



5 July 2023

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee

Treasury Laws Amendment (2023 Law Improvement Package No. 1) Bill 2023

Thankyou for the opportunity to make a submission in respect of the Treasury Laws Amendment (2023 Law Improvement Package No. 1) Bill 2023 (Bill).

As the professional body representing around 85% of Australia's insolvency, turnaround and restructuring professionals, the Australian Insolvency, Turnaround and Restructuring Association (ARITA) has particular interest in the proposed amendments that impact external administrations.

As such, our comments are restricted to key aspects of the Bill that impact the operation of external administrations.

Unfreezing the *Acts Interpretation Act 1901*

ARITA supports the unfreezing of the *Acts Interpretation Act 1901* (AIA).

Unfreezing the AIA is a sensible measure and its frozen status is something that is often easily overlooked. As noted in the Explanatory Memorandum, '[f]reezing the AIA has created practical complications for Corporations Act and ASIC Act readers, who must locate the historic version of the AIA.

Definition of Resolution

ARITA supports the Australian Law Reform Commission's Interim Report recommendation for the implementation of a single glossary of defined terms.

In this regard, we support the consolidation of the definition of 'resolution' but note the importance of the exception in proposed section 7 where a term is defined for the purposes



of Schedule 2 (the Insolvency Practice Schedule), which enables the use of proposals without a meeting to pass a resolution.

That said, we continue to voice concerns regarding the use of the proposal without meetings provisions being largely limited to matters contained in Schedule 2.

We are firmly of the view that proposals without meetings should be able to be used to compromise debts (s 477(2A) and enter into agreements longer than three months (s 477(2B)) for all liquidations.

It is our understanding that the limitation on the use of proposals in these circumstances was due to a drafting error in the *Insolvency Law Reform Act 2016* and it is somewhat nonsensical that section 506(1A)(c) enables the use of a proposal without a meeting in accordance with Schedule 2 to be used to pass such resolutions in a simplified liquidation but not a traditional liquidation.

Requiring meetings to obtain creditor approval on these two matters results in significant increased costs for any liquidation. Outside of a simplified liquidation, creditors have the opportunity to object to the matter being dealt with without a meeting, giving them protection in instances where they believe that a meeting is required. However, for the vast majority of liquidations, approval will be able to be obtained expeditiously and at lower cost via approval using a proposal without a meeting.

Importantly, for a liquidator to be able to take action to recover property for the benefit of creditors (eg. uncommercial transactions, creditors-defeating dispositions and limited preferences) in an unfunded (or low funded) liquidation, they may need to seek funding and/or enter into contracts longer than 3 months. In most cases, this is the only likely avenue to take action against those that have unfairly benefited prior to the liquidation.

It is of paramount importance that this issue be resolved and we see the amendment of the Bill to incorporate this change as an ideal opportunity to rectify an error which remains unresolved since 2016.



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 2,200 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 80% 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 2021, ARITA delivered 82 professional development sessions to over 7,100 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 19 inquiries, hearings and public policy consultations during 2021.