Reducing barriers to business dynamism

Productivity Commission

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Acknowledgements

The Law Council of Australia thanks its Business Law Section for its contribution to Part A of this submission. We are also grateful to the Queensland Law Society for additional input, forming Part B of this document.

Introduction

1. The Law Council of Australia welcomes the opportunity to respond to the Productivity Commission's call for submissions on reducing barriers to business dynamism in Australia.

2. Annexure A of the Productivity Commission's call for submissions sets the scope of the Commission's inquiry, providing that:

> *The Commission is to investigate regulatory barriers to business dynamism and recommend actionable reform options that increase productivity, the entry of new firms and the expansion of existing firms. In particular, the Commission should:*
>
> 1. *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*
>   b. *the design, operation and integrity of corporate and personal insolvency frameworks, encompassing consideration of:*
>   i. *whether there are net benefits of greater harmonisation, particularly for small business owners who may need to navigate both systems simultaneously, and*
>   ii. *whether they support the efficient allocation of resources across the economy in a manner that preserves system integrity and deters corporate misconduct.*
> 2. *Examine the economic impacts of these processes and barriers, including effects on productivity, innovation, investment, and employment.*
>
> *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 Illegal Phoenixing) Act 2020.*
>
> *For the avoidance of doubt, the tax, workplace relations, and mergers frameworks are not intended to be the focus of this inquiry.*[1]

3. In responding to these matters, this submission is divided into two distinct parts:

    - Part A of this submission reflects the views of the Law Council's Business Law Section (**BLS**) and responds to each of the above issues in turn.

    - Part B of this submission reflects input provided by the Queensland Law Society (**QLS**) and is focused on the interconnected nature of small business activity, personal and household financial wellbeing and regulatory environments.

[1] Productivity Commission, *Reducing barriers to business dynamism in Australia: Call for submissions* (May 2026), 7-8.

Part A: General response across full inquiry scope

4. This part has been prepared by the Insolvency and Restructuring Committee of the BLS with additional input from the SME Business Law Committee, the Financial Services Committee, the Taxation Committee, and the Corporations Committee. Through these and other committees, the BLS provides a forum through which lawyers and others interested in law affecting business can discuss current issues, debate and contribute to the process of law reform in Australia, as well as enhance their professional skills.

Regulatory and administrative burdens, including access to capital markets, business registration and industry-specific licensing

Regulatory complexity

5. Regulatory complexity is a key productivity inhibitor in the Australian economy. Regulatory complexity can take a number of different forms, and may involve:

   (a) inconsistency between federal, State and local government laws;

   (b) inconsistency between laws made by the same level of government and administered by different government agencies or regulators;

   (c) internal inconsistency within a single piece of legislation; and/or

   (d) complexity in the way in which the law is developed, which causes difficulties with navigating legislation to understand the regulatory position: for example, primary provisions of the *Corporations Act 2001* (Cth) may be modified by regulations or by legislative instruments made by the Australian Securities and Investments Commission (**ASIC**).

6. The BLS has engaged heavily in the consultation processes run by the Australian Law Reform Commission (**ALRC**) in its Review of the Legislative Framework for Corporations and Financial Services Regulation which took place between September 2020 and January 2024. The ALRC made very clear findings about the problems with the current design of the Corporations Act and identified the solution which would address the situation. The BLS is disappointed that limited progress has been made in implementing the ALRC's recommendations.

7. Since the ALRC delivered its report, further amendments have been made to the Corporations Act without regard to the problems in the legislative design which the ALRC articulated, which only serves to compound the issue and add to the difficulty of the ultimate task of addressing the underlying issue.

8. The BLS believes that having a clear and coherent legislative framework would better support growth in business productivity, and that government should be both:

   (a) actively addressing and seeking to reverse historical complexity that has arisen; and

   (b) taking better care not to unnecessarily add to regulatory complexity and/or inconsistency with existing laws when making new laws.

9. The BLS notes that this may require a shift in priorities and mindset from lawmakers and regulators.

Industry-specific licensing

10. Members of the BLS Financial Services Committee advise businesses which need to be licensed by ASIC to conduct regulated financial services and credit activities. Members have observed that the length of the ASIC licensing process represents a challenge for a business obtaining a licence or varying its licence to allow it to expand its regulated activities.

11. Under the service standards which ASIC has articulated under its Service Charter ASIC aims to decide 70% of applications for new Australian financial services licences or credit licences or licence variations within 150 days and 90% within 240 days - with the caveat that the licence assessment will take longer if "complex or new policy issues" are raised, or ASIC does not have all the information which is needed.

12. At the time a business makes its application to ASIC, it must be in a position to show that it has the financial, human and technological resources to conduct the relevant regulated activities in accordance with the law. To get to such a position involves costs, including hiring staff and having capital available on the balance sheet, as well as paying thousands of dollars in ASIC application fees.

13. Upon making its application to ASIC for a new licence, the business must then effectively sit back and wait for ASIC to make a decision, while some or all of those resources (depending on whether the application is for a new licence or a variation) are unable to be used to generate income for the business. Even assuming that ASIC adheres to its service standards, this will take a number of months and the longer it takes, the more it costs the business. This is a frequent source of frustration.

14. Another observation about the licensing process is that the regulatory remit of ASIC has grown significantly and at particular points in time, ASIC will start regulating a new industry - most recently the digital assets industry. In those circumstances, the newly regulated population may be required to be licensed within a prescribed statutory timeframe. During those periods, ASIC will "triage" and prioritise the applications received from members of the newly regulated industry, and this can mean an even longer wait than usual for a business operating in an industry that ASIC already regulates.

15. It should be acknowledged that there have been regulatory initiatives which are designed to encourage innovation, such as ASIC's Innovation Hub and the enhanced regulatory sandbox framework created under the *Corporations (FinTech and Sandbox Australian Financial Services Licence Exemption) Regulations 2020* (Cth) and the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* (Cth).

16. However, these initiatives are focused on the market entry on-ramp, and they do not seek to address broader and ongoing challenges which new businesses will face once they are operating on an ongoing basis and have to comply with a suite of regulatory obligations which have progressively grown in both volume and complexity over the course of the 21st century.

The design, operation and integrity of corporate and personal insolvency frameworks

17. In a 2022 submission to the Parliamentary Joint Committee on Corporations and Financial Services (**PJC**) inquiry into corporate insolvency in Australia, the BLS noted as follows:

> *… this Submission's primary, and key, recommendation is that the legislative scheme be redesigned. That is consistent with recent calls from the ALRC to do the same for other parts of the Corporations Act. Such a redesign does not need to break the system or require complete, substantive amendments to Australia's regime, but the opportunity should be taken to review parts of the law that require examination along the way. …*
>
> *Ultimately, Australia's corporate insolvency regime works well. However, there are real opportunities to fine-tune the system and provide better results for all stakeholders.*[2]

18. The BLS submission contained 33 recommendations for the PJC's consideration. Those recommendations continue to have merit as no substantial (or any) change has been made to the design and operation of the corporate and insolvency frameworks. Notably, the 12 July 2023 report of the PJC made 28 recommendations which aligned in large part with the BLS's views. The Government has only this month released its response to the PJC report and has indicated broadly that it supports all recommendations in principle (other than 2 which were noted, as they were recommendations to other agencies and one which has already been implemented).

19. The BLS nevertheless makes the following further submissions in light of the inquiry now being undertaken by the Productivity Commission.

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2 Law Council of Australia (Business Law Section), *Corporate insolvency in Australia*, Submission to the Parliamentary Joint Committee on Corporations and Financial Services (1 December 2022), 10.

Framework design

20. Consistent with the United Nations Commission on International Trade Law (**UNCITRAL**) Legislative Guide on Insolvency Law, one of the key underlying principles of insolvency law is to promote the restructuring of viable businesses and the efficient closure and transfer of assets of failed businesses.[3]

21. This goal is also reflected in section 435A of the Corporations Act which says that the object of that Part of the Act dealing with administration of companies is to provide for the business, property and affairs of an insolvent company to be administered in a way that:

    (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or

    (b) if it is not possible for the company or its business to continue in existence--results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

Operational Improvements

22. The BLS notes that a potential broad-scale improvement which bears consideration (at least in respect of companies of a certain size) is a complementary process to existing insolvency processes of liquidation and voluntary administration—being a court-sanctioned process akin to Chapter 11 in the United States. The bulk of the submissions to the PJC did not endorse a Chapter 11-style process directly, but consideration should be given to a system which draws on some of the positive aspects of that regime.

23. This suggestion is made in light of increasingly frequent contests (including successful ones) concerning deeds of company arrangements (**DOCAs**)—on a number of grounds. Such contests often relate to a potential strategy where the DOCA:

    (a) unfairly prejudices a particular creditor (for example, by providing for a separate class with a lower dividend without a rational basis);[4] or

    (b) where the DOCA was against public policy by allowing an insolvent company to continue to trade and for directors to avoid clawback proceedings available in liquidation.[5]

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3 UNCITRAL, Legislative Guide on Insolvency Law (Parts One and Two, 2004), 10.

4 *Canstruct Pty Ltd v Project Sea Dragon Pty Ltd (Subject to a Deed of Company Arrangement) (No 4)* [2024] FCA 112; *Academy Construction & Development Pty Ltd (Subject to Deed of Company Arrangement)* [2024] NSWSC 808.

5 *Chief Commissioner of State Revenue v Gleeson (as administrators of Dalma Form Specialist Pty Ltd (subject to deed of company arrangement)* [2024] FCA 908. See also *Yan v The Won Capital Pty Ltd* [2024] NSWSC 758 [86] where a DOCA was set aside on public interest grounds years after it took effect.

24. The benefit of an “expedited reorganisation proceeding” would be to combine the negotiation between debtor and majority creditors with swift Court confirmation of the proposed plan to bind dissenting creditors.[6] This would require evidence of a real or reasonable prospect of survival of the debtor or of the economic viability of the debtor’s business This assessment could (and would) be made by the Court, after the application is made by the debtor.

25. Such a mechanism would allow the Court to carefully consider the objectives of the plan; and allow objecting creditors (potentially including secured creditors) to voice their opinion, prior to implementation. Such a framework improvement would be best suited to complex restructures, which may be hampered by various disparate creditor voices.

Harmonisation of corporate and personal insolvency?

26. In terms of the potential harmonisation of corporate and personal insolvency frameworks, Recommendation 33 of the BLS’s 2022 submission was that “the PJC should, or should recommend that the Attorney-General, consider a broad review by the ALRC or another appropriate body into the potential harmonisation of corporate and personal insolvency laws as part of the redesign of the corporate insolvency legislative regime”.[7]

27. The reasons for that recommendation were briefly explained as being most advantageous for micro, small and medium-sized enterprises (**MSME**). In those smaller businesses, directors have obligations not only to the company and its creditors but must also be alive to their potential personal financial risks associated with personal guarantees and exposure to enforcement of security over their personal assets—usually their principal place of residence.

28. As noted in the BLS’s 2022 submission, “the majority of MSME directors have had limited business education and consequently have difficulty understanding the different types of business structures, securities, guarantees and, in the event of insolvency, what the effects are on the business, them personally, and other stakeholders”.[8]

29. It seems trite to observe that some harmonisation (particularly in the MSME space) would simplify the restructuring process for small business owners and give them an opportunity to resolve both personal and corporate financial issues in one process. How and when that might be achieved would require a detailed analysis of the interaction of personal and corporate frameworks and how any “carve-out” for MSME business might operate without compromising or complicating the operation of the insolvency system otherwise.

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6 UNCITRAL Legislative Guide on Insolvency Law [31], 76]-[94].

7 Law Council of Australia (Business Law Section), *Corporate insolvency in Australia*, Submission to the Parliamentary Joint Committee on Corporations and Financial Services (1 December 2022), 14.

8 Ibid, 59.

The efficient allocation of resources across the economy in a manner that preserves system integrity and deters corporate misconduct

30. There are a number of features of the insolvency frameworks which, as the BLS submitted in 2022, are arguably inefficient and could be the subject of improvement. In many of the instances outlined below, these inefficiencies strain system integrity because they complicate—or are contrary to—the notion of corporate rescue by causing resources to be diverted away from the orderly management of insolvent estates.

Extension of convening periods (administration)

31. The BLS recommended in 2022 that "consideration should be given to replacing the requirement for Court applications for section 439A convening period extensions with an administrative process or alternatively a default approval process".[9]

32. The voluntary administration procedure is intended to be relatively swift, so that all stakeholders can be assured that the uncertainty associated with a moratorium of the enforcement of rights and the future viability of a distressed business (including any return to creditors) are known sooner rather than later.

33. Nevertheless, where the voluntary administration process is engaged by larger and more complex corporate entities (and particularly company groups) it is often not possible within the statutory timeframe (of about 6 weeks) for administrators to determine whether the business might be saved and which structures (and funding) might be available to improve the prospects of corporate survival.

34. For this reason, administrators are regularly required to apply to Court to extend the administration period—and in particular, extend the time to convene the holding of the meeting of creditors to decide the fate of the company.

35. Applications to Court for extensions of time are regularly granted (almost as of right where the evidence is compelling), an outcome which tends to demonstrate that such applications are routinely supported by evidence that an extension of the convening period is in the best interests of creditors.

36. But, of course, Court applications come at a cost. For that reason, consideration should be given to amending the legislative framework to permit an administrator to unilaterally extend time (subject to prescribed conditions) to hold a second meeting of creditors for a further period of no more than 90 days, subject to the right of creditors affected by any ongoing moratorium[10] to challenge any such decision—or alternatively, allowing creditors to vote to extend such time if they assess an extension to be in their interests. The BLS recommends that such a reform be adopted as a priority.

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9 Ibid, Recommendation 3.

10 For example, a landlord, secured creditors or creditors with the benefit of personal guarantees for the company's debt.

37. It is not only the cost associated with this process that is problematic. Self-evidently, an administrator and their staff are distracted from their core statutory mandate of potentially maximising the chances of a company remaining in business (even in a modified form); and instead attention is diverted to the task of assisting legal representatives in settling (often detailed) affidavit material and providing other instructions in relation to the relief to be sought and the reasons why relief is in the interests of creditors.

Personal liability of administrators (administration)

38. Administrators are personally liable for debts they incur during administration.[11] Often, where funding is required to continue to trade, administrators obtain funding from financiers on the basis that a funder's recourse is limited to the value of the administrator's lien over the company's property. Despite the funder agreeing to those terms, the Corporations Act specifically provides that an administrator cannot contract out of their personal liability for debts incurred.[12]

39. This requires administrators to make an application to the Court seeking relief from personal liability over and above the value of their lien, adding cost and complexity to the administration process.

40. As with applications to extend convening periods, Courts regularly (if not almost always) grant relief to administrators amending the way in which the Corporations Act applies to any borrowing sought by an administrator to trade the business during the administration period. In doing so, the Court is effectively giving its imprimatur to a commercial arrangement already agreed to by the administrator and the proposed lender.

41. Again, the inefficiency not only relates to the cost of this exercise, but also the distraction associated with an administrator and their staff being required to focus their attention on matters other than their core statutory duties.

42. As the BLS noted in its 2022 submission, "alternative approaches may be for an administrative approval process rather than requiring a Court application, or a default position that no Court application is required unless a creditor requests it within a certain period of notice being provided".[13]

Super priority for post-administration creditors (administration and liquidation)

43. As was noted in the BLS's 2022 submission to the PJC and in the subsequent to questions on notice, there is presently no legislative pathway to potentially grant post formal insolvency creditors a super-priority in relation to funds advanced to allow a company to continue to trade (as there is, for example, in the United States and in Singapore).[14]

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[11] Corporations Act, section 443A(1).
[12] Ibid, section 443A(2).
[13] Law Council of Australia (Business Law Section), *Corporate insolvency in Australia*, Submission to the Parliamentary Joint Committee on Corporations and Financial Services (1 December 2022), 23.
[14] Law Council of Australia (Business Law Section), *Corporate insolvency in Australia*, Response to Questions on Notice from the Parliamentary Joint Committee on Corporations and Financial Services (14 February 2023), 25.

44. Although, as above, funding can be advanced to administrators (albeit not without, in almost all cases, intervention of the Court to limit an administrator's liability), there is no specific provision in the Corporations Act clearly articulating how and in what circumstances funding can be obtained by an external administrator, nor are there rules around priority for those advances. Where Australia's insolvency system purports to prioritise corporate rescue, that is an egregious oversight. The BLS recommends that a clear statutory framework for post-appointment financing priority be introduced as a matter of urgency.

45. Moreover, the BLS notes that if the first ranking secured creditor is unwilling or unable to extend further credit, then alternative financiers which may otherwise provide much-needed funds to practitioners, are left with an uncertain recovery. In a voluntary administration, the financier may rely on the statutory indemnity supported by the statutory lien[15] and in a liquidation, the financier may resort to rely upon the *Universal Distributing*[16] lien. It is unlikely that either approach would work without an express subordination agreement with the insolvency practitioner, and a priority deed with the secured creditor.

46. Several solutions are possible, including either an automatic super-priority to such financiers, or security with priority over existing secured creditors. These methods may be sanctioned by the Court, if necessary, subject to certain parameters.

47. In addition, there is presently a divergence in the case authorities as to whether security granted to post-administration lenders requires "curing" orders by the Court[17] given the possibility that any security so provided is immediately invalidated by virtue of the operation of section 588FL of the Corporations Act.[18] At the very least, this uncertainty could easily be remedied by making a modest amendment to the Corporations Act to clarify the position.

Court or creditor approvals for certain dealings (liquidation)

48. Although not specifically addressed in its 2022 submission, the BLS submits that there are also a number of unnecessarily complicated pathways which arise exclusively in liquidation—where returns to creditors are likely to be underwhelming.

49. Specifically, a liquidator is required to seek the approval of creditors, any committee of inspection or the Court:

    (a) where he or she seeks to compromise any debt owing to the company of more than $100,000;[19] or

    (b) where he or she proposes to enter into an agreement where the term of the agreement may end or the obligations of a party may be discharged by performance more than 3 months after any such agreement is entered into.[20]

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15 Sections 443D and 443F Corporations Act 2001 (Cth).
16 *In re Universal Distributing Co Ltd (In Liq)* (1933) 48 CLR 171.
17 See, for example, a summary of the conflicting authorities in *Re Yeeda Pastoral Company (admins apptd); Ex parte Tucker* [2024] WASC 120 at [66] – [82].
18 Section 588FL of the Corporations Act provides that an unregistered security interest "vests" in the insolvent estate upon the appointment of an external administrator.
19 Corporations Act 477(2A) and Regulation 5.4.02.

50. Although it is possible for a liquidator to obtain the consent of creditors or a committee of inspection in both instances, that is not always possible. Sometimes creditors simply decline to vote on such resolutions and, in smaller liquidations, there is likely no committee of inspection. Where proceedings are proposed to be brought against certain creditors, it may be impractical to seek approval other than from the Court. Although the Court expects a liquidator to seek approval from creditors in the first instance, for any number of reasons that may not be feasible, possible, or advisable.[21]

Compromising of debts

51. As to the compromise of debts, the BLS regards the threshold of $100,000 as low; it has not been increased for nearly 20 years. The BLS recommends that the threshold be increased to at least $500,000, indexed annually. Further, the fetter on a liquidator's commercial judgment is difficult to reconcile with the Court's general refusal to provide directions to external administrators where the issue about which directions or guidance is sought is confined to purely commercial matters.[22]

Leave to enter agreements of more than 3 months

52. It is often the case in complex liquidations that a liquidator will need to commence proceedings on their own behalf or on behalf of the company to recover debts and other property which was the subject of voidable transactions occurring prior to liquidation.

53. The obligation to potentially seek Court approval to enter into retainer agreements with lawyers to institute those proceedings (or, indeed, settlement agreements where obligations are to be performed beyond a relatively brief period of 3 months) adds unnecessary cost or delay to that process.

54. There is also some doubt as to whether approval is required in respect of longer-term agreements where agreements are entered into by liquidators personally or whether as agents of the company.[23] It should also be noted that there is no equivalent provision in the *Bankruptcy Act 1966* (Cth) which requires bankruptcy trustees to seek Court relief in relation to compromising of debts or entry into longer term contracts.

55. As has been noted by a leading academic:

> *The costs associated with routine s 477(2A) and (2B) approvals appear difficult to justify when assessed against the ongoing uncertainty in their application (evident in the case law) and the broad range of other, unfettered powers customarily exercised by external administrators (against which creditors are not protected by any mandatory approval process). Given the minimal returns typically delivered*

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20 Corporations Act 477(2B).

21 For a detailed analysis of the operation of these provisions, including their problematic operation, see Wellard, M, The Price of Power: Restraints on Liquidators under section 477(2A) and (2B) of the Corporations Act, (2025) 33 Insolv LJ 69

22 See for example *Re Ansett Australia Ltd v Korda* (2002) 115 FCR 409 and *Krejci, in the matter of Union Standard International Group Pty Ltd (Administrators Appointed) (No 2)* [2020] FCA 1111, [7]-[11].

23 *Tonks (Liquidator), in the matter of Vaucluse 29 Pty Ltd (in liq)* [2025] FCA 1306 at [19].

to creditors in liquidations, it is difficult to discern what these restraints and approvals ultimately achieve and whose interests they serve.[24]

Operation of the insolvency system—other key concerns

Barriers to entry

56. In the BLS's 2022 submissions, it was noted some concerns around the efficient operation of the Small Business Restructuring process, given that eligible companies needed to have paid all employee entitlements and have their taxation lodgements up to date in order to meet certain requirements.

57. As the BLS noted at the time:

> *There is room to argue that the barriers to accessing the SBR regime should be loosened. There is not a clear policy basis for excluding entities which have not paid employee entitlements (as distinct from any other stakeholders), particularly given:*
>
> *(a) those employee entitlements are generally protected in the replication of the section 556 order of priorities as part of any restructuring arrangement; and*
>
> *(b) in any event, at least some employees are likely to retain their jobs if a restructuring can be achieved, benefitting the employees who retain employment and the Commonwealth which does not have to make the FEG scheme available.*[25]

58. Similar barriers to entry also apply to the safe harbour regime introduced in September 2017, and which provide that directors of a company cannot invoke the potential protection of a "carve-out" from later potential allegations of insolvent trading if employee entitlements are not being paid on time and tax lodgements are not occurring when required by the tax legislation.[26]

59. Whilst there is a sound policy basis for ensuring that employees are not disadvantaged in any attempted restructuring, as noted above, they are otherwise priority creditors in any subsequent liquidation. In any event, it is not suggested that these pre-requisites be deleted, but some relaxation (i.e. by allowing directors to immediately enter safe harbour on condition that the current pre-requisites are brought into compliance within 30 days) would likely encourage directors to consider restructuring protections earlier than they may currently.

60. An argument can be made that these barriers to small business restructuring and safe harbour are designed to unfairly prioritise the Commonwealth and ensure their interests are protected prior to directors seeking professional assistance to potentially improve the economic outcome for all creditors.

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24 Wellard, M, The Price of Power: Restraints on Liquidators under section 477(2A) and (2B) of the Corporations Act, (2025) 33 Insolv LJ 69, 70.

25 Law Council of Australia (Business Law Section), *Corporate insolvency in Australia*, Submission to the Parliamentary Joint Committee on Corporations and Financial Services (1 December 2022), 25.

26 Corporations Act, section 588GA(4).

61. That is because in many formal corporate insolvencies, it is the employees and the Australian Taxation Office (**ATO**) who are often the largest creditors. The operation of the Fair Entitlements Guarantee (**FEG**) scheme, means it is often the Commonwealth who is “out of pocket” when employees are left unpaid given that the FEG scheme operates as a statutory guarantee for employees (thereby subrogating FEG to their preferred position of employee creditors).

62. By strictly requiring payment of employee entitlements prior to accessing certain restructuring options, the Commonwealth is arguably ensuring that it is not exposed to the uncertainty associated with informal restructuring models in the same way as other unsecured creditors. Whether the Commonwealth should enjoy “favoured status” in this way, and with this effect, is an open question.

The role of the ATO

63. As noted above, the Commonwealth continues to be a key and active stakeholder in Australia’s insolvency system. It is a matter of common knowledge that in many large corporate insolvencies the ATO is often a substantial creditor. In that context, and as the BLS has previously observed, the ATO has at its disposal a number of statutory powers which can sometimes be utilised harshly or contrary to the objects of an external administration process.[27]

Use of the ATO’s Notice regime

64. A recent example of this issue arose in *Hudson Global Resources (Aust) Pty Limited*.[28] There, several weeks prior to the appointment of administrators, the ATO had issued a statutory notice (**Notice**) to a lender who provided funding to the company, requiring the funder to remit 20% of all funding available to the ATO.

65. Upon their appointment, the administrators negotiated a new funding arrangement with the same funder in order to allow the company to continue to trade whilst they investigated a potential sale of the business as a going concern. However, unless the Notice issued by the ATO was suspended, 20% of such funding would have to be diverted to the ATO during the administration period.

66. In the administrators’ assessment, that would have made the ongoing trading of the company unfeasible, and the company’s business would need to be wound down. The ATO did not agree to suspend the Notice, leading to an application to the Court by the administrators for orders which would have that effect.

67. The Court granted the relief sought by varying the way in which the Corporations Act applied in the administration of the company (relying on s 447A of the Corporations Act).[29]

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27 Law Council of Australia (Business Law Section), *Corporate insolvency in Australia*, Submission to the Parliamentary Joint Committee on Corporations and Financial Services (1 December 2022), 55-56.

28 [2026] NSWSC 535.

29 Section 447A provides that "the Court may make such order as it thinks appropriate about how this Part is to operate in relation to a particular company."

68. The Court so ordered despite a submission by the ATO that the Corporations Act could not operate to, in essence, interfere with the operation of the *Taxation Administration Act 1953* (Cth). As the Court noted:

> *The administrators seek to invoke s 447A in this case to assist them to maximise the chances of Hudson continuing in existence, or to provide a better return for the company's creditors and members than would result from a closure of the business and an immediate winding up. That is consistent with the object of s 435A. The evidence establishes that the object is more likely to be achieved if the effect of the ATO Notice is suspended. That suspension would be consistent with the policy intention behind Part 5.3A, seen most pointedly in this case in the application of ss 440B and 440F. The case in favour of relief under s 447A is powerful.*[30]

69. Despite those comments, as the BLS understands it, that decision has been appealed by the ATO (which the ATO is entitled to do).

70. Regardless of the outcome of any appeal, the fact that the Court had to amend the way in which the Corporations Act applied to a company in administration demonstrates two things. First, the Corporations Act does not presently always reflect the key goal of potential restructuring (even though there is a process by which its application may be varied). Second, costs and time were incurred by administrators seeking relief from the Court in circumstances where those resources should have been directed to trying to ensure a sale of the company's business—which would have been possible if the Corporations Act had more clearly regulated the rights of the ATO to continue to assert garnishee-like rights during the administration period.

Conflicts between the ATO's rights as against directors and the safe harbour regime

71. There is an apparent conflict in the Corporations Act between the safe harbour "carve-out" for insolvent trading and the director indemnity provisions under section 588FGA.

72. Section 588FGA imposes a personal indemnity obligation on directors where the Commissioner is ordered to repay unfair preference payments to a liquidator. The defences to that indemnity obligation are set out exclusively in s 588FGB and are principally concerned with the director's state of knowledge and belief at the time the impugned payment was made, whether the director had a reasonable expectation of solvency, relied on a competent person, was incapacitated, or took steps to prevent the payment.

73. Section 588GA, by contrast, operates as a defence to the civil insolvent trading provisions of subsection 588G(2) where debts are incurred pursuant to a restructuring plan which is likely to lead to a better outcome for the company than appointing an external administrator (i.e. the "safe harbour" "carve out"). Section 588GA is not referenced in, cross-referenced by, or incorporated into the s 588FGA or 588FGB framework.

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[30] *Hudson Global Resources (Aust) Pty Limited* [2026] NSWSC 535, 56].

74. The effect of these provisions is that where a company makes payments to the ATO whilst its directors are relying on safe harbour, and the restructuring ultimately fails and liquidators are appointed, the directors may still face personal liability to indemnify the Commissioner for any unfair preference payments ordered to be repaid—even though they may otherwise have a safe harbour “carve out” for other debts incurred.

75. Accordingly, if section 588GA does not protect directors from claims under section 588FGA, particularly where preference payments were made in furtherance of a safe harbour plan, this exposes a flaw in the regime, affording protection from some creditors ***but not*** the ATO.

76. This outcome is in direct contrast to the entire basis for the safe harbour regime, which is to encourage directors to continue to trade a company (i.e. continue to incur debt) which is in financial difficulty on the basis that they have potential protection from claims of insolvent trading by any liquidator subsequently appointed. The current framework allows the ATO to “stand outside” such a protection by maintaining a personal claim against the directors should a subsequently liquidator recover any unfairly preferential payment received by the ATO.

Rejecting onerous contracts

77. The 2023 Submission identified that there is no specific regime governing the acceptance or rejection of pre-appointment contracts.[31]

78. The objective of such a regime would be to enhance the prospects of a debtor’s survival and the continuation of its affairs to the extent possible.[32] The continuation of key contracts is often a key element to the debtor’s success (and the 2018 ipso facto reforms went some way to addressing this issue).

79. However, the inability to ***withdraw from or terminate*** burdensome contracts, such as those contracts where the cost of performance exceeds the benefit to be derived from the contract, particularly in the case of royalty agreements and supply agreements without rise/fall clauses, can be detrimental and possibly fatal to a successful restructure.

80. For example, a DOCA may require a deed administrator to take steps to terminate a contract (if permissible under its terms) or indicate an intention not to perform (effectively repudiating the contract) - however, this may leave the DOCA company in a state of dispute post-effectuation and does not provide for the “clean-slate” intended by the Corporations Act.

81. Given the significance of contract law, the BLS suggests that careful consideration be given to how such burdensome contracts might be released or terminated upon the happening of an insolvency event.[33]

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31 Law Council of Australia (Business Law Section), *Corporate insolvency in Australia*, Response to Questions on Notice from the Parliamentary Joint Committee on Corporations and Financial Services (14 February 2023), 25.

32 UNICITRAL Legislative Guide on Insolvency Law, [121].

33 Potentially in a manner akin to the liquidator's ability to do so under section 568 of the *Corporations Act* 2001 (Cth). However, see *Tahmoor Coal Pty Ltd (in liq)* [2026] NSWSC 773 where the Royalty Deed was

82. Given the lack of clarity as to whether contracts can be terminated, in the absence of express contractual provision or otherwise acceptance of repudiation, it is difficult to determine whether a contract will be terminated through a DOCA process—leading to lingering uncertainty and none of the “clean slate” outcomes which the administration process is designed to achieve.

83. This difficulty has been highlighted in a number of recent decisions. In *Franco-Nevada Australia Pty Ltd v Southern Iron Pty Ltd*,[34] the Court accepted that a claim arising under a royalty deed could have been released or novated to another entity under the terms of the respective deeds of company arrangement, but the question was whether it had actually been released or novated.

84. In *SCL AUS Limited v Kirkalocka Gold SPV Pty Ltd*,[35] prior to execution of the DOCA, the Receivers had written to the royalty holder repudiating the Royalty Deed pursuant to section 419A(3) of the Corporations Act.[36] It was common ground at the trial that the Receivers’ letter was repudiatory and that SCL did not accept the repudiation - that is, there was no election on their part having the consequence that the Royalty Deed was terminated.[37] However, the Court of Appeal found that the primary judge was correct to find that the obligation to pay the royalty was a contingent claim and a “claim” within the meaning of section 444D of the Corporations Act, which was therefore extinguished and released by the DOCA.

85. This uncertainty is potentially disruptive to the administration process. A potentially better approach is to make it clear when a contract can effectively be terminated—for example, where it is an impost on the economic viability of the continuing business such that the business is unable to continue or restart unless the contract can be terminated or otherwise disregarded.

Treatment of subordinate claims

86. The fundamental policy underpinning Australian insolvency law is the equitable treatment of unsecured creditors. Where creditors cannot be paid in full, permitting equity holders to veto or delay a restructuring that would benefit creditors would offend the statutory hierarchy and the policy that creditors’ claims take precedence.

87. A relevant issue arises with respect to the rights of the holders of convertible redeemable preference shares (**CRPS**) in insolvency.

88. The hierarchical position of CRPS holders is contingent upon the proper characterisation of their claims. Where CRPS are unconverted and carry a redemption obligation, the holder may assert a creditor claim (analogous to unsecured debt). However, upon conversion, or where the terms of the instrument give rise predominantly to equity-like features, the holder may be treated as a member holding a subordinated claim under s 563A of the Corporations Act.

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not found to constitute an unprofitable contract for the purposes of section 568 in a liquidation context. In that case, the focus was on negative covenant, rather than the operation of the royalty agreement.

34 [2026] WASC 43.

35 [2026] FCAFC 60.

36 Subsection 419A(3) empowers a receiver to effectively "disavow" a contract entered into a company to which they have been appointed.

37 *SCL AUS Limited v Kirkalocka Gold SPV Pty Ltd* [2026] FCAFC 60 [17].

89. A critical policy tension arises between the commercial imperative to facilitate corporate rescue and the protection of the interests of CRPS holders who may have invested on the basis of contractual protections (including redemption rights and preferential dividend entitlements—i.e, claims akin to an unsecured creditor and not that of a member).

90. In *Twinza*,[38] Banks-Smith J considered that it was possible that all claims of the CRPS holders *may* be characterised as subordinate claims (i.e. not claims in the nature of debt). Relevantly, subsection 563A(1) of the Corporations Act provides that the payment of a subordinate claim "is to be postponed until all other debts payable by, and claims against, the company are satisfied".

91. A "subordinate claim" is defined to encompass both:

    (a) a claim for a debt owed by the company to a person in the person's capacity as a member, whether by way of dividends, profits or otherwise;

    (b) any other claim that arises from buying, holding, selling or otherwise dealing in shares in the company.[39]

92. In a scheme context, creditors of a scheme company with subordinate claims will be bound even though they have not voted on the scheme at a meeting.[40] However, as the scheme proposed in *Twinza* involved cancellation of the CRPS, such an outcome could be considered extinguishment of property, as opposed to dilution or subordination. Banks-Smith J noted that proponents of a creditors' scheme may need to consider such issues in the elements of a scheme, "until an occasion arises for the court to determine as a decisive issue the question of cancellation of preference share holder rights".[41]

93. Following the Court's refusal to approve the first scheme, negotiations ensued, resulting in an out-of-court conversion of CRPS to ordinary shares and the allocation of 10% of issued equity to CRPS holders in a new creditors' scheme. This outcome illustrates the practical operation of the policy tension: while CRPS holders could not insist on full satisfaction of their contractual entitlements in insolvency, the court's supervisory role created bargaining leverage that produced a negotiated allocation, a recovery that the insolvency hierarchy would not otherwise have delivered.

94. The hybrid character of convertible redeemable preference shares raises a classification problem. CRPS holders occupy an unresolved intermediate position: they hold instruments that carry both debt-like features (a redemption obligation giving rise to a monetary claim) and equity-like features (rights of conversion into ordinary shares, dividend preferences).

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[38] *Twinza Oil Limited (Receivers and Managers Appointed), in the matter of Twinza Oil Limited (Receivers and Managers Appointed) (No 2)* [2025] FCA 1325.

[39] Corporations Act, subsection 563A(2).

[40] Corporations Act, section 411(5A).

[41] *Twinza Oil Limited (Receivers and Managers Appointed), in the matter of Twinza Oil Limited (Receivers and Managers Appointed) (No 2)* [2025] FCA 1325, [269].

95. The policy question is whether the protective statutory framework, which is designed to prevent equity holders from competing with creditors for the same pool of assets, should apply with equal force to CRPS holders whose instruments were designed precisely to give them debt-like protections.

96. There is a strong argument that where CRPS carry a fixed redemption obligation and the holder has not elected to convert their monetary investment to shares they should be treated as an unsecured creditor claim rather than a subordinated equity claim. This characterisation would affect the holder's voting rights, its entitlement to participate in distributions, and its standing to oppose a scheme or DOCA.

97. The position is presently unclear and would benefit from legislative amendment. The BLS recommends that the Corporations Act be amended to clarify the characterisation of CRPS claims in insolvency, including express provision for treating unconverted CRPS with a fixed redemption obligation as unsecured creditor claims rather than subordinated equity claims.

Pooling and secured creditors

98. Subsection 579E(1) of the Corporations Act empowers the Court to order that a group of two or more companies be administered in liquidation as a "pooled group" if it is satisfied that it is just and equitable to do so, provided certain conditions are met. These conditions include that each company in the group is being wound up and that the companies satisfy one of several nexus requirements (related body corporate, joint liability, joint ownership or operation of property, or shared use of property in connection with a joint business).

99. Subsection 579E(2) provides that if a pooling order comes into force:

    (a) each company in the group is taken to be jointly and severally liable for each debt payable by, and each claim against, each other company in the group;

    (b) each debt payable by a company or companies in the group to any other company or companies in the group is extinguished; and

    (c) each claim that a company or companies in the group has against any other company or companies in the group is extinguished.

100. Subsection 579E(5) preserves the statutory order of priority for the payment of unsecured creditor claims under sections 556, 560 and 561. However, it does not expressly refer to section 433, which requires a receiver to pay certain priority creditors (i.e. employees) ahead of secured creditors holding a circulating security interest. Indeed, there remain unresolved questions in a liquidation even without a receivership about the proper distribution priority. Certain attitudes to section 561 of the Corporations Act are to the effect that despite the clear priority in section 556 in favour of costs of the administration (including remuneration) before employees, that section 561 has the effect of relegating practitioners to sit behind both employees and the security holders. In the United Kingdom, this issue came to a head following a decision of the House of Lords to the effect that liquidator fees did not have the

requisite priority.[42] That led to amendments to the UK equivalent of section 561 reversing the position, ensuring proper liquidator remuneration.[43]

The implicit preservation of secured creditor rights

101. Division 8 of Part 5.6 of the Corporations Act (dealing with winding up) does not contain an express provision stating that a pooling order does not affect the rights of secured creditors.

102. However, subsection 579E(9) provides that the operative pooling provision does not apply in relation to a secured creditor unless the relevant debt is payable by a company or companies in the group to any other company or companies in the group. This means that a secured creditor's rights are preserved—although reasonable minds may differ as to the effect of subsection 579E(9).

Is pooling effectively unavailable where there Is a secured creditor?

103. The central policy issue is whether the presence of a secured creditor in effect renders pooling unavailable or substantially limits its utility, notwithstanding that the legislative purpose of pooling was to permit better returns to creditors through more streamlined administration, consolidated accounts, and removing unnecessary duplication.

104. The tension arises from the following considerations:

- **The practical effect of preserving secured creditor rights**. If a secured creditor holds security over the assets of one company in a group, pooling cannot disturb that security. The result is that pooling operates asymmetrically: unsecured creditors' positions are merged and their claims ranked pari passu against pooled assets, while the secured creditor retains its prior claim over specific assets. Where the secured creditor's security covers substantially all of one entity's assets (as is common with general security agreements), there may be little or no unsecured asset pool available from that entity to contribute to the pooled fund.

- **The interaction with intra-group securities**. Paragraphs 579E(2)(b) and (c) of the Corporations Act extinguish inter-company debts and claims. However, where an external creditor holds security that depends on retaining the separate identity of the group companies, for example, an intra-group guarantee supported by a charge over a particular entity's assets, the interaction between pooling and such security arrangements requires careful navigation.

- **Deterrence of pooling applications**. Practitioners may be reluctant to bring pooling applications where a significant secured creditor exists, not because the pooling would fail on the statutory criteria, but because the preservation of secured creditor rights means that the practical benefits of pooling (being cost savings and better potential returns) are diminished.

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[42] *Leyland DAF v Talbot* [2004] UKHL 9.

[43] *Insolvency Act 1986* (UK) s176ZA.

105. Clarification of these issues (by possible legislative amendment) would go some way to resolving some of the uncertainty associated with the position of secured creditors vis a vis any pooling regime and potentially enhance the administrative benefits of a pooling procedure (which remains underutilised by liquidators—in part, we suspect, due to this uncertainty).

Insolvent trusts

106. An ongoing source of cost and uncertainty is the treatment of insolvent trusts. As the BLS noted in its 2023 submission:

> *A trust (or, more correctly, a trustee in that capacity) will have assets, liabilities and stakeholders that are separate and distinct from those of the person or company in their own right (and of any other trust of which they are trustee). The [Corporations Act and the Bankruptcy Act] do not expressly acknowledge this. Trust assets, liabilities and stakeholders are left to be dealt with as part of the bankrupt person's or insolvent company's estate, by statutory provisions that are manifestly ill-suited to the task. There is no legislative guidance as to how trust assets, liabilities and stakeholders should be dealt with separately from the bankrupt/insolvent trustee's own personal assets, liabilities and stakeholders.*[44]

107. As a result, there are a myriad of issues which arise when trust law and insolvency law collide. For example, many trust deeds operate to effect automatic removal of a trustee upon their becoming insolvent. This begs a few questions: has the insolvent trustee thereby lost control of the trust assets, and how does it enforce its indemnity in respect of liabilities incurred on behalf of the trust? How are the trust assets to be distributed in insolvency? By virtue of trust law, or the law of insolvent priorities? Can the liquidator take control of the trust assets under the terms of the company's indemnity?

108. These issues require discrete consideration on a case-by-case basis and almost always require intervention by the Courts. The BLS submits that this inefficiency could be simply resolved by legislative amendment to clarify that trading trusts ought to be treated in accordance with insolvency principles when it comes to the treatment of creditors' claims. Clauses effecting the automatic removal of trustees upon their entry into insolvency could also be declared invalid - in much the same way as the ipso-facto reforms of 2018 regulated the effect of contractual provisions purporting to permit termination of contracts upon a company entering external administration or receivership.

Operation of the insolvency system—some other key concerns: (g) personal property security

109. The *Personal Property Securities Act* 2009 (Cth) (**PPSA**) introduced significant improvements to Australia's secured transactions law including greater consistency, transparency and predictability. However, as identified by the *Review of the Personal Property Securities Act 2009, Final Report* (published in 2015), there is undoubtedly

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[44] Law Council of Australia (Business Law Section), *Corporate insolvency in Australia*, Response to Questions on Notice from the Parliamentary Joint Committee on Corporations and Financial Services (14 February 2023), 32.

scope for further improvement to the PPSA and, most importantly, the functionality of the Personal Property Securities Register (**PPSR**) and the registration process.

110. Adopting the recommendations of the Final Report, particularly those relating to the registration process, will make it easier for small businesses to use the PPSR, register correctly in a timely and cost-effective manner and mitigate the incidence of businesses losing their rights to personal property in the event of customer or counterparty insolvency or in a priority contest with other creditors. This in turn should assist small businesses to maintain their own solvency and obtain debt finance.

111. The BLS has consistently supported the implementation of the majority of the recommendations of Final Report since it was published in 2015. The BLS takes this opportunity to do so again.

Combatting illegal phoenixing

112. The BLS notes that the Productivity Commission is also tasked with undertaking a review of the operation of the changes to the law that were introduced by Schedules 1, 3 and 4 of the *Treasury Laws Amendment (Combatting Illegal Phoenixing) Act 2020*.

113. In the BLS's 2022 submission it was noted that since the reforms took effect in 2020, the BLS was only aware of one successful Court decision.[45] That remains the case today. The reasons for that are unclear. It is unlikely due to reduced incidents of poor conduct. It is more likely due to the fact that a liquidator appointed to a company whose assets have been stripped likely does not have the resources or funding available to pursue those responsible for such conduct.

114. That said, the creation of the new creditor-defeating disposition class of voidable transaction (essentially an anti-phoenixing provision) has much to commend it. For one thing, because the provision is concerned with misconduct, a liquidator can look to set aside transactions entered into up to 10 years ago.[46] The separate creation of a "phoenixing" voidable transaction is also commendable given that some of the elements of such a claim require a liquidator to prove demonstrable facts, such as that the transaction was entered into within 12 months of the start of an external administration process of the company.[47]

115. There is some industry disquiet about ASIC's modest use of its powers under s 588FGAA, which permit ASIC (either on its own initiative or upon the request of a liquidator) to give an order to person involved in a "phoenixing" transaction to transfer property or money to the company. It is likely that ASIC's infrequent use of this power is a resourcing issue more than anything else, but more could be done. That is particularly so given that—as noted above - liquidators appointed to companies which have been "stripped" of assets often cannot self-fund recovery proceedings themselves without third party funding—which may be difficult where the "target" of

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45 *Re Intellicomms Pty Ltd (in liq)* [2022] VSC 228; 70 VR 332.
46 Corporations Act; subsection 588FE(5).
47 Corporations Act; subsection 588FE(6B).

any cause of action has no ostensible assets or the property transferred has been dealt with in a way making any recovery procedure difficult and expensive.

116. Nevertheless, the BLS notes that on 30 June 2026, ASIC released a press release that it has brought its first criminal charge in relation to a creditor-defeating disposition, alleging that a director used the proceeds of the sale of a business to enrich himself and avoid paying company creditors.

117. In the BLS's view, it is likely that if ASIC is better funded to pursue such activity civilly and criminally, there may be a reduction in incidents of creditors' interests being dishonestly compromised.

Part B: Small business activity, personal and household financial wellbeing and regulatory environments

118. Part B of this submission reflects input provided by the Queensland Law Society (**QLS**) and is focused on the interconnected nature of small business activity, personal and household financial wellbeing and regulatory environments.

Regulatory and administrative burdens

119. The QLS notes that regulatory complexity, duplication and fragmentation can create significant costs for businesses seeking to establish, operate and expand. Differences between Commonwealth, State and Territory frameworks can result in unnecessary administrative burdens and inconsistent compliance requirements. These costs are disproportionately experienced by small and medium-sized businesses that may lack the resources and administrative capacity of larger organisations.

120. Opportunities to simplify and streamline processes should be explored where appropriate. Consistency across jurisdictions can reduce compliance costs, improve certainty and allow businesses to focus resources on productive growth. However, efforts to reduce regulatory burden should not come at the expense of important consumer protections.

Access to capital and financial resilience

121. Frameworks that treat consumers and small businesses as entirely separate categories may not adequately reflect the realities faced by many small business owners.

122. QLS members have reported that many small business operators rely on personal assets, including family homes, to secure business lending. Personal guarantees are also commonly used to support business borrowing. As a result, the distinction between personal and business financial circumstances is often less clear than existing frameworks may assume. This overlap can become particularly significant during periods of financial hardship.

123. The QLS considers that efforts to improve access to capital should be accompanied by appropriate safeguards that support responsible lending practices and reduce the risk of financial vulnerability during economic downturns.

Access to capital and consumer protections

124. Access to finance is critical to business establishment and growth. However, efforts to improve access to capital should not come at the expense of important consumer protections.

125. As noted above, QLS members report that small business owners frequently use personal guarantees secured against the family home. This can significantly distort decision-making during periods of financial distress, as directors may prioritise avoiding personal loss over the interests of the business or its creditors.

126. Existing regulatory frameworks generally distinguish between consumers and businesses. However, that distinction may not adequately reflect the reality faced by many small business operators, particularly where personal assets and guarantees are used to support business borrowing.

127. The QLS considers that reforms designed to improve access to finance should maintain appropriate safeguards and recognise the intersection between business and personal financial circumstances. Effectively, when accessing banking and financial services, small businesses need as much protection as consumers.

Personal and corporate insolvency frameworks

128. The separation between corporate insolvency (under the Corporations Act) and personal insolvency (under the Bankruptcy Act) can create real complexity for small business operators, who are often dealing with both systems at the same time. This can increase costs, slow things down, and make it harder to resolve financial distress efficiently. Better alignment or coordination between the frameworks could help streamline processes and improve outcomes.

129. At the same time, while reducing the cost and time involved in business exits is important, any reforms need to be approached with care. Faster or simplified processes should not come at the expense of fair treatment, proper process, or protections. Getting this balance right is critical to maintaining confidence in the system.

130. Small businesses and their owners, not only access the corporate and personal insolvency systems as debtors but also as creditors.

Data accessibility and early intervention

131. The QLS considers that financial distress within the small business sector is often identified too late. Information about a business's financial position is frequently dispersed across multiple parties such as lenders who have visibility of loan performance, and banks who have access to cash flow. However, a complete picture of a business's financial position can be more difficult to ascertain.

132. The lack of visibility can delay intervention and reduce opportunities for successful restructuring. The QLS considers that there may be an opportunity to explore mechanisms that support early identification of financial distress and earlier engagement while ensuring that privacy and confidentiality protections are maintained.

Impacts on law firms

133. The legal profession provides a practical example of how regulatory and operational burdens can affect business dynamism.

134. Legal practices are subject to a range of regulatory obligations that serve important public interest objectives, including maintaining professional standards, protecting consumers and supporting confidence in the administration of justice. These include trust account compliance, professional indemnity insurance, continuing professional

development requirements, regulatory reporting and practice management obligations.

135. The anti-money laundering and counter-terrorism financing (**AML/CTF**) regime has been implemented as of 1 July 2026. While the Society supports measures to strengthen Australia's AML/CTF framework and combat financial crime, the reforms introduce significant compliance obligations for many law firms. There is no carve out for small businesses and AML/CTF applies to designated services irrespective of their size.

136. For many small and micro practices, these obligations will require significant investment and compliance obligations. These additional regulatory costs should be taken into consideration when considering barriers to business dynamism.

137. While these requirements are important, compliance can be resource heavy for smaller firms. The increasing importance of cyber security, digital systems and technology investment has also added to operational pressures.

138. These challenges may affect the ability of legal practices to establish or expand their businesses, and this is particularly relevant in regional and rural communities where access to legal services is an ongoing challenge. This is not only a matter of business dynamism but access to justice.

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- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
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