AFSA

Submission to the Productivity Commission's inquiry: Reducing barriers to business dynamism

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Australian Government

Australian Financial Security Authority

Contents

Executive Summary

Key messages

1. **Personal insolvency is part of Australia's productivity infrastructure** - it supports credit confidence, orderly exit, debtor rehabilitation and the redeployment of capital and labour.
2. **Small business financial distress often crosses personal and corporate boundaries**, particularly through sole traders, personal guarantees, personal borrowing and closely held company structures.
3. **Australia's framework is generally sound, but can be made more proportionate and accessible**, especially for low-asset, low-return matters where compliance costs may outweigh creditor benefit.
4. **Harmonisation between personal and corporate insolvency exists along a spectrum,** with opportunities to reduce unnecessary friction where personal and business financial affairs are closely interconnected.

Australia's personal insolvency system is a critical component of a productive and dynamic economy. By providing an orderly framework for resolving unmanageable debt, it supports confidence in credit markets, enables the efficient reallocation of capital, and helps individuals return to productive employment, business activity and entrepreneurship following financial distress.

These functions are important as innovation, entrepreneurship and responsible risk-taking contribute to productivity growth. Treasury analysis[1] indicates that Australia's long-run productivity performance has been persistently weak, with productivity flat in 2023–24 and declining in 2024–25. While changes to insolvency frameworks alone are unlikely to materially shift aggregate productivity outcomes, incremental improvements in system efficiency can make a meaningful contribution to the Government's broader productivity agenda.

Australia's personal insolvency framework generally performs well and is supported by strong institutional arrangements, including AFSA's unique role as regulator, administrator, and trustee (see appendix A), alongside its broader stewardship of the personal insolvency system. Beyond its role in the personal insolvency system, AFSA also operates the Personal Property Securities Register (PPSR), which supports access to finance, commercial confidence and the efficient functioning of secured credit markets (see appendix B).

Consistent with international principles, Australia's framework seeks to balance debtor rehabilitation, creditor recovery and system integrity. The system plays a particularly important role for small businesses that have interconnected personal and business financing via sole trader structures, personal guarantees and personal borrowing.

The current framework provides a range of insolvency pathways: bankruptcy, debt agreements, and personal insolvency agreements, which are designed to accommodate differing financial circumstances.

While this flexibility is an important system strength, AFSA acknowledges that pathway selection and outcomes can be influenced by both the design of the system and information and advice received before entering insolvency (which AFSA seeks to influence but ultimately cannot control).

There are opportunities to improve proportionality, accessibility and coordination while maintaining confidence and integrity. This includes reducing unnecessary regulatory costs where there is little prospect of a return to creditors, creating more proportionate pathways for individuals with minimal assets and limited repayment capacity, and reducing friction where financial distress spans both personal and corporate insolvency systems.

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[1] Department of the Treasury, Submission 155 to the Select Committee on Productivity in Australia, Parliament of Australia, *Select Committee on Productivity in Australia*, March 2026, accessed 1 July 2026.

Section 1: Design of the personal insolvency framework

The personal insolvency system is primarily a mechanism for resolving financial distress. It supports economic objectives by facilitating the orderly resolution of debt, providing a framework for creditors to recover available funds, enabling individuals to re-engage in productive economic activity, and promoting confidence in credit markets. The objectives of Australia's personal insolvency framework are therefore aligned with the broader economic objectives of business dynamism, allocative efficiency and productivity.

1.1 Personal insolvency supports business dynamism and economic participation

The personal insolvency system outlines the rights and obligations of creditors and debtors where an individual is unable to pay their debts when they fall due. It applies to individuals experiencing financial distress arising from personal circumstances, as well as those whose business activities have created personal liabilities, including through sole trader arrangements, personal guarantees, personal borrowing and other forms of direct liability associated with a business.

The objectives of the system are to:

- offer debtors the opportunity to recover from financial distress and return to productive economic participation through employment, business activity or entrepreneurship;
- provide for the orderly liquidation and distribution of assets; and
- underpin confidence in the credit system by ensuring the treatment of creditors is prescribed and predictable, reducing the risk associated with credit provision.

These objectives support business dynamism by enabling orderly business exit, supporting responsible risk-taking and facilitating the reallocation of capital to more productive uses.

1.2 Personal and business financial distress are often interconnected

At 30 June 2025, there were 2.7 million[2] actively trading businesses in the Australian economy, of which 97.3% were small businesses with fewer than 20 employees[3].

In Australia, small businesses operate through a range of business structures, with best available evidence[4] suggesting:

- 1.2 million or 44% are structured as companies (including proprietary companies, public companies and other incorporated entities);
- 0.8 million or 30% are structured as sole traders, who operate without a legally separate business structure and bear direct liability for business debts;
- 0.5 million or ~18% are structured as trusts involving one or more individuals;
- 0.2 million or ~7% are structured as partnerships involving one or more individuals.

The Parliamentary Joint Committee on Corporations and Financial Services, Corporate Insolvency in Australia (2023) report found that owners, beneficiaries and/or directors frequently provide personal guarantees, rely on personal borrowings to finance business activities, or have taxation and other liabilities that create direct personal exposure when a business fails[5].

Consequently, in the event of business failure, there are often impacts to both the business operations and the individual's personal credit and solvency.

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[2] Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits*, ABS website, 28 August 2025, accessed 26 June 2026.

[3] Australian Small Business and Family Enterprise Ombudsman, *Number of small businesses in Australia*, ASBFEO website, n.d., accessed 26 June 2026.

[4] Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits*.

[5] Parliamentary Joint Committee on Corporations and Financial Services, *Corporate Insolvency in Australia*, July 2023, accessed 1 July 2026.

Approximately 31% of individuals who entered personal insolvency in 2024–25 indicated involvement with a business within the preceding 5 years (e.g. by providing a personal guarantee for business loans), according to Statements of Affairs filed with AFSA. Among those indicating business involvement:

- 1,670 (45%) were sole traders or in partnerships
- 1,360 (36%) were using a company structure
- 718 (19%) were using a trust structure

When establishing a business structure, individuals may consider the legal and taxation implications associated with their chosen structure. Unincorporated businesses are often simpler to establish and operate than incorporated structures[6], making them attractive to small businesses and sole traders. However, they provide limited protection for personal assets if the business fails, as owners are personally liable for business debts and may be required to use personal assets to meet those obligations.

There is merit in considering personal and corporate insolvency systems in the same policy context as many small business operators experience these systems in response to a single financial event. This approach would mitigate the risk that any further reforms to support business dynamism create or exacerbate differences in these systems.

1.3 Australia's framework balances rehabilitation, recovery and integrity

Personal insolvency differs from corporate insolvency in some respects (by focussing on individual debtor accountability rather than corporate governance), but is aligned in other respects (for example, practitioner regulation and creditor rights).

Australia's personal insolvency framework reflects a series of policy choices about how to balance the interests of debtors, creditors and the broader economy.

- Treatment of debtors: imposing sufficient consequences to discourage recklessness, misconduct and non-compliance, while supporting rehabilitation and a return to productive economic participation;
- Treatment of creditors: providing clear avenues for recovery, supported by safeguards and enforcement mechanisms that deter debtors from avoiding their obligations and protect the interests of creditors; and
- System design: balancing flexibility for different debtor circumstances with consistency, fairness, and certainty.

International frameworks, such as those developed by the World Bank[7], emphasise the importance of the following factors when evaluating insolvency frameworks:

- A balanced approach between debtor rehabilitation and creditor recovery - ensuring efficient resolution while preserving viable economic activity;
- Accessible, efficient and cost-effective procedures - with clear entry criteria and streamlined processes that enable timely resolution of financial distress;
- Strong legal and institutional frameworks - including predictable laws, effective courts, and competent administration to ensure transparency, integrity, and enforcement, and
- Clear and predictable creditor priority rules, equitable treatment of similarly situated creditors, protection of established priority hierarchies, and efficient, proportionate processes.

When considered against these principles, Australian's personal insolvency system performs comparatively well.[8]

In Australia, insolvency legislation is focused heavily on protecting creditor rights. More recently, policy debates have recognised the economic benefit of providing debtors with a timely and effective pathway to

[6] Australian Government, *Difference between a sole trader and a company*, business.gov.au, n.d., accessed 2 July 2026.
[7] World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes*.
[8] C Symes, 'Theory and influences found in Australian insolvency law', Adelaide Law Review, 2024, 45(1), 64-94.

address unmanageable debt. The system therefore balances certain trade-offs, which have important economic consequences:

- deterring debtor recklessness or malfeasance while encouraging entrepreneurship and risk-taking; and
- protecting the interests of vulnerable individuals in financial distress, while supporting creditor recovery and maintaining confidence in the credit system.

The policy choices made in negotiating these trade-offs can influence risk-taking entrepreneurship and the allocation of capital, particularly for small business operators whose personal and business finances are interconnected.

Effective insolvency frameworks balance accessibility, efficiency, creditor confidence and debtor rehabilitation. Their ultimate contribution to business dynamism lies in supporting orderly business exit, encouraging responsible risk-taking, and enabling the productive redeployment of capital and entrepreneurial effort. As such, insolvency frameworks should be assessed not only by creditor returns or debtor outcomes, but by their broader contribution to economic efficiency and confidence in credit markets.

Section 2: Integrity of the framework

2.1 Confidence in the credit system depends on personal insolvency integrity

AFSA's role in administering, regulating, and enforcing Australia's personal insolvency framework is central to maintaining trust, fairness and integrity across the personal insolvency system. AFSA regulates the conduct and practice of Registered Trustees (RTs), controlling trustees, the Official Trustee (OT), Registered Debt Agreement Administrators (RDAAs) and debtors through a combination of education and outreach, compliance monitoring, investigation, and enforcement activities.

AFSA adopts a risk-based approach to regulation, prioritising areas of greatest actual or potential economic and social harm[9]. Consistent with this approach, AFSA seeks to ensure that the benefits of regulation justify the regulatory costs imposed.

AFSA employs a range of proportionate regulatory responses to address misconduct and non-compliance, including education and engagement activities, warnings, infringements, undertakings and restrictions, and, where appropriate, civil or criminal enforcement action.

Debtor behaviour is a key determinant of how effectively the personal insolvency system supports business dynamism and innovation. To achieve its objectives, the framework must encourage timely engagement, full disclosure, informed decision making and compliance with obligations. AFSA's experience indicates that most individuals enter bankruptcy voluntarily, with 88% of bankruptcies in 2024–25 initiated through a debtor's petition rather than a court-ordered bankruptcy (sequestration order).

However, as with any regulatory framework, incentives within the system can influence behaviour that reduce system efficiency and undermine confidence. Insolvency has historically been associated with significant societal stigma, reflecting both legal consequences and societal attitudes toward financial failure[10].

Other key behavioural considerations impacting debtors' behaviour include:

- Information and advice: Individuals may rely on third-party advice (including advice generated through artificial intelligence) when selecting an insolvency pathway. Where incentives are misaligned or information is incomplete, this may result in outcomes that are not best suited to the individual's circumstances.
- Non-compliance and concealment: Failure to disclose assets, including through intentional concealment[11], can undermine system integrity and reduce returns to creditors. These behaviours are addressed through compliance, investigation and enforcement activity.

Ensuring that regulatory settings appropriately balance rehabilitation with deterrence is therefore important not only for maintaining system integrity but also for supporting economic dynamism and the efficient functioning of Australia's credit system.

2.2 Practitioner regulation supports confidence in the system

Personal insolvency practitioners are required to be registered as either a Registered Trustee (RT) or a Registered Debt Agreement Administrator (RDAA).[12] In addition to paying prescribed fees to AFSA (currently $2,200[13] for initial application fee, $1,300 for initial registration fee and $1,700 for renewal every 3 years),

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[9] Australian Financial Security Authority, *AFSA Regulatory Strategy 2023-27,* n.d., accessed 2 July 2026.
[10] P Ali, L O'Brien and I Ramsay, 'Short a Few Quid': Bankruptcy Stigma in Contemporary Australia, *UNSW Law Journal*, 2015, 38(4), 1575-1613, SSRN: https://ssrn.com/abstract=2700544
[11] In 2026, AFSA has investigated Mr Matthew Sward for disposing of $119,500 with intent to defraud creditors (https://www.afsa.gov.au/news/afsa-investigation-sees-queensland-man-sentenced-bankruptcy-fraud), and Mr David Machin for failing to disclose $124,780 in inheritance to his registered trustees (https://www.afsa.gov.au/news/wa-man-sentenced-after-afsa-finds-hidden-assets-bankruptcy).
[12] An exception is a solicitor who can be authorised to be a controlling trustee of a PIA (s 188 of the Bankruptcy Act) but is still subject to regulation by the Inspector-General in their administration of a PIA.
[13] Australian Financial Security Authority, *Fees and charges*, AFSA website, n.d., accessed 26 June 2026

practitioners must demonstrate that they possess the necessary qualifications, experience and capability, satisfy the fit and proper person test and comply with the statutory duties imposed under the Bankruptcy Act.

Registration requirements are generally more stringent for RTs than for RDAAs, reflecting the broader range and complexity of administrations undertaken by RTs, including bankruptcies. RTs are also officers of the Court and are subject to responsibilities and professional standards comparable to those applying to Registered Liquidators under the *Corporations Act 2001*.

These registration requirements help ensure that personal insolvency practitioners, who support individuals experiencing financial distress and vulnerability, are appropriately qualified and capable of meeting their statutory and professional obligations. They help ensure practitioners have the capability and integrity required to administer estates, fulfil statutory duties and support informed decision-making by debtors and creditors.

AFSA is progressing a program of internal uplift in 2026–27 to modernise its registration processes. This includes working with ASIC to align aspects of the personal and corporate insolvency registration frameworks, reduce duplication, strengthen governance, and improve the application experience. The reforms are also intended to ensure the registration process is accessible to suitably qualified candidates from a broader range of professional backgrounds and experiences, supporting greater diversity within the practitioner profession.

Section 3: Operation of the framework in practice

3.1 Pathways are influenced by complexity, incentives and advice

Australia's personal insolvency system provides 3 formal pathways, each with different eligibility criteria[14] (Appendix B), regulatory requirements and outcomes for both debtors and creditors. The different pathways provide a level of flexibility for debtors and reflect the different circumstances (particularly the level of debt and number of creditors) associated with each case.

There are 3 personal insolvency pathways:

1. Bankruptcy
2. Debt Agreements
3. Personal Insolvency Agreements

The delineation between different insolvency pathways can help support entrepreneurship and responsible risk-taking by providing options (namely, debt agreements and personal insolvency agreements) which support genuine business failure and economic re-entry while still ensuring effective mechanisms are in place to respond to misconduct and minimise harm. Without these options, all individuals would be faced with the same level of restrictions and consequences imposed by bankruptcy, which may deter entrepreneurial risk-taking at the margin.

If the consequences of insolvency are perceived to be too high, individuals experiencing financial distress may instead pursue informal arrangements, such as negotiated repayment plans, debt settlements or hardship arrangements with creditors, rather than entering the formal insolvency system. While these arrangements may be appropriate in some circumstances, they are not generally subject to the same regulatory oversight and protections as formal insolvency pathways, and AFSA has limited visibility of these interactions.

In Australia's personal insolvency system, practitioners and intermediaries play a critical role in shaping outcomes by advising debtors on the most appropriate pathway, whether bankruptcy, a debt agreement, or a personal insolvency agreement. AFSA has previously recognised[15] that outcomes associated with these pathways are also shaped by decisions, advice, incentives and economic conditions occurring prior to formal entry into the system.

AFSA does not provide advice to potential entrants on the most appropriate pathway for them, nor does it seek to change or redirect debtors' pathways once they have entered into the insolvency process. This may provide pre-insolvency advisors with an opportunity to direct debtors down a path which is not in their best interests, but which provides the advisor with a commercial opportunity.

Flexible insolvency pathways allow different debtor circumstances to be accommodated, which can improve outcomes for both debtors and creditors. However, flexibility can also increase complexity and create opportunities for unintended consequences, reinforcing the importance of accessible information, effective oversight and appropriate safeguards.

3.2 Perceived consequences can influence engagement with formal insolvency

The personal insolvency system is predominantly composed of individuals with modest debt levels: in 2024–25, 45% of entrants had less than $50,000 in liabilities. This highlights that most people entering the system are not burdened by excessive debt, but rather by liabilities that have become unmanageable due to limited financial resilience – reinforcing the system's role as a safety net for financially vulnerable individuals.

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[14] Australian Financial Security Authority, *Compare your insolvency options*, AFSA website, n.d., accessed 25 June 2026.

[15] Australian Financial Security Authority, Submission No. 7 to the Parliamentary Joint Committee on Corporations and Financial Services , Parliament of Australia, *Inquiry into corporate insolvency in Australia*, 2022, accessed 2 July 2026.

A 2017 study of public attitudes to bankruptcy by the University of Melbourne[16] provides insight into public views on bankruptcy and the prevalence of bankruptcy stigma in Australia. It found evidence that Australians have complex attitudes on bankruptcy, ranging from disapproval (with respondents associating bankruptcy with poor financial management, extravagance and greed, particularly among the stereotypical dishonest, 'high-flying' businessman) to widespread sympathy for debtors on modest incomes who go bankrupt because of unemployment, illness or other unforeseeable events.

The study also indicates that the term 'stigma' does not fully convey the complexity of Australians' attitudes to bankruptcy, as 'many do not hold rigid or unequivocal views on the subject but rather combine a generalised sense of disapproval with considerable sympathy for individual debtors and a recognition of the suffering associated with financial failure.'

While societal attitudes towards insolvency and financial distress are shaped by a range of factors beyond the direct influence of policy, regulatory settings and posture can influence individual behaviour at the margin**.** Individuals experiencing financial distress often face challenges beyond the immediate management of debt, and decisions relating to financing arrangements, engagement from an adviser, personal guarantees and chosen business structures (where relevant) can have a significant impact on the individual's circumstances well in advance of entry into formal insolvency pathways.

The consequences and limitations of insolvency (such as restrictions on access to credit, limits on overseas travel, and disclosure requirements) may discourage timely engagement with the formal system and lead to reliance on informal arrangements outside the regulated framework. While there is still a stigma associated with insolvency today, attitudes have evolved over time alongside a broader recognition that business failure is a healthy and expected feature of modern economies and that insolvency systems, if effective, can support innovation and productive risk-taking.

Targeted changes to reduce the real or perceived negative consequences of insolvency (including the societal stigma) can help to ensure that individuals are not overly discouraged from risk-taking, which fosters entrepreneurial behaviour.

3.3 Creditor outcomes vary across pathways and influence behaviour

The treatment and prioritisation of creditors varies across bankruptcy, debt agreements, and personal insolvency agreements, which can result in variation in creditor outcomes. In practice, debtors with sufficient means or access to advice are able to select the insolvency pathway that best suits their circumstances. This may not be available for those who do not have the same level of resources, producing inconsistent outcomes across the system.

In bankruptcy, creditor priority is governed by a structured statutory framework. Secured creditors typically enforce their rights against secured assets directly, rather than participating in the distribution of the bankrupt estate, while the trustee administers the bankrupt estate for the benefit of unsecured creditors. From the available assets, trustee remuneration and expenses are paid first, followed by certain priority claims (including specific employee entitlements[17]), with remaining funds distributed to unsecured creditors on a pro-rata basis. In practice, recoveries for unsecured creditors are often limited (around 1.31 cents in the dollar), reflecting both the level of available assets and the costs involved in administering the estate.

Debt agreements provide a contract-based approach to creditor treatment. Under a debt agreement, interest on debts is frozen and creditors can vote on the proposal. The agreement comes into force if accepted by a majority of creditors (by value of unsecured debts owed) and is binding on all unsecured creditors by the terms of the agreement. Creditors typically receive pro-rata distributions based on the debtor's capacity to make periodic payments over time, providing an alternative to bankruptcy where the debtor has some repayment capacity. While creditor returns are often higher than in bankruptcy, outcomes remain closely tied to the debtor's income and the sustainability of the repayment arrangement.

[16] P Ali, L O'Brien and I Ramsay, 'Misfortune or Misdeed: an empirical study of public attitudes towards bankruptcy', *UNSW Law Journal*, 2017, 40(3): 1098-1129, doi: 10.53637/BYMJ3752
[17]Australian Financial Security Authority, *Treatment of debts in bankruptcy*, AFSA website, n.d., accessed 25 June 2026

Personal insolvency agreements (PIAs) offer the greatest flexibility in creditor treatment. Terms are negotiated, allowing different creditors to receive different outcomes, provided the arrangement is approved by creditors[18] and complies with legal protections (for example, provisions relating to priority payments like employee entitlements).

This flexibility enables PIAs to accommodate more complex or higher-value matters. However, it can also result in less consistent outcomes, as creditor returns depend on the specific agreement in each case by a majority of the creditors (more than 50% by number and at least 75% by value). Remuneration for RTs is also approved by creditors as part of the proposal, and AFSA has observed that returns to creditors have declined in recent years; in 2024–25, PIAs returned 3.73 cents in the dollar on average, around 3 times more than bankruptcies (Appendix B, Figure 3 refers). Low dividend outcomes may result in creditors participating in the insolvency process without receiving a meaningful return, raising questions about overall system efficiency and fairness of outcomes for creditors.

Creditor returns are an important measure of insolvency system performance, but they are not the only one. Confidence that insolvency processes are fair, transparent and predictable helps support the efficient functioning of credit markets and influences the willingness of lenders to extend credit across the economy.

3.4 Regulatory effort is not always proportionate to economic value

A key consideration in supporting productivity is whether the level of regulation and administrative effort applied in insolvency is proportionate to the complexity and economic value of the matter. AFSA's experience, and that of comparable jurisdictions, suggests there is an opportunity to improve how the system, and associated pathways, deal with low complexity and low-asset cases.

In instances where there is limited or no prospect of a return to creditors, current requirements may be disproportionate to the likely outcomes. For example, only 2.4% (426 of 18,000) of all matters handled by the Official Trustee in 2024–25 made any payments, whether to creditors, third parties or towards administration costs. However, all matters, regardless of asset levels or recovery prospect, remain subject to a baseline set of statutory obligations, including reporting, compliance, and investigation requirements.

In matters requiring litigation, the costs of investigation and recovery action may exceed the value ultimately recovered, even where some assets are available for distribution. As a result, the effort and expense required under the current framework may be disproportionate to the likely benefit realised for creditors and the broader system.

Compliance, reporting and investigative obligations impose administrative requirements on practitioners, which may ultimately be reflected in the costs of administration borne by debtors and creditors. Regardless of estate size, there is a minimum level of administration, reporting and regulatory activity required to comply with legislative obligations.

AFSA's engagement with bankruptcy indicates that, in practice, the administration of low-asset estates is subsidised by fees generated from higher-value estates. This cross-subsidisation occurs in both the private and public systems. For the OT, the fee model (currently comprising a fixed fee of $4,000 plus 20% of funds realised) means that the estates with higher assets values generate greater revenue, which can partially offset the costs of administering lower-value or assetless estates.

Minimal Asset Procedure (MAP)

AFSA notes recent consultation[19] from the Government on introducing a Minimal Asset Procedure in Australia, which would be a streamlined insolvency process for those who have very low levels of income,

[18] For the proposal to be accepted, it must be passed by a special resolution – that is, a majority in number and at least 75 per cent in debt value of the voting creditors must vote in favour (pursuant to subsection 204(1) of the Bankruptcy Act).

[19] Attorney General's Department, *Minimal Asset Procedure discussion paper*, July 2024, accessed 1 July 2026.

less than $10,000 in assets and no realistic ability to pay their debts. It would involve writing off the individual's debts (with a maximum debt threshold of $50,000), lasting for 12 months, with a period of 4 years post-discharge to be listed on the National Personal Insolvency Index. As per the consultation, a Minimal Asset Procedure would allow access to a fresh start sooner than a bankruptcy where that person has no other way to pay. As proposed, it should also leave creditors no worse off, ensuring Australia's personal insolvency system remains fair and balanced.

This type of approach has already been implemented in other jurisdictions, such as in New Zealand where their 'No Asset Procedure' provides a streamlined pathway for individuals with minimal assets, relatively small debts and no meaningful ability to make repayments. It clears individuals' debts and results in creditors not receiving returns and writing the debts off, in recognition that a more formal process for these debtors would not likely achieve a more favourable outcome for creditors. This option is not available to everyone; individuals must have no way to pay any of their debt and not own anything that can be sold to help make payments. This approach recognises that in some circumstances, formal regulatory proceedings do not provide benefit to creditors, debtors or the economy by facilitating a financial reset and re-entry.

The effectiveness of insolvency frameworks depends not only on their legal design, but also on whether they remain accessible and economically viable in practice. Where regulatory obligations, administrative costs or pathway settings become disproportionate to the value and complexity of the matter, participation in the formal insolvency system may be discouraged and economic recovery delayed. Maintaining a balance between integrity, accessibility and proportionality is therefore important to ensuring insolvency pathways remain effective, efficient and fit for purpose.

3.5 Personal and corporate insolvency frameworks intersect in practice

AFSA and ASIC have separate responsibilities for the regulation and administration of the personal and corporate insolvency regimes. The various intersecting aspects of both the personal and corporate insolvency regimes have been given significant consideration over many years, with work having already been undertaken to align the systems, including through:

- the 2014 Productivity Commission inquiry into Business set-up, transfer and closure
- the Insolvency Law Reform Act 2016
- the Bankruptcy Amendment (Enterprise Incentives) Bill 2017
- the 2022 Parliamentary Joint Committee Inquiry into Corporate Insolvency

The Insolvency Law Reform Act (2016) provides a consistent framework for how insolvency is administered by introducing schedules into both the *Bankruptcy Act 1966* and the *Corporations Act 2001* which enhance accountability and transparency requirements and align registration and discipline processes across the personal and corporate insolvency frameworks.

However, stakeholders have suggested there is increased scope for harmonisation. In submissions made to the Parliamentary Joint Committee on Corporations and Financial Services, Corporate Insolvency in Australia (2023), the Australian Restructuring Insolvency & Turnaround Association[20], Institute of Public Accountants[21] and the Society of Corporate Law Academics[22], advocated for establishing a single insolvency regulator covering both personal and corporate insolvency. Other stakeholders, such as the

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[20] Australian Restructuring Insolvency & Turnaround Association, Submission No. 36 to the Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Inquiry into corporate insolvency in Australia*, 30 November 2022, accessed 2 July 2026.

[21] Institute of Public Accountants, Submission No. 62 to the Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Inquiry into corporate insolvency in Australia*, December 2022, accessed 2 July 2026.

[22] Society of Corporate Law Academics, Submission No. 37 to the Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Inquiry into corporate insolvency in Australia*, 2 December 2022, accessed 2 July 2026.

Australian Small Business and Family Enterprise Ombudsman[23] and Minter Ellison[24], instead advocated for a singular legislative framework for personal and corporate insolvency.

A duplicative regulatory burden is imposed on insolvency practitioners that operate in both the corporate and personal insolvency space, as these practitioners are required to maintain separate registrations as both Registered Liquidators and Registered Trustees, pay fees under both regulatory frameworks and comply with separate statutory and regulatory reporting requirements. These compliance costs may ultimately be reflected in the costs borne by debtors and/or creditors. Approximately 83%[25] of Registered Trustees are also Registered Liquidators.

AFSA and ASIC already work collaboratively to identify misconduct involving dual-registered practitioners and are strengthening data-sharing arrangements to better identify links between personal and corporate insolvency.

In the Australian context, a subset (7-8%)[26] of the debtors who have indicated business involvement are likely to need to navigate both personal and corporate insolvency systems. In these instances, debtors and creditors often need to engage with both insolvency systems in relation to the same underlying debts, which can result in inefficiencies and duplications arising from these dual regimes.

There are additional reporting and behavioural obligations for a debtor who is also a company director, and who is subject to concurrent corporate and personal insolvency processes. Since independence requirements restrict one practitioner from managing both an individual's personal and corporate insolvency appointments (even if the practitioner holds dual registrations as both a Registered Trustee and Registered Liquidator), debtors often have to provide very similar information and context to 2 different insolvency practitioners. This not only results in duplicative practices but also carries the risk that the debtor may (knowingly or unknowingly) provide differing information to the 2 practitioners.

Creditors involved in both processes may need to navigate differing obligations and provisions (e.g. meetings, claims, review rights, antecedent transaction provisions) across appointment types, and potentially also multiple resource-intensive Court processes[27] (including across multiple jurisdictions, where needed) to prosecute claims.

Practitioners pass on these regulatory costs to debtors and creditors through their charging models, resulting in regulatory duplication eroding returns to creditors of both the corporate and personal insolvency appointments.

3.6 Harmonisation could reduce friction and duplication

Australia's personal and corporate insolvency frameworks have evolved separately and are administered by AFSA and ASIC respectively, reflecting their distinct legal, policy and operational objectives.

The personal insolvency framework is primarily concerned with providing a formal process for individuals (and their creditors) to address unmanageable debts when they fall due. By contrast, the corporate

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[23] Australian Small Business and Family Enterprise Ombudsman, Submission No. 31 to the Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Inquiry into corporate insolvency in Australia*, 2 December 2022, accessed 2 July 2026.

[24] Minter Ellison, Submission No. 4 to the Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Inquiry into corporate insolvency in Australia*, 22 November 2022, accessed 2 July 2026.

[25] Calculated using Registered Liquidator lists published by ASIC: Insolvency statistics | ASIC and AFSA's Register of trustees: Practitioners | AFSA

[26] Calculated using publicly available insolvency statistics and Australian Company Number data from ASIC for the 2024–25 financial year

[27] This includes the process of a creditor making a Statutory Demand requesting that a company pays a debt and making an application to the Court for orders winding up the company after it has failed to comply with the Statutory Demand. A director who has provided a personal guarantee for the company's debts may then be issued with a bankruptcy notice, and if they are unable to pay, they may be made bankrupt via a sequestration order from the Court.

insolvency regime is designed around the separate legal entity of the company and the relationship between the company, its directors, shareholders and creditors.

Corporate insolvency law incorporates additional obligations that have no direct equivalent in personal insolvency, including directors' duties and the duty to prevent insolvent trading. These settings are designed to address agency risks, where directors control company assets on behalf of others and may have incentives that diverge from those of creditors, particularly in the lead-up to insolvency. As a result, corporate insolvency focuses not only on addressing unmanageable debt, but also on regulating conduct, managing competing stakeholder interests, and preserving confidence in the corporate framework.

Despite these distinct policy objectives, there are significant areas of practical overlap, particularly for small businesses and closely held companies where personal and business finances are closely intertwined.

International practice demonstrates that there is no single approach to the design and administration of insolvency systems. Jurisdictions adopt a range of models (see Appendix C), from highly integrated frameworks with common regulation and administration of personal and corporate insolvency matters, through to separate but coordinated systems overseen by specialist regulators. Similarly, insolvency administration may be undertaken primarily by private practitioners, government agencies, or a combination of both. Despite these differences, there is recognition that small business financial distress often involves interconnected personal and business liabilities, creating a need for coordination across insolvency frameworks and processes.

While personal and corporate insolvency frameworks serve distinct policy objectives, financial distress - particularly for small businesses and closely held companies - often spans both systems. This can increase complexity, duplication and administrative burden for debtors, creditors and practitioners. As harmonisation exists along a spectrum of options, there may be opportunities to further improve coordination and reduce unnecessary friction where personal and business financial affairs are closely interconnected.

Section 4: Appendices

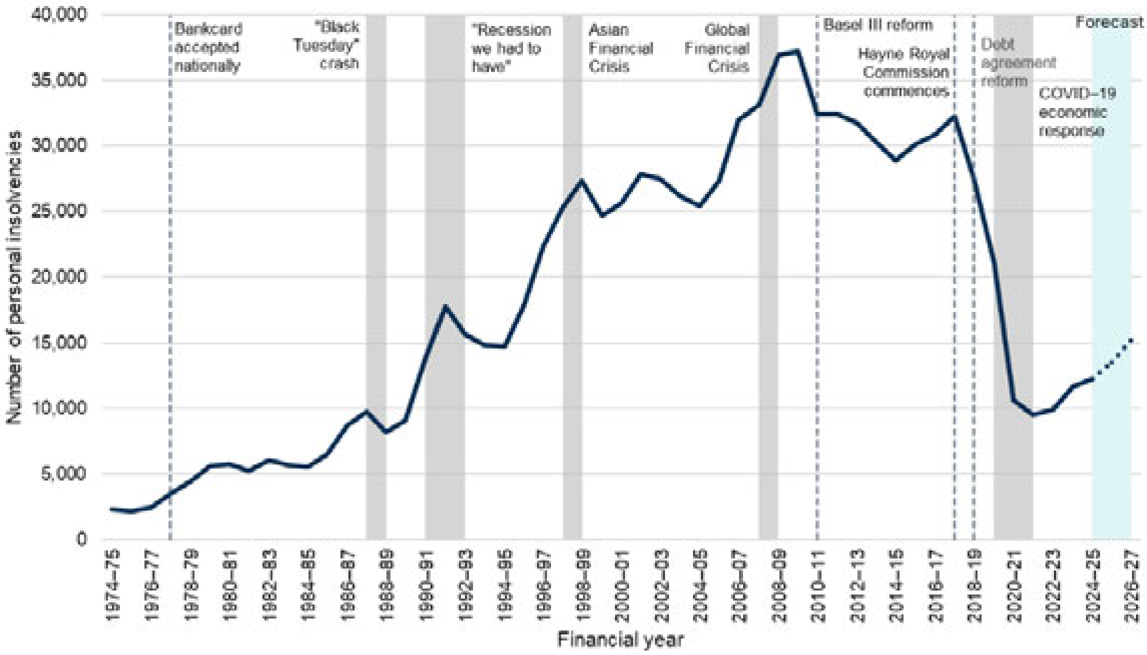
Appendix A – Overview of Australia's personal insolvency framework

Personal insolvency volumes have been increasing at a moderate pace, following a 30-year low in 2021–22 which was driven by macroeconomic conditions (including COVID-19) and earlier policy settings (Figure 1).

In 2024–25, there were 12,257 new personal insolvencies. While final figures for 2025–26 are not yet available, volumes are likely to be around 13,500, reflecting growth of around 10–12% over the near term, and continue toward 15,000 in 2026–27.

While there is an upward trend in personal insolvency volumes, the pace of growth is expected to remain moderate as broader credit market conditions remain relatively benign, and overall volumes return towards pre-COVID-19 levels.

Figure 1: New personal insolvencies, 1974–75 to 2024–25 with forecast



Source: AFSA

The system prescribes:

- A unified, orderly process for debt recovery (rather than individual creditors separately pursuing debts) which establishes a clear order of priority for creditor returns
- A range of different pathways into insolvency, including through both voluntary and involuntary entry processes, to cater for different levels of income, assets and activity restrictions
- Administration of estates largely undertaken by licensed practitioners (with courts playing a limited role)
- A government regulator (the Inspector-General in Bankruptcy) maintaining integrity of the system, the Official Receiver overseeing the bankruptcy process and personal insolvency registry process, and the Official Trustee acting in the public interest to provide a 'trustee of last resort' function

These settings play a critical role in maintaining creditor confidence and trust in the system, while supporting the effective functioning of the broader credit system.

Figure 2: Eligibility thresholds for each insolvency pathway

Type	Income	Assets	Liabilities	Duration
Bankruptcy	No minimum or maximum income	No minimum or maximum assets Certain assets are protected, including tools of trade up to $4,450 and a vehicle used primarily for transport up to $9,600	No minimum or maximum liabilities	3 years and 1 day
Debt Agreement	After-tax income for the next year must be less than $113,213.10	Up to $301,901.60 (excluding protected household and other exempt assets)	Up to $150,950.80	As agreed with creditors – usually up to 3 years
Personal Insolvency Agreement	No minimum or maximum income	No minimum or maximum assets	No minimum or maximum liabilities	As negotiated with trustee and creditors

Source: AFSA

Another option is a Temporary Debt Protection (TDP), which provides individuals with a 21-day protection period from being pursued by unsecured creditors. A TDP, which can be used prior to entering into one of the above formal insolvency pathways, provides individuals with time to seek advice and decide how to proceed. While TDPs are not recorded on the National Personal Insolvency Index[28], they are considered to be an act of bankruptcy as they can provide creditors with an avenue to initiate legal proceedings.

Figure 3: Average rate of return (in cents on the dollar) to creditors, by administration type

Financial year	Bankruptcy	Debt agreement	Personal insolvency agreement
2014–15	1.04	59.65	1.90
2015–16	1.04	60.25	2.01
2016–17	1.15	59.68	2.16
2017–18	1.61	57.05	2.12
2018–19	1.84	53.52	2.47
2019–20	0.87	55.57	1.02
2020–21	1.63	54.90	9.70
2021–22	2.33	55.40	8.71
2022–23	2.19	51.74	10.36
2023–24	2.42	50.97	8.24
2024–25	1.31	47.75	3.73

Source: AFSA

The personal insolvency market uses a hybrid model comprising both private practitioners and the Official Trustee (OT). The private market is a commercial market, with the Official Trustee stepping in only to administer those estates which have few or no realisable assets as part of its value in providing a public good. Consequently, only 2.4% of administrations managed by the OT in 2024–25 made any payments at all.

[28] The National Personal Insolvency Index is a publicly available electronic record of individuals who have been subject to proceedings under the Bankruptcy Act from August 1928, which is maintained by AFSA.

Figure 4: Breakdown of public and private personal insolvency market in 2024–25

	Private market	Public market (OT)	Total market
Activity	36,250 (67% of total) managed administrations	18,000 (33% of total) managed administrations	54,250 managed administrations
Payments[29]	**$367m** in payments from 26,776 administrations	**$10m** in payments from 426 administrations	$377m total payments administered
Returns to creditors	**$173m** (47% of payments) returned to creditors	**$2m** (25% of OT payments) returned to creditors	$175m returned to creditors
Payments to practitioners	**$90m** (25% of payments) paid in remuneration costs	**$8m** (75% of OT payments) paid to the Official Trustee to contribute to the cost of its operations	$98m in remuneration costs
Administration costs	**$104m** (28% of payments) paid in administration costs	**$24.1m** in estate administration* operating costs **$54.6m** in all other personal insolvency program[30] operating costs	$127m in administration costs

Source: AFSA

*Excludes debt agreements

While there is a significant level of payments returned to practitioners in the personal insolvency system, it is overwhelmingly concentrated in estates that generate payments and are administered in the private market (as opposed to those administered by the OT which do not generally yield recoverable income). As a result, it is not suitable to make direct comparisons between the level of returns to creditors made by the private market and the OT.

[29] Payments represent transactions from the distribution of funds held within the trust of an administration.

[30] This includes costs relating to the administration of the National Personal Insolvency Index, and enables AFSA to deliver its statutory functions in addition to key program elements such as compliance and enforcement activities, information and registry, policy reform, trauma-informed support for financially distressed individuals, and the provision of public education and digital information services.

Appendix B – The Personal Property Securities Register

The Personal Property Securities Register (PPSR) is a key component of Australia's credit infrastructure, supporting access to finance by providing transparency and certainty in transactions involving personal property. As of March 2026, the PPSR held registrations with a potential economic value of approximately $480 billion[31], equivalent to around 17 per cent of Australia's GDP, illustrating its significance to the Australian economy.

Operated by AFSA under the *Personal Property Securities Act 2009 (Cth)*, the PPSR gives creditors the confidence that they can enforce their rights under the clear priority rules that a perfected[32] security interest offers.

The PPSR enables lenders and other parties to identify whether personal property has been used as collateral and to determine the priority of claims over that property. By making security interests visible and enforceable, the system reduces information asymmetries and provides greater confidence to lenders, borrowers and other market participants.

Unlike traditional secured lending, which frequently relies on real property[33], the PPSR enables businesses to use a broader range of assets as collateral, including inventory, equipment, vehicles, intellectual property and accounts receivable. It also provides greater certainty for transactions involving consigned goods and other forms of personal property. This can be particularly important for newer, smaller and growing businesses that may have limited real property assets but significant value in intangible and other forms of personal property. By supporting the use of these assets as collateral, the PPSR can expand financing options for businesses, support business investment and promote economic growth.

The transparency provided by the PPSR reduces due diligence costs for lenders and facilitates faster lending decisions. This can improve the availability of credit and support business investment, growth and innovation. The PPSR also contributes to business dynamism by supporting the efficient resolution of financial distress. Where a business fails, registered security interests can be identified quickly and creditor priorities determined with greater certainty. This reduces disputes, improves predictability for creditors and facilitates the orderly distribution of assets.

By supporting confidence in secured lending and enabling a more efficient resolution when businesses fail, the PPSR assists in the reallocation of capital and productive assets to more productive uses. In this way, the PPSR complements Australia's personal insolvency framework by supporting both access to finance during the life of a business and efficient exit where debt cannot be managed.

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[31] This estimate reflects the maximum potential economic value of the PPSR, based on proxy assumptions using RBA credit data. It assumes: (1) collateral value is approximately 90–95% of secured (non-housing) credit; (2) the secured lending ratio reported by the Big Four banks represents the broader system; and (3) nearly all secured non-housing lending is registered on the PPSR. As such, this figure should be interpreted as an upper-bound estimate, contingent on optimal system usage. These estimates are based on data over the 4 quarters to March 2026.
[32] Australian Financial Security Authority, *State of the Personal Property Securities System 2024-25*, n.d., accessed 2 July 2026.
[33] 'Real property', which is not eligible for registration on the PPSR, includes interests in land and fixtures or structures upon the land, while 'personal' property encompasses tangible or 'corporeal' property other than land, buildings and fixtures including motor vehicles, company assets, boats, used goods and intellectual property. *Australian Law Reform Commission*, n.d., accessed 15 July 2026.

Appendix C – Comparison of international insolvency frameworks

Jurisdiction	Regulatory oversight	Administration model	Treatment of personal and business financial distress
United Kingdom[34]	Single specialist insolvency authority	Public and private administration for both personal and corporate insolvency	Coordinated treatment of personal and business financial distress
Canada[35]	Single specialist insolvency authority	Primarily private administration for both personal and corporate insolvency	Integrated treatment of interconnected personal and business liabilities
Singapore[36]	Single government insolvency framework	Public and private administration for both personal and corporate insolvency	Coordinated treatment of personal and business financial distress
New Zealand[37]	Single government insolvency authority	Public personal insolvency administration; primarily private corporate insolvency administration	Coordinated treatment of personal and business financial distress

[34] The Insolvency Service, *About Us*, The Insolvency Service website, n.d., accessed 1 July 2026.

[35] Office of the Superintendent of Bankruptcy, *Office of the Superintendent of Bankruptcy*, OSB website, 2025, accessed 1 July 2026.

[36] Ministry of Law Insolvency Office, Insolvency Office, Insolvency Office website, 2015, accessed 1 July 2026.

[37] New Zealand Insolvency and Trustee Service, About Insolvency and Trustee Service, NZ ITS website, 2026, accessed 1 July 2026.