Parliamentary Joint Committee calls for ‘shake up’ of corporate insolvency regime

After 78 submissions, five public hearings and 10 months of review, on July 12, 2023, the report into the framework of Australia’s corporate insolvency laws was handed down. Undertaken by the Federal Government’s Parliamentary Joint Committee on Corporations and Financial Services, it was the most comprehensive review in more than 30 years (see terms of reference in the break-out section **below**).

The Inquiry, which commenced in September 2022, found that Australia’s current insolvency regime no longer reflects modern business practices and, as a result, requires major reform, highlighting a number of key areas where changes are required. The Committee also found that the regime is complex, difficult to access and creates unnecessary cost and confusion for debtors and creditors. In determining that it’s important to have a “robust, fit-for-purpose insolvency system”, the Committee made 28 recommendations with a key proposal for a comprehensive, holistic, and independent review into the country’s corporate and personal insolvency laws. Such a review would examine potential reforms pertaining to:

- small business restructuring
- voluntary administration
- insolvent trading and safe harbour
- unfair preferences and voidable transactions
- simplified liquidation
- ‘untrustworthy pre-insolvency advisers’
- interaction between personal and corporate insolvency
- clarify treatment of trusts with corporate trustees during insolvency

The role of insolvency practitioners

A number of potential areas of reform in relation to insolvency practitioners were suggested by the Committee. These included required experience, independence, remuneration and the need to promote gender equality in the profession. The Committee recognised that the independent requirements at law are currently not as exhaustive as the professional code of conduct, and thus an area of potential reform. It was encouraging to see the important public interest role played by Registered Liquidators being recognised, and that they should be sufficiently independent and appropriately remunerated (particularly in circumstances of assetless administrations).

‘Quick fixes’

Given such a comprehensive review could be a lengthy process, the Committee has suggested a number of immediate reforms or actions including:

- implementing the recommendations of the Safe Harbour Review (tabled on March 24, 2022)

- development of pathways for small business restructuring and simplified liquidations
- reforms regarding the experience requirements for registered liquidators in order to address inequalities and the gender imbalance within the profession
- reporting obligations for insolvency practitioners and whether those obligations are best servicing the corporate insolvency framework
- the collection of high quality, granular data about insolvency by ASIC with the view to providing greater visibility of the solvency status of deregistered companies
- considering the potential benefits of a Public Interest Administration Fund
- improving the framework to ensure access to the Fair Entitlements Guarantee (FEG) as a scheme of last resort and to ensure all individuals with valid entitlements are being captured
- reforms to improve the regulation and active enforcement of pre-insolvency advisers
- reforms to the Assetless Administration Fund
- the Government responding to the Whittaker Review of the Personal Properties Securities Act 2009 (PPSA)
- improving the insolvency process for trusts

What's next?

The report recommended that the Government should set a clear timetable for a comprehensive and independent review of the country's insolvency, encompassing both corporate and personal insolvency, and that a final report be delivered within three years of the review's commencement. It also recommended the certain areas of reform (as above) be progressed independently of – and sooner than – the comprehensive review. We will watch any progressions with interest and will provide further updates once the Government has provided its response to the recommendations contained in the report.

In the meantime, our team of Registered Liquidators, Bankruptcy Trustees, experienced insolvency professionals and support staff are here to assist financially distressed businesses and individuals and provide tailored solutions to suit their individual circumstances and needs. Please don't hesitate to reach out to us for an obligation-free consultation.

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Inquiry terms of reference

The Inquiry's terms of reference were divided into seven key focus areas:

- recent and emerging trends in corporate insolvency
- effectiveness of existing laws
- potential reforms including unfair preference claims, trusts and safe harbour provisions
- support provided to business access turnaround capabilities to manage financial distress
- the role of insolvency practitioners including remuneration, conduct and financial viability
- the role of government agencies such as the Australian Taxation Office (ATO) and the Australian Securities & Investments Commission (ASIC)