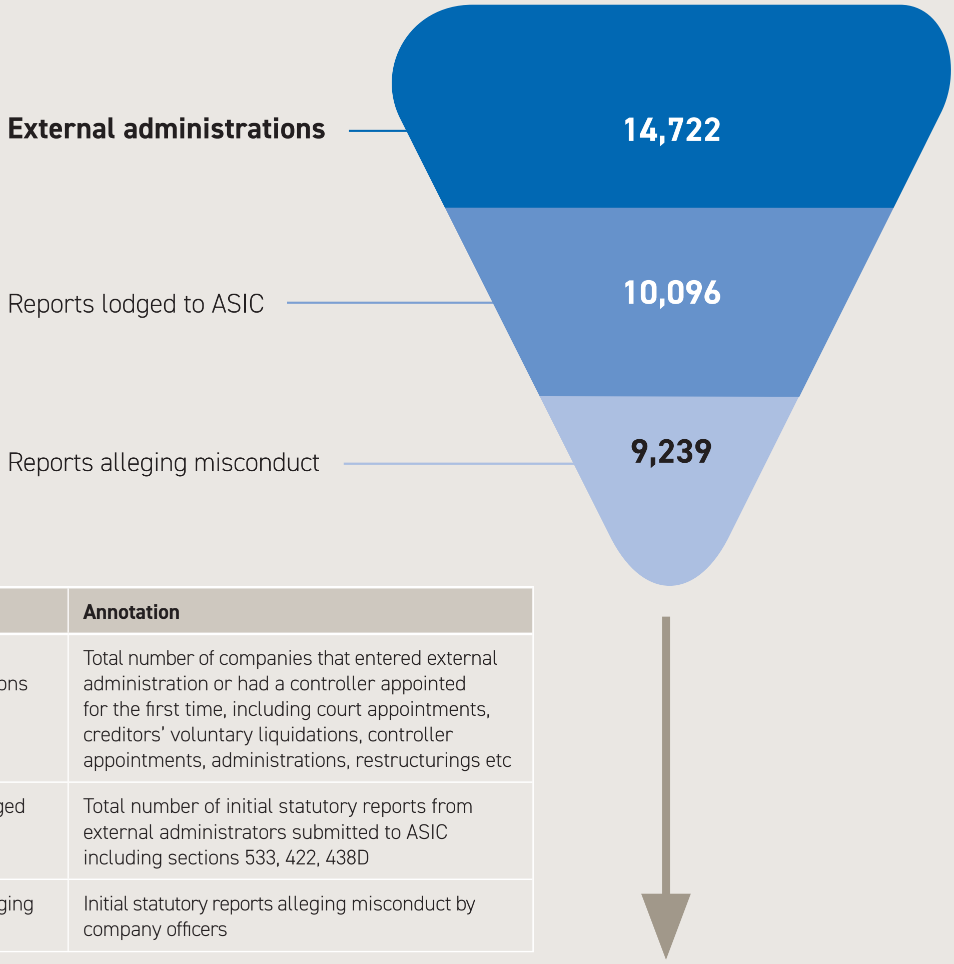
E. ARITA Submissions, Member Evidence and Practitioner Experience

- ARITA submission to the Independent Review of the Insolvent Trading Safe Harbour.
- ARITA submission to the Parliamentary Joint Committee inquiry into Corporate Insolvency.
- ARITA trust reform submissions and policy papers.
- Ask ARITA technical enquiries.
- Practitioner evidence relating to SBR eligibility, plan termination, creditor conduct, trust administration, court dependence, valuation methodologies, contingent liabilities and restructuring barriers.

F. Comparative and International Sources

- OECD publications concerning insolvency, productivity and business dynamism.
- World Bank Group Business Ready (B-READY) materials.
- UNCITRAL insolvency and restructuring guidance.

- INSOL International publications, conference materials and practitioner roundtable discussions.
- Academic and practitioner commentary concerning business rescue, restructuring, insolvency law reform and productivity.



Category	Annotation
External administrations	Total number of companies that entered external administration or had a controller appointed for the first time, including court appointments, creditors' voluntary liquidations, controller appointments, administrations, restructurings etc
Reports lodged with ASIC	Total number of initial statutory reports from external administrators submitted to ASIC including sections 533, 422, 438D
Reports alleging misconduct	Initial statutory reports alleging misconduct by company officers

Category	Annotation
ASIC follow up	ASIC requests more information from external administrators in the form of supplementary reports. *Note: The system has changed from April 2025 such that registered liquidators now form their own view in relation to supplementary reports.*
Cases investigated	The number of supplementary reports assessed for compliance, investigation or surveillance by ASIC
Regulatory oucomes	People disqualified or removed from directing companies as a result of ASIC pursuing criminal, civil, or administrative enforcement actions.

*All data is extracted from 2024/25 ASIC Annual Report reports and ASIC Insolvency Statistics.

Annexure E - Insolvency Appointments and Who Appoints Them – High level guide to common formal appointments in Australia:

Insolvency Practitioner: generic term for the appointee to a specific appointment, for both personal and corporate insolvency- registered trustee with AFSA or registered liquidator with ASIC.
Resructuring Practitioner: Only a person registered with ASIC as a 'registered liquidator' can act as a restructuring practitioner of a company or for a restructuring plan of an SBR

Corporate appointments (Corporations Act)

Appointment	Appointor / appointment pathway
Voluntary Administrator	The company (by resolution of the board); a liquidator or provisional liquidator; or an enforcing secured party with security over the whole, or substantially the whole, of the company's property.
Receiver / Receiver and Manager	Usually a secured party under a security document; or the Court.
Provisional Liquidator	The Court.
Liquidator - Members' Voluntary Liquidation	The company in general meeting (the members).
Liquidator - Creditors' Voluntary Liquidation	Usually the company in general meeting. If the winding up follows voluntary administration or a deed of company arrangement, the creditors may appoint the liquidator; otherwise the relevant administrator may be taken to be appointed.
Liquidator - Court Liquidation	The Court.
Deed Administrator	The voluntary administrator becomes the deed administrator unless the creditors resolve to appoint another person when resolving that the company execute a deed of company arrangement.
Resructuring Practitioner	The directors of a company appoint a restructuring practitioner in writing – subject to eligibility criteria

Personal appointments (Bankruptcy Act)

Appointment	Appointor / appointment pathway
Trustee in Bankruptcy	The debtor or petitioning creditor may select a registered trustee who has consented to act; otherwise the Official Trustee becomes trustee. Creditors may later appoint a registered trustee in place of the Official Trustee.
Controlling Trustee	The debtor, by signing a section 188 authority in favour of a registered trustee or solicitor.
Trustee of a Personal Insolvency Agreement	The creditors, by resolution at the meeting, nominate the trustee or trustees of the personal insolvency agreement. The controlling trustee is commonly nominated, but another eligible person may be chosen.
Debt Agreement Administrator	The debtor nominates the administrator in the proposal, with the administrator's consent. The appointment takes effect if the creditors accept the proposal.

Note: This is a simplified overview. The precise appointment pathway can vary depending on the circumstances and the applicable legislation.