

15 October 2025

Simplification team
Australian Securities and Investments Commission
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To the ASIC Simplification Team

Regulatory Simplification Report

We refer to the Regulatory Simplification Report (**Report**). We appreciate the opportunity to make a submission and provide our views.

The Australian Restructuring Insolvency and Turnaround Association (**ARITA**) is Australia's largest professional representative body of insolvency practitioners representing approximately 85% of Australia's registered liquidators.

Firstly, we would like to take the opportunity to recognise the significant improvements that ASIC has made to its website. The new Regulatory Resources section of the website makes it easy to find all information relevant to our area of interest.

ARITA's responses to the questions raised in the report are attached to this letter. Please note that we have only responded to those questions where we had a comment to make.

Key points

We have made eight recommendations to further assist ASIC in its regulatory simplification journey. Details of these recommendations are in our responses to the Report's questions.

1. Being able to print PDFs of information sheets may assist user understanding and processing of large amounts of information.
2. The sequential numbering system used for guidance materials should be retained even if a naming convention is introduced.

3. Roadmaps should include hyperlinks to additional detailed information, including existing information sheets and other relevant regulatory information.
4. Roadmaps to assist stakeholders with understanding insolvency processes and for directors to understand their obligations during an insolvency administration would be useful Roadmap additions.
5. Open and free access should be provided to ASIC's Register data to empower businesses and the public to scrutinise corporate conduct, improve empirical and academic research on corporate conduct and improve the efficiency of external administrations.
6. ASIC's lodgement systems must be able to take into account differences in time zones and public holidays to determine due dates for lodgements and the determination of late fees.
7. Strict liability offences should not be unworkable or unreasonable and if there is a valid reason for a strict liability offence, it should be enforced by ASIC.
8. Consideration should be given to changing the "External Administration" status of companies in Members' Voluntary Liquidation and there should be consistency in the register for companies subject to Small Business Restructuring Plan and those subject to a Deed of Company Arrangement.

Should you wish to discuss any aspect of our submission, please do not hesitate to contact [REDACTED], ARITA's Policy and Education Director, on [REDACTED] or

[REDACTED].

[REDACTED]

Chief Executive Officer



About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,300 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

We are a not-for-profit, incorporated professional association run for the benefit of our members.

Around 85% of Registered Liquidators and Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2024, ARITA delivered 98 professional development courses and events to more than 5,000 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members' knowledge and experience. We represented the profession at 11 inquiries, hearings and public policy consultations during 2024.

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Section 1: Improving access to regulatory information

1. Has our new website improved searchability and access to useful information for you? Do you have any suggestions for further improvement?

Recommendation 1: Being able to print PDFs of information sheets may assist user understanding and processing of large amounts of information.

Recommendation 2: The sequential numbering system used for guidance materials should be retained even if a naming convention is introduced.

PDFs of information sheets

The new Regulatory Resources section of the website makes it much easier to find ASIC forms, instruments and regulatory documents relevant to the user. We commend the changes made.

We suggest a further improvement - where the website provides an information sheet, for example Information Sheet 42: Insolvency for directors¹, users should be able to access a PDF of the document to be able to print or save it. At the moment, the information is only available on screen and would require a cut and paste or screen shots to be able to save or print the information.

Some users will find information easier to process when reading a paper version of a document, particularly where there is a lot of information to process, the information is new to them, or they wish to make notes to assist with their understanding.

Naming convention

Although ARITA supports the idea of a naming convention for guidance materials, if a decision is made to adopt a naming convention, the existing sequential numbering system should not be removed as numbering is an easy way to reference a document and will ensure that similarly named documents are never confused.

¹ <https://www.asic.gov.au/regulatory-resources/insolvency/insolvency-for-directors/>

4. Do you think the small-company and financial advice regulatory roadmaps are helpful? Would you suggest any improvements?

Recommendation 3: Roadmaps should include hyperlinks to additional detailed information, including existing information sheets and other relevant regulatory information.

Yes, the pilot Roadmaps provide a useful high-level overview. Clear plain-English explanations of complicated process will always be helpful to stakeholders.

We think that these Roadmaps could be improved by hyperlinking to additional comprehensive information so that users can select to obtain more information relevant to the stage of the Roadmap that they are interested in. For example, the “Roadmap for small-company directors” talks about insolvency. ASIC has an information sheet on insolvency (INFO42 Insolvency for directors) that should be hyperlinked into the Roadmap.

5. Should we consider piloting additional roadmaps? If so, for which sectors?

Recommendation 4: Road maps to assist stakeholders with understanding insolvency processes and for directors to understand their obligations during an insolvency administration would be useful roadmap additions.

Insolvency is a stressful time for all involved. The vast majority of insolvency administrations occur in the SME sector where it is more likely that stakeholders have less knowledge of the process and their rights and obligations.

Roadmaps for each type of insolvency administration would assist stakeholders to understand the process and the role that the appointed registered liquidator fulfills. This would likely reduce complaints to ASIC against registered liquidators which, from ARITA's experience in managing its own complaints process, often arise due to a lack of understanding.

Such additional Roadmaps could compliment the pilot “Roadmap for small-company directors”, providing directors with information on options for dealing with a company in financial distress and their obligations during such processes.

Section 3: Making it easier to interact with ASIC

11. With respect to interacting with ASIC, other than the work we've outlined, is there anything else we should prioritise?

Recommendation 5: Open and free access should be provided to ASIC's Register data to empower businesses and the public to scrutinise corporate conduct, improve empirical and academic research on corporate conduct and improve the efficiency of external administrations.

ARITA has made numerous submissions to Government advocating for the availability of business data within the Australian economy to be more open, transparent and efficient and for improved access to ASIC searches by a reduction in search costs.

It is particularly important that registered liquidators and registered trustees, who bear significant statutory investigatory responsibilities, should be provided free access to ASIC databases to support them in carrying out their statutory functions.

It should be noted that it is not the liquidators and trustees that are the beneficiaries of these searches. The beneficiaries are the creditors, wider community and ASIC for whom practitioners undertake investigations and make prosecution recommendations.

We believe open access, free of charge, to ASIC Register data would deliver the following benefits:

Empowering businesses and public to scrutinise corporate conduct

The Report of the Senate Economics References Committee on *Insolvency in the Australian construction industry* recommended 'ASIC ... company records be available online without the payment of a fee.'²

The Committee noted that free data would enable small business operators to conduct due diligence and protect themselves against unscrupulous phoenix activity. ARITA strongly agrees with this and notes the Government's ongoing focus on detecting and preventing phoenix activity.

The United Kingdom in 2015 established a 'truly open register of business information' when its Companies House (the equivalent of the ASIC Register) made its digital data available free of charge. Like the ASIC Register, this data includes basic information about companies, their accounts and officers and electronic images of lodged documents.

² Report of the Senate Economics Reference Committee, 'Insolvency in the Australian Construction Industry', December 2015, p 188

This reform was a response to the UK's House of Commons Public Administration Select Committee Report on Open Data and Statistics of 17 March 2014 which recommended that charging for government data 'should become the exception rather than the rule.'

In announcing the change to open and free access to Companies House data, the UK Government stated that consequently 'it will be easier for businesses and members of the public to research and scrutinise the activities and ownership of companies and connected individuals' and that it was 'a considerable step forward in improving corporate transparency'.³

ARITA submits that the UK Companies House model of free and open access to data should be adopted in respect of the ASIC Register.

Improving empirical and academic research on corporate conduct

Open and free access to ASIC Register data will also facilitate empirical and academic research. For example, there have been only a limited number of empirical studies of the performance of Australia's insolvency laws. The value of such research was borne out by the Productivity Commission's Report on 'Business Set-up, Transfer and Closure' dated 30 September 2015.⁴

Free and open access to ASIC Register data would enable more empirical research which supports evidence-based policy and law reform. Law reform proposals have been known to be deferred due to the lack of evidence-based support, but the costs of empirical studies are a substantial obstacle to sustaining the case for change.

Improving the efficiency of external administrations

Open and free access to ASIC Register data would also address an anomaly in the conduct of external administrations.

Insolvency practitioners are duty-bound to conduct certain investigations relating to the affairs of companies to which they are appointed. For example, under s 533 of the *Corporations Act 2001* a liquidator is obliged to lodge with ASIC a report with respect to any possible breaches of duty or offences committed by a person involved in the management of a company.

Liquidators must comply with this duty even if this means incurring expenses which cannot be met out of available company property⁵. If the company being liquidated has assets, a liquidator is entitled to apply those assets toward the payment of expenses incurred in complying with the liquidator's statutory reporting duties. However, often there are

³ Press Release, 'Free Companies House data to boost UK economy', 15 July 2014 available at <https://www.gov.uk/government/news/free-companies-house-data-to-boost-uk-economy>.

⁴ Productivity Commission, 'Business Set-up, Transfer and Closure', Report No.75, 30 September 2015, in particular pp 363 and 364.

⁵ s 545(3) of the *Corporations Act 2001*

insufficient company assets to cover these costs, leaving the liquidator personally 'out of pocket'.

Consequently, in cases where there are no or limited company assets, liquidators must pay fees - at their own expense - to access ASIC Register data, investigate and then lodge the necessary report with ASIC. For example, if property of the company being liquidated has been transferred for no value to another company with a common director, the cost of a company search is required to verify the 'related party' status of that recipient in order to confirm an apparent case of a breach of that director's duties. In effect, ASIC charges fees for access to its own data where that data is required by the accessing party to report back to ASIC on a review of that same data.

13. With respect to how you use ASIC's registers, other than the work we've outlined, is there anything else you would like us to improve?

Recommendation 6: ASIC's lodgement systems must be able to take into account differences in time zones and public holidays to determine due dates for lodgements and the determination of late fees.

Our members who are registered liquidators, have advised us that there are issues with ASIC's systems rendering incorrect late fees on lodgements due to time zone differences and state based public holidays changing business day calculations.

Members are told to apply for remission of penalties to not have to pay the late fee. However, the remission process takes time that means it is often not cost effective to do so.

ASIC's lodgement systems should be able to take into account time zone differences and state based public holidays in the place of lodgement in order to determine whether a lodgement is made on time or not.

Section 4: Simplification through law reform

17. Are there any other regulatory reform ideas within ASIC's remit that could simplify the application of the law, or otherwise make it easier for individuals and businesses to meet their compliance obligations?

Recommendation 7: Strict liability offences should not be unworkable or unreasonable and if there is a valid reason for a strict liability offence, it should be enforced by ASIC.

Recommendation 8: Consideration should be given to changing the "External Administration" status of companies in Members' Voluntary Liquidation and there should be consistency in the register for companies subject to Small Business Restructuring Plan and those subject to a Deed of Company Arrangement.

Strict liability offences

Care must be taken when making an offence a strict liability offence to not make the legislation unworkable or unreasonable.

The commencement of the *Insolvency Law Reforms Act* in 2017 saw the introduction of a number of strict liability offences for the conduct of external administrations.⁶ Some of these strict liability offences have resulted in inflexibility in the legislation and additional costs for external administrations, as external administrators have to seek consent from the Court to be able to proceed with actions that would otherwise result in a strict liability offence.

The best example of this is the strict liability offence for funds handling under Division 65 of the Insolvency Practice Schedule (Corporations).

Feedback from the profession on funds handling

The funds handling requirements are burdensome in that they require:

- all money ... in relation to the company to be paid into an administration account within five business days and
- not pay any money into an administration account if it was not received by the external administrator in relation to the company.

An example of this would be any business traded by a practitioner where there are multiple or large floats. For example, a pub with poker machines. The cash floats across all the cash registers, poker machines and in the safe (for poker machine winnings) would

⁶ See IPS (Corporations) ss 60-20, 65-5, 65-15, 65-25, 65-40, 70-25, 80-55.

need to be physically taken to a bank, deposited, withdrawn, and then redistributed back to their original locations.

The cost of this, not to mention the risks of transporting such a volume of cash, is ridiculous and serves no positive purpose. And such a task may require the pub to be shut while this occurred, which would have further negative consequences (a whole day's takings lost yet the staff still have to be paid).

The alternative would be a court order for relief – but again, this is a costly exercise.

Dealing with cash floats is a significant problem and is not just limited to larger administrations. On a smaller scale, imagine being appointed to a suburban convenience store. While the cash float might be just a few hundred dollars, failure to collect it up and pass it through the administration bank account in a timely manner potentially risks a \$10,500 criminal penalty. Not to mention the inconvenience to the company's ability to keep trading while its cash register is temporarily devoid of a cash float.

There are also situations involving groups of companies where one entity acts as a 'treasury' company receiving and distributing moneys on behalf of everyone in the group. The Ten Network group of companies were structured this way, but that administration commenced pre-1 September 2017 so it wasn't impacted.

Where there is a treasury company in a group of companies, the external administrator would need court relief to maintain the status quo and avoid the costly and time consuming task of separating everything into individual company accounts.

It was standard practice to maintain pre-appointment accounts for a time in trade on situations to ensure that direct payments of pre-appointment debtors were captured. This can no longer be done.

Another example is the imposition of a strict liability offence on members of a creditors' Committee of Inspection (**COI**)⁷ to not directly or indirectly derive a profit or advantage from the external administration of the company.⁸ If the company is continuing to trade, it is usual that the external administrator would continue to trade with the company's existing creditors. The creditor would, as a result of these transactions, be making a profit – that is the purpose of being in business. If that creditor is a member of the COI, this would be a strict liability offence by the creditor, which in our view is totally unreasonable, particularly since it is unlikely that the creditor would be aware of the issue unless the external administrator told them.

⁷ A Committee of Inspection (COI) is a committee of creditors that is representative of the whole body of creditors. The COI can approve actions of the external administrator, approve remuneration etc. A COI can be appointed by a resolution of creditors in liquidations and voluntary administrations and is usually only appointed in larger administrations.

⁸ IPR s 80-55.

Where strict liability offences are set in the Act, they should be set for a reason, and ASIC should be enforcing them. We are not aware of any project by ASIC to review insolvency practitioner's files and enforce the strict liability offence for funds handling. Yet, great time and cost is incurred in trying to comply with what is difficult and impractical requirements.

Reporting status of a company

Companies subject to a solvent winding up (Members' Voluntary Liquidation or **MVL**) where all creditors are paid in full, funds are distributed to shareholders and the company is deregistered, are being reported on the register with a status of "External Administration".

We are advised by our members that credit reporting agencies are not differentiating this solvent winding up from insolvent external administrations. As a result, the MVL is having an adverse impact on director's credit rating.

We recognise that an MVL is an external administration as defined in the Corporations Act. However, there is a significant difference in the process, including how and why the company ends up in liquidation, and the outcome of a MVL versus a court or creditors' voluntary liquidation. As such, the register should designate MVLs in a different way to insolvent external administrations.

An anomaly in the register occurs in relation to companies subject to a Small Business Restructuring Plan (**SBR Plan**) versus a Deed of Company Arrangement (**DOCA**). An SBR plan has many similarities to a DOCA, in that they are both an agreement with creditors for a compromise of debt. The main difference is that Small Business Restructuring is a process for small companies (debts less than \$1million).

When a company is subject to an SBR Plan, the company is not reported with a status of "External Administration" on the register. This is even though a SBR Plan is an external administration as defined under the Corporations Act. Notwithstanding the similarities between the objectives and outcomes of an SBR Plan and DOCA, when a company is subject to a DOCA, it is reported on the register with the status of "External Administration".

Due to the nature of both SBR Plans and DOCAs being the effectuation of a compromise agreed with creditors, there should be consistent treatment of the status of the company in the register. To allow for the successful turnaround of these companies, it is arguable that neither should require a company's status to be shown as "External Administration".