Australian Government

Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services report:

Corporate insolvency in Australia

August 2026

Introduction

On 28 September 2022, the Parliamentary Joint Committee on Corporations and Financial Services (Committee) commenced its inquiry into corporate insolvency in Australia. The Committee examined the effectiveness of Australia's corporate insolvency laws in protecting and maximising value for the benefit of all interested parties and the economy. The Committee presented its final report to the Senate on 12 July 2023 and subsequently tabled it in the House of Representatives on 1 August 2023.

The Albanese Government welcomes the report and is committed to a corporate insolvency system that facilitates a fair, orderly, transparent and predictable process for dealing with the financial affairs of insolvent or financially distressed companies while promoting good corporate conduct and market confidence.

The Government's response to the Committee's recommendations is below.

Response to the recommendations

Recommendation 1

The committee recommends that as soon as practicable the government commission a comprehensive and independent review of Australia's insolvency law, encompassing both corporate and personal insolvency. The committee is also recommending that the government progress several other near-term actions as identified in the executive summary.

Australian Government response

The Government **supports in principle** this recommendation.

The Government has tasked the Productivity Commission with undertaking an inquiry into *Regulatory barriers to business dynamism in Australia* (the PC business dynamism inquiry), which, among other matters, will consider the impact of Australia's corporate and personal insolvency frameworks on business dynamism. The Government has asked the PC to have regard to previous inquiries where relevant in conducting its inquiry.

The Government intends generally to defer consideration of the near-term actions identified by the Committee, so that they can be considered alongside the relevant recommendations of the PC business dynamism inquiry.

This will support the development and implementation of reforms in a holistic and coordinated manner and minimise unnecessary regulatory change for stakeholders.

Recommendation 2

The committee recommends that the comprehensive review, as part of its early work, consider and report on the appropriate principles and objectives of insolvency law. The committee further recommends that the government respond quickly to this first report of the comprehensive review to allow the comprehensive review to continue with further stages of work in a timely way.

Australian Government response

The Government **supports in principle** this recommendation.

As part of the PC business dynamism inquiry, the Government has tasked the PC to identify and evaluate whether the design, operation and integrity of corporate and personal insolvency frameworks are barriers to business dynamism.

Recommendation 3

The committee recommends that the comprehensive review consider and make recommendations on options to enhance public interest objectives and the effectiveness of, and interaction between, the personal and corporate insolvency systems.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider some or all of these matters as part of its business dynamism inquiry.

Recommendation 4

The committee recommends that the Australian Securities and Investments Commission collect high quality, granular data in relation to insolvency and provide this data in a timely way to relevant government agencies and regulators.

Australian Government response

The Government **supports in principle** this recommendation.

The Government acknowledges that current data collected by the Australian Securities and Investments Commission (ASIC) is in accordance with the law. The Government notes that the PC may consider whether any additional powers to collect data should be made available to ASIC through legislation to help drive better industry practices and further assist its oversight of corporate insolvency as part of its business dynamism inquiry.

In the near term, the Government encourages ASIC to further analyse and share available data with relevant government agencies and regulators pending completion of the PC business dynamism inquiry. The Government will also consider opportunities for changes to ASIC’s collection and sharing of data from regulated entities as part of its broader work to make communications more technology-neutral and flexible.

Recommendation 5

The committee recommends that the proposed comprehensive review of insolvency consult data holders, researchers, industry participants, and public sector organisations to progress the access to and analysis of insolvency data.

Australian Government response

The Government **supports in principle** this recommendation.

The Government has directed the PC to undertake a report into barriers to business dynamism, in which it will:

- undertake appropriate public consultation, including holding hearings, inviting submissions and releasing an interim report to the public; and
- engage relevant stakeholders and experts, including Commonwealth, state and territory governments, relevant statutory agencies, industry stakeholders and interested members of the public.

Recommendation 6

The committee recommends that the proposed comprehensive review consider and report on the current system of corporate insolvency pathways from a holistic systems analysis perspective.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider the current system of corporate insolvency pathways from a holistic systems analysis perspective as part of its business dynamism inquiry.

Recommendation 7

The committee recommends that the government implement recommendations from the Safe Harbour Review, independent and likely in advance of the further review, and consider referring the remainder of safe harbour reform issues identified in this report to a comprehensive review.

Australian Government response

The Government **supports in principle** this recommendation.

The Government has implemented some recommendations from the Safe Harbour Review (Recommendations 3, 6, 8 and 9) through miscellaneous and technical amendments that clarify the operation of the provisions and ensure they remain fit for purpose. These amendments were enacted through the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*, which was passed by the Parliament on 4 July 2024.

ASIC released *Consultation Paper 372: Guidance insolvent trading safe harbour provisions: Update to RG 217* on 14 September 2023. Following stakeholder consultation, ASIC published an updated *Regulatory Guide 217: Duty to prevent insolvent trading: Guide for directors* on 6 December 2024. The updated guidance sets out key principles to help directors understand and comply with their duty to prevent insolvent trading. It also provides guidance on the use of the safe harbour protection from liability for insolvent trading.

The Government notes that the PC may consider the remaining issues noted by the Committee as part of its business dynamism inquiry.

The Government will consider the need for implementation of the remaining Safe Harbour Review recommendations alongside the Government response to the PC business dynamism inquiry.

Recommendation 8

The committee recommends that as soon as practicable the government consider and consult on potential reforms to the:

- small business restructuring pathway; and
- simplified liquidation pathway.

Australian Government response

The Government **supports in principle** this recommendation.

The Government recognises the importance of ensuring that the small business restructuring and simplified liquidation pathways are achieving their intended policy outcome of providing efficient and effective external administration options for small businesses with simple affairs, while reducing the risk of corporate misconduct.

As noted in the response to Recommendation 6, the Government notes that the PC may consider these pathways as part of its business dynamism inquiry.

In addition, the Government will consider whether any targeted changes could be progressed in parallel.

Recommendation 9

The committee recommends that the comprehensive review consider the:

- voluntary administration pathway; and
- members voluntary liquidation pathway.

Australian Government response

The Government **supports in principle** this recommendation. The Government notes that the PC may consider these pathways as part of its business dynamism inquiry.

Recommendation 10

The committee recommends that the Australian Securities and Investments Commission collect and analyse data from an appropriately sized sample of voluntary and compulsory de-registrations, to provide greater visibility of the solvency status of deregistered companies.

Australian Government response

The Government **notes** this recommendation and encourages ABRS, ASIC and ATO to collaborate to undertake an analysis utilising information available to each agency.

Recommendation 11

The committee recommends that the comprehensive review consider the requirements for the registration of small business restructuring practitioners to understand the reasons for the limited number of registrations to date.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider these matters as part of its business dynamism inquiry.

Recommendation 12

The committee recommends that the government reform the experience eligibility requirements for registered liquidators, to address the inequity of the requirements and the gender imbalance in the population of registered liquidators. Reforms could potentially include:

- increasing the period over which experience is demonstrated, or
- replacing part of the required hours with a competency-based exam.

Australian Government response

The Government **supports in principle** this recommendation.

The Government acknowledges the importance of increasing inclusivity and improving the representation of women in the registered liquidator profession.

Following law reform introduced in December 2020 (commencing on 1 January 2021), committees considering registration applications were able to grant registration as a registered liquidator where the 4,000 hours' experience requirement had not been met but the applicant was otherwise suitable to be registered.

ASIC released *Consultation Paper 376: Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance: Updates to RG 258 and supporting documents and templates* on 8 March 2024. Following stakeholder consultation, ASIC published an updated *Regulatory Guide 258: Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance requirements* on 3 October 2024. The updated guidance reflects legislative changes and experiences with the regime since the regime was implemented. It provides additional guidance on meeting the mandatory experience requirements and outlining that persons can apply where the experience requirement is not met.

The Government encourages ASIC to continue its important work in this area.

Recommendation 13

The committee recommends that the comprehensive review include consideration of the remuneration of insolvency practitioners, including:

- the extent to which public interest work carried out by liquidators for no or limited pay is sustainable; and
- the impact of this on all stakeholders in external administrations.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider these matters as part of its business dynamism inquiry.

Recommendation 14

The committee recommends that the comprehensive review include consideration of the operation, efficacy, and efficiency of the current independence requirements for insolvency practitioners, including:

- whether the current requirements are achieving the policy settings that inform them and whether these policy settings are optimal; and
- the advantages and disadvantages of formally separating the roles of advice and restructuring from formal appointments to liquidations and administrations.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider some or all these matters as part of its business dynamism inquiry.

Recommendation 15

The committee recommends that the comprehensive review include consideration of the nature and extent of the harm posed by 'untrustworthy pre-insolvency advisors', and whether further regulation or enforcement measures are needed to address this issue. The committee further recommends that in the interim, the government take prompt action to improve the regulation and active enforcement of pre-insolvency advisers.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider the current regulation of corporate and personal pre-insolvency advisors, and the enforcement tools available to regulators, as part of its business dynamism inquiry, including alongside its review of sections 1, 3 and 4 of the *Treasury Laws Amendment (Combatting Illegal Phoenixing) Act 2020*.

Recommendation 16

The committee recommends that the government consider changes to the Assetless Administration Fund to ensure that it is achieving its intended policy objectives.

Australian Government response

The Government **supports in principle** this recommendation.

The Government will consider changes to the Assetless Administration Fund (AAF), including its scope and funding, following the conclusion of the PC business dynamism inquiry.

The AAF plays an important role in supporting the identification and reporting of corporate misconduct to ASIC by registered liquidators and assisting liquidators to recover assets for the benefit of creditors, particularly where liquidators may otherwise lack the resources to do so. The AAF also assists employees in recovering their entitlements via the Fair Entitlements Guarantee scheme (FEG) by winding up abandoned companies and funding liquidators to conduct the wind-up.

ASIC plans, designs and administers the AAF grant programs in accordance with the Commonwealth Grants Rules and Principles and directions from Government on what the grant funds can be used for. This includes setting eligibility criteria for each grant opportunity and determining available grant amounts. ASIC assesses applications against the published grant opportunities.

Recommendation 17

The committee recommends that the Department of the Treasury consider assessing the potential benefit of the Public Interest Administration Fund proposed by the Productivity Commission in 2015, including the impacts of the required increase on the annual review fee for company renewals; and either consider implementing the proposal, or provide that analysis to a comprehensive review.

Australian Government response

The Government **supports in principle** this recommendation.

The Public Interest Administration Fund was proposed to be established through an expansion of the scope, and renaming of, the AAF. As the PC business dynamism inquiry may assess options for funding the administration of assetless companies (see response to Recommendation 18 below), including potential changes to the AAF, the Government will consider reforms in this area informed by the PC business dynamism inquiry.

Recommendation 18

The committee recommends that the comprehensive review consider and make recommendations on options for funding the administrations of assetless companies, including reforms to the Assetless Administration Fund (noting the committee's recommendation 16) and the merits of creating a public liquidator for corporate insolvency.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider these matters as part of its business dynamism inquiry.

Recommendation 19

The committee recommends that the comprehensive review consider whether the current statutory reporting obligations for insolvency practitioners are best serving the integrity, efficiency, and efficacy of the Australian corporate insolvency framework, including (but not limited to):

- the ability of the Australian Securities and Investments Commission (ASIC) to appropriately process, utilise and respond to initial statutory reports on current resources; and
- the appropriateness of existing reporting thresholds, having regard to their regulatory value as well as the burden imposed on insolvency practitioners.

The committee further recommends that in the interim, the government and ASIC consider whether any timely changes can be made to the regulations on reporting thresholds, and ASIC's response to insolvency practitioner reports.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider some or all these matters as part of its business dynamism inquiry.

The Government considers that statutory reporting obligations for insolvency practitioners are a key feature of the regulatory framework and an important source of information for ASIC in identifying alleged corporate misconduct. While statutory reporting thresholds are set in legislation, ASIC can provide additional guidance to assist liquidators in meeting their reporting obligations.

ASIC released *Consultation Paper 377: Guidance for reporting by external administrators and controllers* on 11 April 2024. Following stakeholder consultation, ASIC published an updated *Regulatory Guide 16: External Administrators and Controllers – Reporting of Possible Offences and Misconduct* on 5 September 2024. The updated guidance clarifies reporting expectations and supports the exercise of professional judgement by insolvency practitioners.

In 2025, ASIC made a number of changes to its forms and processes to further reduce the burden on registered liquidators and allow them greater scope to apply their professional judgement in reporting misconduct. The Government encourages ASIC to continue its important work in this area.

Recommendation 20

The committee recommends that the comprehensive review examine the operation of the insolvent trading regime and its impact on the broader corporate insolvency framework.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider these matters as part of its business dynamism inquiry.

Recommendation 21

The committee recommends that the comprehensive review analyse and make recommendations on the overall economic and social benefits and costs of Australian Taxation Office relief to potentially insolvent companies in hard economic times, in the context of the impacts on the purposes of the insolvency system.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider these matters as part of its business dynamism inquiry.

Recommendation 22

The committee recommends that the Australian Taxation Office consult, act on and publish model creditor guidelines, consistent with its model litigant obligations.

Australian Government response

The Government **notes** this recommendation, which is directed to the ATO.

The ATO plays a unique and important dual role as the administrator of the tax and superannuation systems and as a statutory creditor. The ATO will consult with industry on the guidelines in due course.

Recommendation 23

The committee recommends that the comprehensive review consider the relative priority of employees, liquidators, and secured creditors, including the priority over circulating assets under section 561 of the *Corporations Act 2001*. The committee further recommends that this be a high priority topic for the comprehensive review.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider these matters as part of its business dynamism inquiry.

Recommendation 24

The committee recommends that the government develop reforms to improve the framework designed to ensure the policy objective of access to the Fair Entitlements Guarantee as a scheme of last resort, both to prevent misuse by novel schemes of arrangement, phoenixing, and other practices and to ensure capture of all individuals with valid entitlements.

Australian Government response

The Government **supports in principle** this recommendation.

FEG is intended to operate as a scheme of last resort, where no alternative avenue exists for eligible employees to be paid their employee entitlements due to the insolvency of their employer. To protect the integrity of FEG, the Government is considering reforms to address potential misuse of FEG that could be implemented independent of the PC business dynamism inquiry, following public consultation in early 2025.

The Government's *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* has improved the protection of the redundancy entitlements of persons employed by small business employers in insolvency contexts, including supporting fair outcomes for claimants under FEG.

Recommendation 25

The committee recommends that the comprehensive review consider and report on franchising insolvency issues.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider these matters as part of its business dynamism inquiry.

Recommendation 26

The committee recommends that the government provide a formal response to the Whittaker Review which was completed in 2015.

Australian Government response

The Government **supports** this recommendation.

The Government released its formal response to the Whittaker Review for public consultation on 22 September 2023, accepting 345 of the 394 recommendations. The Government subsequently consulted on proposed amendments to the *Personal Property Securities Act 2009* and regulations. Timing of any further work will be announced in due course.

Recommendation 27

The committee recommends that the comprehensive review consider unfair preferences and voidable transactions as a core aspect of potential insolvency reform.

Australian Government response

The Government **supports in principle** this recommendation.

The Government notes that the PC may consider these matters as part of its business dynamism inquiry.

Recommendation 28

The committee recommends that the government amends the *Corporations Act 2001* to expressly clarify the treatment of trusts with corporate trustees during insolvency.

Australian Government response

The Government **supports in principle** this recommendation.

Creating a legislative framework for trusts with corporate trustees in external administration is an important area of reform to help enhance the efficiency of external administrations of insolvent corporate trustees and support improved outcomes for distressed companies, their creditors and the broader economy.

The Government will consider holistically the timing and sequencing of any major corporate insolvency reforms, including in relation to trusts with corporate trustees, alongside its response to the PC business dynamism inquiry.
