

Corporate Insolvency in Australia

On 28 September 2022, the Parliamentary Joint Committee on Corporations and Financial Services began an inquiry into corporate insolvency in Australia.

The committee welcomes contributions from interested persons and stakeholders and is calling for written submissions by **30 November 2022**.

The committee currently intends to table a report in both Houses of the Parliament by 30 May 2023.

Terms of Reference

Terms of Reference (as agreed on 28 September 2022)

Inquiry into the effectiveness of Australia's corporate insolvency laws in protecting and maximising value for the benefit of all interested parties and the economy, including:

1. recent and emerging trends in the use of corporate insolvency and related practices in Australia, including in regard to:
 - a. temporary COVID-19 pandemic insolvency measures, and other policy measures introduced in response to the pandemic that may have had an effect on such trends and practices;
 - b. recent changes in domestic and international economic conditions, increases in material and input costs for businesses and inflationary pressures more broadly, and supply shortages in certain industries; and
 - c. any other contributory factors or events that have impacted insolvency patterns;
2. the operation of the existing legislation, common law, and regulatory arrangements, including:
 - a. the small business restructuring reforms (2021);
 - b. the simplified liquidation reforms (2021);
 - c. the unlawful phoenixing reforms (2019); and
 - d. the operation of the *Personal Property Securities Act 2009* in the context of corporate insolvency;
3. other potential areas for reform, such as:
 - a. unfair preference claims;
 - b. trusts with corporate trustees;
 - c. insolvent trading safe harbours; and
 - d. international approaches and developments;
4. supporting business access to corporate turnaround capabilities to manage financial distress;
5. the role, remuneration, financial viability, and conduct of corporate insolvency practitioners (including receivers, liquidators, administrators, and small business restructuring practitioners);
6. the role of government agencies in the corporate insolvency system, including:
 - a. the role and effectiveness of ASIC as the corporate insolvency regulator;

- b. the ATO's role and enforcement approaches to corporate insolvency, and relevant changes to its approach over the course of the COVID-19 pandemic;
 - c. the role, funding and operation of relevant bodies, including the Assetless Administration Fund and the Small Business Ombudsman; and
- 7. any related corporate insolvency matters.



PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Media release Inquiry into corporate insolvency in Australia

28 September 2022

The Parliamentary Joint Committee on Corporations and Financial Services has commenced an inquiry into the effectiveness of Australia's corporate insolvency laws in protecting and maximising value for the benefit of all interested parties and the economy. The terms of reference are available on the committee's website: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/CorporateInsolvency

The COVID-19 pandemic has had a profound and continuing impact on the Australian economy and businesses, and the committee is interested in better understanding how temporary COVID-19 pandemic insolvency measures, and other policy measures introduced in response to the pandemic, may have influenced trends and practices in the use of corporate insolvency and related practices in Australia. Meanwhile, broader domestic and international economic conditions, including increased material and input costs, supply shortages and other inflationary factors have amplified pressures on businesses. In this environment, it is critical that Australia's corporate insolvency regime, along with mechanisms to support business access to corporate turnaround capabilities, are fit for purpose and effectively serve the Australian economy and all participants in it.

In this context, the committee has resolved to undertake this inquiry in order to understand and describe the reality of what is happening in the corporate insolvency space right now and consider potential areas of reform.

The committee welcomes contributions from interested persons and stakeholders and is calling for written submissions by **30 November 2022**. Information on public hearings will be added to the committee's website in due course.

Media inquiries

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For background information

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For more information about this committee, you can visit its website: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services. On the site, you can, read submissions, find details of upcoming public hearings, and subscribe to receive email updates by clicking on the blue 'Track this Committee' button on the right-hand side of the page.