

Brief comments received

No.	Comment
1	Voluntary administration timeframes as a barrier to business dynamism and domestic recapitalisation. Currently it appears Australia lacks an effective bridge between a listed company developing a viable project and the deep domestic capital pool that might prevent an insolvency event in the first place. I wish to raise a structural issue concerning Australia's voluntary administration (VA) framework that may itself operate as a barrier to business dynamism. Voluntary administration is designed to provide a rapid pathway for restructuring or otherwise resolving an insolvent or near-insolvent company. However, the accelerated statutory timetable can also have the unintended effect of excluding large domestic institutional investors, including Australian superannuation funds, from participating meaningfully in business continuation, recapitalisation or rescue opportunities. Large institutional investors are necessarily subject to governance, valuation, due-diligence, investment-committee and risk-management processes. These processes generally cannot be completed within the compressed timeframes associated with voluntary administration. By contrast, pre-positioned buyers, secured creditors, private capital or offshore entities may be able to move much more quickly, with limited competition from onshore institutional investors. The result may be a narrower pool of potential rescue capital at precisely the point when a viable Australian business most needs access to capital. This appears inconsistent with the broader objective of business dynamism. The Productivity Commission's inquiry paper identifies access to capital, restructuring, transfer of businesses and the design and operation of insolvency frameworks as areas of interest. It also notes that regulatory settings should support suitable outcomes for businesses and help move resources toward productive uses. Recent Australian resource-sector administrations illustrate the issue. I was a long-term shareholder in both Lucapa Diamond Company and Strandline Resources. Both companies entered insolvency processes, and Treasury has subsequently confirmed to me that court extensions were granted in both administrations. This raises an important policy question: if voluntary administration timeframes can be extended where necessary for the administration process itself, should there also be a mechanism allowing credible domestic institutional capital sufficient time to assess and participate in genuine recapitalisation opportunities? The concern is that superannuation funds or other Australian institutions may currently be prevented from realistically considering recapitalisation opportunities at all, including opportunities to recapitalise businesses before voluntary administration becomes necessary. Under VA processes, distressed valuations may substantially reduce the recognised value of assets held by companies whose shareholders have supported projects through lengthy and high-risk exploration and development stages. In some cases, including Lucapa, the underlying difficulty may be a liquidity or funding constraint rather than an absence of long-term asset value. This can have several broader effects: 1. Reduction in competitive tension for distressed businesses and assets. 2. Exclusion of Australian retirement capital from potentially viable domestic investment opportunities. 3. Increased likelihood of distressed transfers rather than transparent recapitalisation. 4. Loss of shareholder confidence in funding early-stage Australian businesses. 5. Potentially poorer allocation of capital across the economy. This issue may be particularly important in sectors such as exploration and mining, where companies can hold assets with significant long-term option value but limited near-term cash flow, especially during development stages. A distressed corporate valuation may not adequately reflect the future value of those projects, while the VA timetable may not allow sufficient time for potential institutional investors to independently assess them. There is also a public-sector risk dimension. In some resource projects, early-

OFFICIAL

No.	Comment
	stage and development risk is carried not only by shareholders, but also by public financing institutions such as NAIF and the CEFC. Yet insolvency processes can still result in strategic assets being transferred at distressed valuations while shareholders, taxpayers and domestic creditors absorb much of the loss. Recent examples including Strandline's Coburn project and Salt Lake Potash illustrate the broader issue. Safeguards across the exploration-to-development pipeline may therefore be warranted, particularly where early-stage projects such as Lucapa's Merlin tenements or more advanced projects such as Strandline hold strategic or nationally significant assets. I suggest the Commission consider whether a limited institutional participation mechanism could improve the operation of voluntary administration. Options might include: 1. A short additional recapitalisation window where credible institutional interest exists. 2. Mandatory notification of substantial listed-company administrations to appropriate domestic institutional investment channels, with consideration also given to voluntary self-notification well before potential administration. 3. Greater transparency around recapitalisation opportunities before irreversible asset or share transfers occur. 4. Consideration of whether court-granted VA extensions should also facilitate broader competitive access to rescue capital. The objective would be to ensure that speed does not inadvertently undermine the primary economic purpose of restructuring by excluding potentially viable sources of domestic capital. A well-designed framework should give economically viable businesses, particularly at vulnerable stages, a genuine opportunity to be recapitalised. In my view, the current mismatch between VA timeframes and institutional investment processes warrants examination as a potential barrier to business dynamism.

2

I am CEO of Elixinol Wellness Limited, an Australian listed wellness company, and wanted to provide a recent real-world example that may be relevant to your inquiry into reducing barriers to business dynamism.

In October 2024, Elixinol, a Victorian company, acquired The Healthy Chef, a NSW-based e-commerce business from NSW sellers.

The acquired business had no premises, employees, inventory, warehousing, fulfilment operations, assets or tax registration in Western Australia. All stock and fulfilment were located in NSW. Its only relevant connection with WA was that some consumers had purchased products online and had them delivered there.

RevenueWA subsequently determined that this was sufficient for The Healthy Chef to be treated as a “Western Australian business” for transfer duty purposes.

RevenueWA calculated the WA component of the acquisition by reference to WA customer sales as a proportion of total Australian sales. The assessment records approximately \$1.085 million of WA sales out of \$8.841 million of Australian sales.

This raises a broader regulatory issue for national e-commerce.

Modern online businesses routinely sell to customers in every Australian State from a single operating location. Customer geography no longer necessarily tells you where a business is established or operates. A consumer placing an online order from Perth does not require the seller to establish an office, employee, warehouse, licence or tax registration in Western Australia.

Yet under the WA transfer-duty regime, those ordinary online transactions can create a separate acquisition-tax obligation for a future purchaser of the business.

The practical consequence is that a purchaser of a national e-commerce business may need to investigate the business-transfer and acquisition-tax laws of every State (and country) into which the target has sold products, even where neither party has any physical or operational presence there.

For large companies with specialist State-tax advisers, this may simply add cost and due diligence. For smaller and growing businesses, founders and companies undertaking relatively modest acquisitions, the obligation can be effectively invisible.

In our case, Elixinol was subsequently charged a late-lodgement penalty equal to 20% of the duty because the transaction had not been lodged in Western Australia. RevenueWA's Statement of Grounds acknowledges that the target was NSW-based, had no WA premises, employees, assets or registrations, and that its WA connection consisted of customer sales. RevenueWA nevertheless says purchasers are expected to understand the taxation requirements of every jurisdiction in which the acquired business has customers.

This creates an unusual compliance expectation in an e-commerce economy.

If customer location alone is sufficient to require investigation of a jurisdiction's business-acquisition taxes, a company selling internationally could logically be expected to investigate acquisition-tax rules across every jurisdiction into which it ships products.

There is also a second issue involving contingent consideration.

The WA regime can require duty to be paid upfront on the maximum amount of an earn-out or other contingent purchase consideration, even where that amount may never become payable. If the earn-out subsequently fails to materialise, the taxpayer must later apply for reassessment and recover the excess duty.

In our case, RevenueWA included contingent deferred consideration in the assessed acquisition value and confirmed that we would have to seek reassessment later if that consideration ultimately did not become payable.

This creates an unnecessary cash-flow burden precisely at the point when an acquiring business is deploying capital to invest in and grow the acquired company.

We are not asking the Productivity Commission to intervene in our individual tax matter. Our assessment is being dealt with separately through Western Australia's statutory objection process.

We believe, however, that the case raises broader questions relevant to the Commission's inquiry:

- Should the location of an online consumer, by itself, be sufficient to create a State business-acquisition tax nexus?

- Should there be a meaningful materiality or operational-presence threshold before an interstate business becomes subject to a State's business transfer duty?
- Should purchasers be penalised for failing to lodge where neither the purchaser nor target has premises, employees, assets, registration or any ordinary administrative relationship with the relevant State?
- Should contingent earn-out consideration be taxed before it actually becomes payable?
- More broadly, are inconsistent legacy State transaction taxes creating unnecessary barriers to business transfers, investment and consolidation across Australia?

We believe this is a practical example of how legacy State taxation rules can create hidden cost, uncertainty and compliance risk for businesses trying to invest and grow nationally.

The underlying legislation may have made more commercial sense when customer location was more closely connected with physical business presence. In a national e-commerce economy, that relationship has fundamentally changed.

I appreciate that the initial submission period has closed, but would be grateful if this could be considered as a brief comment or case study as part of the inquiry, or retained for the final submission stage.