



INSTITUTE OF
**PUBLIC
ACCOUNTANTS®**

Submission to the Treasury:

**Clarifying the treatment of
trusts under
insolvency law**

December 2021

10 December 2021

The Manager
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

Attention: Mr Matthew Bowd

By email: MCDInsolvency@Treasury.gov.au

Dear Sir

Clarifying the treatment of trusts under insolvency law

The Institute of Public Accountants (IPA) welcomes the opportunity to comment on clarifying the treatment of trusts under insolvency law.

The IPA is one of the three professional accounting bodies in Australia, representing over 46,000 members and students throughout Australia and internationally. Three-quarters of the IPA's members work in or are advisers to small business and SMEs.

In principle, IPA supports the recommendations relating to trusts made in the Harmer Report in 1988. Obviously, some adaptation will need to be made given that over 30 years have passed since the report was delivered.

We are advised by members who practice in insolvency that the involvement of trading trusts (and other types of trusts) create undue complexity and cost. We are advised that in an insolvency context, trusts create some practical and costly hurdles in trying to realise and distribute funds to unsecured creditors. The common solution is a Court application for orders which is costly given so many SMEs use this structure for day-to-day trading.

With respect to Question 1 in the Consultation Paper as to whether the corporate insolvency framework should be amended so that it expressly provides for the external administration of insolvent trusts with a corporate trustee, we believe that yes, amendments are needed to all external administration processes.

This relates to Question 2 and the benefits of a legislative framework, which would deliver certainty and reduce the cost of requiring Court proceedings, as well as reducing the overall compliance and administrative burden currently experienced by many practitioners and their clients. Many of these complexities are specific to the existence of a trust and are not encountered with other insolvencies. Clarifying definitions is fundamental to this process, including when a trust is considered to be insolvent (Question 4). This would generally support the Harmer recommendations.

It will also be necessary to consider the impact of the more recent insolvency reforms and the interaction with these, including the Small Business Reconstruction and simplified insolvencies which would also apply to businesses that utilize corporate trusts. It is conceivable that these reforms have introduced another level of complexity which needs to be clarified; and to ensure that the intended policy objectives to simplify the process and reduce the cost of small business insolvencies are not undermined.

If you have any queries or require further information, please don't hesitate to contact Vicki Stylianou, Group Executive, Advocacy & Policy, either at vicki.stylianou@publicaccountants.org.au or mob. 0419 942 733.

Yours faithfully

A handwritten signature in black ink, appearing to read 'V. Stylianou', with a stylized flourish at the end.

Vicki Stylianou
Group Executive, Advocacy & Policy
Institute of Public Accountants