

First step reforms

In its report on Corporate Insolvency in Australia (**Report**), the Parliamentary Joint Committee on Corporations and Financial Services (**PJC**) made a number of recommendations for reforms to be undertaken in the short term. This paper seeks to provide guidance to assist with the implementation of the following recommendations:

- 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.
- 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.

Small business restructuring (SBRs)

The attached information on suggested improvements to SBRs is consistent with ARITA's submission to the PJC, other than now including:

- A suggestion that eligibility for an SCVL be decoupled from SBRs as restructuring and liquidation are very different processes and there are limits on using either process more than once within a 7 year period.
- That the appointment of a receiver by a secured creditors with security over all or substantially all of the company's assets prevent the company from appointing a RP and where one is appointed after the RP, result in the termination of the SBR.
- Setting a process for dealing with insolvent companies where the plan is not accepted by creditors.

We have now also provided details on which provisions we consider are better dealt with as part of the legislation in the interests of simplifying the process further.

Simplified creditors' voluntary liquidation (SCVL)

The attached information on suggested improvements to SCVLs is consistent with ARITA's submission to the PJC, other than now including a suggestion that eligibility for an SCVL be decoupled from SBRs as restructuring and liquidation are very different processes and there are limits on using either process more than once within a 7 year period.

We have now also provided details on which provisions we consider are better dealt with as part of the legislation in the interests of simplifying the process further.

Dealing with Insolvency in Trusts

As part of his supplementary submission to the PJC, Dr Nuncio D'Angelo, a Partner at Norton Rose Fulbright and an expert in trusts, provided a draft outline of possible amendments to the Corporations Act to provide for the establishment of a register of trading trusts, extending corporate insolvency processes to insolvent trusts and allowing liquidators to deal with trusts assets, without fundamentally undermining the core tenants of the trust structure.

ARITA has previously worked with Dr D'Angelo on a submission to the Treasury's consultation on Clarifying the treatment of trusts under insolvency law in 2021. Our views on this issue are consistent and we strongly support the work of Dr D'Angelo.

The attached information on dealing with trusts in insolvency is largely similar to that submitted by Dr D'Angelo to the PJC, with small amendments to clarify the treatment of the external administrator's remuneration and which trusts are captured by the suggested amendments. It is also consistent with our submission to the Treasury mentioned above.