UNCITRAL - Legislative Guide on Insolvency Law - Recommendations

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
PART 1 - DESIGNING THE KEY OBJECTIVES AND STRUCTURE OF AN EFFECTIVE AND EFFICIENT INSOLVENCY LAW		
I - Key Objectives of an effective and efficient insolvency law		
Establishing the key objectives		
1	In order to establish and develop an effective insolvency law, the following key objectives should be considered: (a) Provide certainty in the market to promote economic stability and growth; (b) Maximize value of assets; (c) Strike a balance between liquidation and reorganization; (d) Ensure equitable treatment of similarly situated creditors; (e) Provide for timely, efficient and impartial resolution of insolvency; (f) Preserve the insolvency estate to allow equitable distribution to creditors; (g) Ensure a transparent and predictable insolvency law that contains incentives for gathering and dispensing information; and (h) Recognize existing creditors rights and establish clear rules for ranking of priority claims.	Australia's insolvency laws generally achieve these objectives, although the laws are complex and spread across numerous different Acts, Regulations, Rules and Directions and improvements could be made.
2	The insolvency law should include provisions addressing both reorganization and liquidation of a debtor.	Yes. In corporate insolvency, reorganisation can be achieved under a scheme of arrangement (Part 5.1 of the *Corporations Act 2001* (Cth) (**CA**), receivership (Part 5.2 CA), voluntary administration (Part 5.3A CA) and restructuring (Part 5.3B CA). In personal insolvency, Part IX (Debt Agreements) and Part X

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		(Personal Insolvency Agreements) of the *Bankruptcy Act 1996* (Cth) (**BA**) allows reorganisation of a debtor's affairs.
3	The insolvency law should recognize rights and claims arising under law other than the insolvency law, whether domestic or foreign, except to the extent of any express limitation set forth in the insolvency law.	Yes. For corporate insolvency see Division 6 of Part 5.6 CA. For personal insolvency, see Division 1 of Part VI BA.
4	The insolvency law should specify that where a security interest is effective and enforceable under law other than the insolvency law, it will be recognized in insolvency proceedings as effective and enforceable.	Yes - subject to some exceptions, this is a tenet of Australian insolvency law. The exceptions are that a security can become unenforceable in an insolvency: • if not registered on the Personal Property Securities Register (**PPSR**) (sections 267 and 267A *Personal Property Securities Act 2009* (Cth) (**PPSA**)); or • if not registered within the certain timeframes in a corporate insolvency (Division 2A of Part 5.7B CA).
5	The insolvency law should include a modern, harmonized and fair framework to address effectively instances of cross-border insolvency. Enactment of the UNCITRAL Model Law on Cross-Border Insolvency is recommended.	Yes - the UNCITRAL Model Law on Cross-Border Insolvency is enacted by the *Cross-Border Insolvency Act 2008* (Cth).
Balancing the goals and key objectives of an insolvency law		
6	The recommendations in the *Legislative Guide* have been designed to address each of the key objectives and achieve an appropriate balance between them.	Noted.
General features of an insolvency law		
7	In order to design an effective and efficient insolvency law, the following common features should be considered:	

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(a)	Identifying the debtors that may be subject to insolvency proceedings, including those debtors which may require a special insolvency regime;	Yes - see the comments below for recommendations 8 to 13.
(b)	Determining and the type of proceeding that may be commenced, the party that may request commencement and whether the commencement criteria should differ depending upon the party requesting commencement;	Yes - see the comments below for recommendations 14 to 29.
(c)	The extent to which the debtor should be allowed to retain control of the business once insolvency proceedings commence or be displaced and an independent party (in the *Legislative Guide* referred to as the "insolvency representative") appointed to supervise and manage the debtor, and the distinction to be made between liquidation and reorganization in that regard;	Yes - see the comments below for recommendations 52 to 62.
(d)	Identification of the assets of the debtor that will be subject to the insolvency proceedings and constitute the insolvency estate;	Yes - see the comments below for recommendation 35..
(e)	Protection of the insolvency estate against the actions of creditors, the debtor itself and the insolvency representative and, where the protective measures apply to secured creditors, the manner in which the economic value of the security interest will be protected during the insolvency proceedings;	Yes - see the comments below for recommendations 46 to 51.
(f)	The manner in which the insolvency representative may deal with contracts entered into by the debtor before the commencement of proceedings and in respect of which both the debtor and its counterparty have not fully performed their respective obligations;	Yes - see the comments below for recommendations 69 to 86.
(g)	The extent to which set-off or netting rights can be enforced or will be protected, notwithstanding the commencement of insolvency proceedings;	Yes - see the comments below for recommendations 101 to 107.
(h)	The manner in which the insolvency representative may use or dispose of assets of the insolvency estate;	Yes - see the comments below for recommendations 52 to 62.

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	(i)	The extent to which the insolvency representative can avoid certain types of transaction that result in the interests of creditors being prejudiced;	Yes - see the comments below for recommendations 87 to 99.
	(j)	In the case of reorganization, preparation of the reorganization plan and the limitations, if any, that will be imposed on the content of the plan, the preparer of the plan and the conditions required for its approval and implementation;	Yes - see the comments below for recommendations 139 to 159.
	(k)	Rights and obligations of the debtor;	Yes -see the comments below for recommendations 108 to 114.
	(l)	Duties and functions of the insolvency representative;	Yes - see the comments below for recommendations 115 to 125.
	(m)	Functions of the creditors and creditor committee;	Yes - see the comments below for recommendations 126 to 136.
	(n)	Costs and expenses relating to the insolvency proceedings;	Yes - see the comments below for recommendations 94, 119, 152, 189 and 264 to the extent they deal with costs and expenses relating to the insolvency proceedings.
	(o)	The treatment of claims and their ranking for the purposes of distributing the proceeds of liquidation;	Yes - see the comments below for recommendations 169 to 190.
	(p)	Distribution of the proceeds of liquidation;	Yes - see the comments below for recommendations 191 to 193.
	(q)	Discharge or dissolution of the debtor; and	Yes - see the comments below for recommendations 194 to 196.
	(r)	Conclusion of the proceedings.	Yes - see the comments below for recommendations 197 and 198.
PART 2 - CORE PROVISIONS FOR AN EFFECTIVE AND EFFICIENT INSOLVENCY LAW			
I - Application and commencement			

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Eligibility and jurisdiction		
Purpose of legislative provisions		
The purpose of provisions on eligibility and jurisdiction is to establish:		
(a)	The types of debtor that are subject to the insolvency law;	
(b)	The types of debtor that may be excluded from the insolvency law;	
(c)	The debtors that have sufficient connection to a State to be subject to the insolvency law; and	
(d)	The courts that have jurisdiction over the commencement and conduct of insolvency proceedings.	
Contents of legislative provisions		
Eligibility (paras. 1-11)		
8	The insolvency law should govern insolvency proceedings against all debtors that engage in economic activities, whether natural or legal persons, including state-owned enterprises,[1] and whether or not those economic activities are conducted for profit.	Generally, yes. The insolvency provisions in the CA apply to all companies and Part 5.7 bodies. If a state-owned enterprise is a company or a Part 5.7 body, the insolvency provisions in the CA will apply to it, but the CA does not govern the potential insolvency proceedings for government agencies, state or federal corporate bodies, or entities created by statute that are not companies. The individual statutes creating these bodies will normally provide for their dissolution (deregistration) or winding up. The BA governs insolvency of all individuals. There are also other statutes which govern the insolvency of other entities, such as: • Aboriginal and Torres Strait Islander Corporations which are governed by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (**CATSI Act**); and

[1] It is not intended that the Guide should apply to the insolvency of States, subnational governments, municipalities and other similar types of organization, except to the extent that they are a "state-owned enterprise".

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		• banks, insurance companies; and • various State Acts which govern incorporated associations and partnerships.
9	Exclusions from the application of the insolvency law should be limited and clearly identified in the insolvency law.[2]	Generally, yes. The CA does not govern the potential insolvency of government agencies, state or federal corporate bodies, or entities created by statute that are not companies, although individual statutes creating these bodies will normally provide for their dissolution or winding up. There is no precedent in Australia for a government-owned enterprise becoming insolvent. Generally, each government-owned enterprise is established under a specific piece of legislation separate to the Act (be it federal or at a state or territory level). The relevant legislation will provide for the winding-up procedure and remedies creditors may have available (noting they are limited compared to a corporate insolvency). Creditors of public enterprises do have remedies; however, as the provisions vary from enterprise to enterprise, and as there has never been an actual example of these provisions being tested, it is difficult to generally comment on how such remedies work in practice. The BA applies to all individuals, whether or not Australian citizens, although there are some specific requirements (s 43 BA) as to when an individual can be made bankrupt.
Jurisdiction (paras. 12-18)		
10	The insolvency law should specify which debtors have sufficient connection to the State to be subject to its insolvency law. Different approaches may be taken to identifying appropriate connecting factors, but the grounds upon which a debtor can be subject to the	Yes - Refer to comments for recommendation 9 as to which debtors have sufficient connection to Australia to be subject to Australian insolvency law. Our insolvency laws do not use the centre of main interest or establishment tests in determining when Australian

[2] Highly regulated organizations such as banks and insurance companies may require specialized treatment that can appropriately be provided in a separate insolvency regime or through special provisions in the general insolvency law. Some state-owned enterprises, such as those involved in sensitive sectors of the economy, might also be excluded.

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	insolvency law should include:[3] (a) That the debtor has its centre of main interests in the State; or (b) That the debtor has an establishment in the State.	insolvency law applies to a debtor (other than to the extent these tests are relevant under the UNCITRAL Model Law on Cross-Border Insolvency as enacted by the *Cross-Border Insolvency Act 2008* (Cth).
11	The insolvency law should establish a presumption that, in the absence of proof to the contrary, a legal person's centre of main interests is in the State in which it has its registered office, and a natural person's centre of main interests is in the State in which that person has their habitual residence.	These are the tests which apply under the UNCITRAL Model Law on Cross-Border Insolvency as enacted by the Cross-Border Insolvency Act 2008 (Cth).
12	The insolvency law should define "establishment" to mean "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services".[4]	This is the test is the test which applies under the UNCITRAL Model Law on Cross-Border Insolvency as enacted by the Cross-Border Insolvency Act 2008 (Cth).
Competent courts (para. 19)		
13	The insolvency law should clearly indicate (or include a reference to the relevant law that establishes) the court that has jurisdiction over the commencement and conduct of insolvency proceedings, including matters arising in the course of those proceedings.	Yes. Various provisions of the CA and BA specifies which courts have jurisdiction to make orders in relation to insolvency matters.
Commencement of proceedings		
Purpose of legislative provisions		
The purpose of provisions on commencement of insolvency proceedings is: (a) To facilitate access for debtors and creditors to the remedies provided by the law; (b) To establish commencement criteria that are transparent and certain;		

[3] This recommendation is intended to indicate minimum and non-exclusive grounds for commencing insolvency proceedings. Other grounds, such as presence of assets, are used in some jurisdictions, but are not recommended: see above, paras. 17 and 18, and the Guide to Enactment of the UNCITRAL Model Law (see annex III), paras. 184-187.
[4] UNCITRAL Model Law, art. 2, para. (f), (see annex III).

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(c)	To enable applications for insolvency proceedings to be made and dealt with in a speedy, efficient and cost-effective manner;	
(d)	To establish safeguards to protect both debtors and creditors from improper use of the application procedure; and	
(e)	To establish requirements for effective notification of commencement of proceedings.	
Contents of legislative provisions		
Persons permitted to apply (paras. 32-53)		
14	The insolvency law should specify the persons permitted to make an application for commencement of insolvency proceedings, which should include the debtor and any of its creditors.[5]	Yes - For example: • In corporate insolvency ss 453B, 459P, 462, 436A-C CA; • In personal insolvency ss 44, 55, 56A, 185C, 188 BA.
Debtor application (paras. 33-36 for liquidation and 45-47 for reorganization)		
15	The insolvency law should specify that insolvency proceedings can be commenced on the application of a debtor if the debtor can show either that: (a) It is or will be generally unable to pay its debts as they mature; or (b) Its liabilities exceed the value of its assets.[6]	Australian insolvency laws use a cash flow test for insolvency, rather than a balance sheet test (see for example, s 95A CA) and so generally, to commence insolvency proceeding, a debtor must show that it is, or will, be unable to pay its debts as and when they become due and payable. For example, ss 436A, 459B CA and s 55(3AA) BA.
Creditor application (paras. 37-41 for liquidation and 48-53 for reorganization)		
16	The insolvency law should specify that insolvency proceedings can be commenced on the application of a creditor if it can be shown that either: (a) The debtor is generally unable to pay its debts as they mature; or	Australian insolvency laws use a cash flow test for insolvency, rather than a balance sheet test (see for example, s 95A CA) and so generally, to obtain an order placing a corporate debtor into an

[5] This would include a government authority that is a creditor of the debtor.
[6] The intention of this recommendation and the recommendation on creditor applications is to allow legislators flexibility in developing commencement standards, based on a single or dual test approach. Where the insolvency law adopts a single test, it should be based on the debtor's inability to pay debts as they mature (cessation of payments test) and not on the balance sheet test. Where the insolvency law contains both tests (cessation of payments and balance sheet tests), proceedings can be commenced if one of the tests can be satisfied.

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	(b) The debtor's liabilities exceed the value of its assets.	insolvency process, a creditor must show that the debtor is unable to pay all its debts as and when they become due and payable (i.e., is insolvent). For example, ss 459A, 459B CA. For individual debtors, a creditor must show that the debtor has committed an 'act of bankruptcy', which include, but are not limited to, the debtor being insolvent.
Presumption that the debtor is unable to pay (para. 37)		
17	The insolvency law may establish a presumption that, if the debtor fails to pay one or more of its mature debts, and the whole of the debt is not subject to a legitimate dispute or offset in an amount equal to or greater than the amount of the debt claimed, the debtor is generally unable to pay its debts.[7]	Yes. This is reflected: • in corporate insolvency via the statutory demand process, where a corporate debtor is presumed to be insolvent if it does not comply with a statutory demand (Division 2 of Part 5.4 CA); • in person insolvency via the bankruptcy notice process, where an individual debtor commits an act of bankruptcy upon failure to comply with a bankruptcy notice (Division 1 and 2 of Part IV BA).
Commencement on debtor application (para. 65)		
18	The insolvency law should specify that where the application for commencement is made by the debtor: (a) the application for commencement will automatically commence the insolvency proceedings; or (b) the court will promptly determine its jurisdiction and whether the debtor is eligible and the commencement standard has been met and, if so, commence insolvency	Yes. An Australian court would promptly determine its jurisdiction to deal with an application to commence insolvency proceedings by a debtor (e.g. application to wind up a company on the company's application) and whether the debtor is eligible and, if so, commence insolvency proceedings.

[7] Where the debtor has not paid a mature debt and the creditor has obtained a judgement against the debtor in respect of that debt, there would be no need for a presumption to establish that the debtor was unable to pay its debts. The debtor could rebut the presumption by showing, for example, that it was able to pay its debts; that the debt was subject to a legitimate dispute or offset; or that the debt was not mature. The recommendations on notice of commencement provide protection for the debtor by requiring notice of the application for commencement of proceedings to be given to the debtor and providing the debtor with an opportunity to rebut the presumption.

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	proceedings.	
Commencement on creditor application (paras. 57 and 67)		
19	The law generally should specify that, where a creditor makes the application for commencement:	
	(a) Notice of the application promptly is given to the debtor;[8]	Yes - for example, see: • for corporate insolvency, rule 2.7 of the *Federal Court (Corporations) Rules (2000)* (Cth); • for personal insolvency, rule 4.05 of *Federal Circuit and Family Court (Bankruptcy) Rules 2021* (Cth).
	(b) The debtor be given the opportunity to respond to the application, by contesting the application, consenting to the application or, where the application seeks liquidation, requesting the commencement of reorganization proceedings; and	Yes - The debtor is given the opportunity to appear and contest, or consent to, the application. If a company is subject to a winding up application, it can appoint an administrator and seek to reorganise, and the court can adjourn the winding up application.
	(c) The court will promptly determine its jurisdiction and whether the debtor is eligible and the commencement standard has been met and, if so, commence insolvency proceedings.[9]	Yes - An Australian court will promptly determine its jurisdiction to deal with an application to commence insolvency proceedings by a debtor (e.g. application to wind up a company on the company's application) and whether the debtor is eligible and, if so, commence insolvency proceedings.
Denial of an application to commence proceedings (paras. 61-63)		
20	The insolvency law should specify that, where the decision to commence proceedings is to be made by the court, the court may deny the application to commence and, where	Yes - Australian courts have this inherent power, and under the relevant court rules, when hearing insolvency proceedings.

[8] Where the debtor's whereabouts is unknown and it cannot be contacted, the general law may provide relevant rules concerning the giving of notice in such circumstances.
[9] A determination that the commencement standard has been met may involve consideration of whether the debt is subject to a legitimate dispute or offset in an amount equal to or greater than the amount of the debt. The existence of such a set-off may be a ground for dismissal of the application (see above, paras. 61-63).

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	appropriate, impose costs or sanctions against the applicant, if it determines that: (a) It does not have jurisdiction or the debtor is ineligible or does not meet the commencement standard; or (b) The application is an improper use of the law.	
21	Where the application was made by a creditor, the insolvency law should specify that the debtor promptly be given notice of the decision to deny.	Yes - The debtor would be given notice of such a decision.
Notice of commencement of proceedings (paras. 64-71)		
22	The insolvency law should establish procedures for giving notice of the commencement of insolvency proceedings.	Yes - Notice of the commencement of corporate insolvency proceedings must be served on the debtor and advertised on ASIC's insolvency notices website. Notice of the commencement of bankruptcy proceedings must be served on the debtor.
General notice (paras. 69 and 70)		
23	The insolvency law should specify that the means of giving notice of the commencement of insolvency proceedings must be appropriate[10] to ensure that the information is likely to come to the attention of parties in interest.[11] The insolvency law should specify the party responsible for giving that notice.	Yes - Notice of the commencement of corporate insolvency proceedings must be served on the debtor and advertised on ASIC's insolvency notices website. A copy of a creditors' petition must be filed with the Official Receiver (reg 13 *Bankruptcy Regulations 2021* (Cth) (**BR**)) and served on the debtor.
Notice to creditors (paras. 65 and 66)		

[10] The question of what is appropriate in a particular case will also involve considerations of cost-effectiveness and the insolvency law should not require, for example, expensive publication in a national newspaper, when publication in a local paper will suffice.
[11] General notice would generally be provided by way of making the information available in a publication such as an official government gazette, a widely circulated national, regional or local newspaper, through electronic means or through relevant public registries.

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24	The insolvency law should specify that notice of the commencement of proceedings is to be given to creditors individually, unless the court considers that, under the circumstances, some other form of notice would be more appropriate.[12]	Yes - for example see ss 436E(3), 497(1) CA.
Content of the notice (para. 71)		
25	The insolvency law should specify that the notice of commencement of insolvency proceedings is to include: (a) Information concerning submission of claims, including the time and place for submission; (b) The procedure and form requirements for the submission of claims; (c) The consequences of failure to submit a claim in accordance with paragraphs (a) and (b) above; and (d) Information concerning verification of claims, application of the stay and its effects and meetings of creditors.	Yes - the information sent to creditors by insolvency appointees includes these matters. For example, see the information required to be provided to creditors prior to the first meeting of creditors in a voluntary administration under reg 5.3A.03A CR.
Debtors with insufficient assets (paras. 72-75)		
26	The insolvency law should specify the treatment of debtors whose assets and sources of revenue are insufficient to meet the costs of administering the insolvency proceedings. Different approaches may be taken, including: (a) Denial of the application, except where the debtor is an individual who would be entitled to a discharge; or (b) Commencement of the proceedings, where different mechanisms for appointment and remuneration of the insolvency representative may be available.[13]	In Australia, there is no restriction on commencement of insolvency proceedings for debtors whose assets and sources of revenue are insufficient to meet the costs of administering the insolvency proceedings.
Dismissal of insolvency proceedings after commencement (para. 79)		

[12] The obligation to prepare the list of creditors to be given notice is dealt with under obligations of the insolvency representative and the debtor (see chap. III, paras. 22-27 and 49-51).
[13] On mechanisms for appointment, see chap. III, paras. 44-47; on remuneration, chap. III, paras. 53-59.

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27	The insolvency law should permit the court to dismiss proceedings if, after commencement, the court determines, for example, that: (a) The proceedings constitute an improper use of the insolvency law; or (b) The debtor was ineligible or did not meet the commencement standard at the time of commencement.	Yes - Australian courts have this power under the relevant court rules when hearing insolvency proceedings.
28	The insolvency law should specify that, where proceedings are dismissed, the court may impose costs or sanctions, where appropriate, against the applicant for commencement of the proceedings.	Yes - Australian courts have power under the relevant court rules to impose costs orders against applicants where the insolvency proceeding is dismissed.
29	The insolvency law should require notice of a decision to dismiss proceedings to be given.	Yes - such notice would be given to the applicant creditor and the debtor. Notice of dismissal of a winding up application is required to be published on ASIC's insolvency notices website and a petitioning creditor is required to notify the Official Receiver when a creditor's petition is dismissed (reg 13 BR).
Applicable law in insolvency proceedings		
Purpose of legislative provisions		
The purpose of provisions on the applicable law in insolvency proceedings is: (a) To facilitate commerce by recognizing, in insolvency proceedings, the rights and claims that arise before commencement of insolvency proceedings and the law that will apply to the validity and effectiveness of those rights and claims; and (b) To establish the law applicable in insolvency proceedings and exceptions, if any, to the application of that law		
Contents of legislative provisions		
Law applicable to validity and effectiveness of rights and claims (paras. 81 and 82)		
30	The law applicable to the validity and effectiveness of rights and claims existing at the time of the commencement of insolvency proceedings should be determined by the private	Yes - the assessment of the validity of claims and rights in an insolvency is governed by the private international law rules of

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	international law rules of the State in which insolvency proceedings are commenced	Australia.
Law applicable in insolvency proceedings: lex fori concursus (paras. 83 and 84)		
31	The insolvency law of the State in which insolvency proceedings are commenced (*lex fori concursus)* should apply to all aspects of the commencement, conduct, administration and conclusion of those insolvency proceedings and their effects. These may include, for example: (a) Identification of the debtors that may be subject to insolvency proceedings; (b) Determination of when insolvency proceedings can be commenced and the type of proceeding that can be commenced, the party that can apply for commencement and whether the commencement criteria should differ depending upon the party applying for commencement; (c) Constitution and scope of the insolvency estate; (d) Protection and preservation of the insolvency estate; (e) Use or disposal of assets; (f) Proposal, approval, confirmation and implementation of a plan of reorganization; (g) Avoidance of certain transactions that could be prejudicial to certain parties; (h) Treatment of contracts; (i) Set-off; (j) Treatment of secured creditors; (k) Rights and obligations of the debtor; (l) Duties and functions of the insolvency representative; (m) Functions of the creditors and creditor committee; (n) Treatment of claims; (o) Ranking of claims; (p) Costs and expenses relating to the insolvency proceedings;	Yes - Australian insolvency laws apply to all such aspects.

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	(q) Distribution of proceeds; (r) Conclusion of the proceedings; and (s) Discharge.	
Exceptions to the application of the law of the insolvency proceedings (paras. 85-90, specifically paras. 86 and 87)		
32	Notwithstanding recommendation 31, the effects of insolvency proceedings on the rights and obligations of the participants in a payment or settlement system or in a regulated financial market should be governed solely by the law applicable to that system or market.	Yes - There are specific laws applicable to financial payment and settlement systems - see the *Payment Systems and Netting Act 1998* (Cth).
33	Notwithstanding recommendation 31, the effects of insolvency proceedings on rejection, continuation and modification of labour contracts may be governed by the law applicable to the contract.	No - this is not specified provided for in Australian insolvency laws.
34	Any exceptions additional to recommendations 32 and 33 should be limited in number and be clearly set forth or noted in the insolvency law.	Noted.
II - Treatment of assets on commencement of insolvency proceedings		
Assets constituting the insolvency estate		
Purpose of legislative provisions		
The purpose of provisions relating to the insolvency estate is: (a) to identify those assets which will be included in the estate, including the debtor's interests in encumbered assets and in third party-owned assets; and (b) to identify the assets, if any, that will be excluded from the estate.		
Contents of legislative provisions		
Assets constituting the insolvency estate (paras. 1-16)		

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35	The insolvency law should specify that the estate should include: (a) Assets of the debtor,[14] including the debtor's interest in encumbered assets and in third party-owned assets; (b) Assets acquired after commencement of the insolvency proceedings; and (c) Assets recovered through avoidance and other actions.	Yes - this is reflected both in the provisions relating to corporate and personal insolvency (for example - ss 53 and Division 3 of Part VI BA).
36	In the case of insolvency proceedings commenced where the debtor has its centre of main interests, the insolvency law should specify that the estate should include all assets of the debtor wherever located.[15]	Australian insolvency laws specify that the estate should include all assets of the debtor wherever located irrespective of where the debtor has its centre of main interests.
Time of constitution of the insolvency estate (paras. 22-24)		
37	The insolvency law should specify the date from which the estate is to be constituted, being either the date of application for commencement or the effective date of commencement of insolvency proceedings.	Yes. In corporate insolvency see Division 1A of Part 5.6 CA. In personal insolvency see s 115 BA.
	Assets excluded from the insolvency estate where the debtor is a natural person8 (paras. 18-21)	
38	The insolvency law should specify the assets, if any, that are excluded from the estate where the debtor is a natural person.	Yes - see section 116(2) BA.
Protection and preservation of the insolvency estate		

[14] Ownership of assets would be determined by reference to the relevant applicable law, where the term "assets" is defined broadly to include property, rights and interest of the debtor, including the debtor's rights and interests in third party-owned assets.
[15] Where the insolvency law adopts a universal approach, as recommended here, the law should also address the issue of recognition of foreign proceedings, see the UNCITRAL Model Law on Cross-Border Insolvency (annex III).

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Purpose of legislative provisions		
The purpose of provisions on the protection and preservation of the estate is:		
(a)	To establish measures to ensure that the value of the estate is not diminished by the actions of the debtor, creditors or third parties;	
(b)	To determine the scope of those measures and the actions and parties to which they apply;	
(c)	To establish the method, time and duration of application of those measures; and	
(d)	To establish the grounds for relief from those measures.	
Contents of legislative provisions		
Provisional measures[16] (paras. 47-53)		
39	The insolvency law should specify that the court may grant relief of a provisional nature, at the request of the debtor, creditors or third parties, where relief is needed to protect and preserve the value of the assets of the debtor[17] or the interests of creditors, between the time an application to commence insolvency proceedings is made and commencement of the proceedings,[18] including: (a) Staying execution against the assets of the debtor, including actions to make security interests effective against third parties and enforcement of security interests; (b) Entrusting the administration or supervision of the debtor's business, which may include the power to use and dispose of assets in the ordinary course of business, to an insolvency representative or other person[19] designated by the court; (c) Entrusting the realization of all or part of the assets of the debtor to an insolvency representative or other person designated by the court, in order to protect and preserve the value of assets of the debtor that, by their nature or because of other	Yes. For example, the court's ability to appoint a provisional liquidator or court appointed receiver.

[16] These articles follow the corresponding articles of the UNCITRAL Model Law on Cross-Border Insolvency, see article 19 (see annex III).
[17] The reference to assets in paragraphs (a)-(c) is intended to be limited to assets that would be part of the insolvency estate once proceedings commence.
[18] The insolvency law should indicate the time of effect of an order for provisional measures, for example, at the time of the making of the order, retrospectively from the commencement of the day on which the order is made or some other specified time (see above, para. 44).
[19] The term "other person" in recommendation 39, paragraphs (b) and (c), is not intended to include the debtor.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and (d) Any other relief of the type applicable or available on commencement of proceedings under recommendations 46 and 48.	
Indemnification in connection with provisional measures (para. 51)		
40	The insolvency law may provide the court with the power to: (a) Require the applicant for provisional measures to provide indemnification and, where appropriate, to pay costs or fees; or (b) Impose sanctions in connection with an application for provisional measures.	Yes - the courts have this power under their relevant court rules.
Balance of rights between the debtor and insolvency representative (paras. 50 and 70-73)		
41	The insolvency law should clearly specify the balance of the rights and obligations between the debtor and any insolvency representative appointed as a provisional measure. Between the time an application for commencement of insolvency proceedings is made and commencement of those proceedings, the debtor is entitled to continue to operate its business and to use and dispose of assets in the ordinary course of business, except to the extent restricted by the court.	Yes - For example: • a provisional liquidator has the powers set out in section 477(3) CA; • a court appointed receiver will have the powers specified in the order appointing them.
Notice (para. 52)		
42	The insolvency law should specify that, unless the court limits or dispenses with the need to provide notice, appropriate notice is to be given to those parties in interest affected by: (a) An application or court order for provisional measures (including an application for review and modification or termination); and (b) A court order for additional measures applicable on commencement unless the court limits or dispenses with the need to provide notice.	Yes, the applicant for such orders is required under the relevant court rules to serve the application on the debtor and also would be required to serve any parties that the court would consider should be heard on the application.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Ex parte provisional measures (para. 52)		
43	The insolvency law should specify that, where the debtor or other party in interest affected by a provisional measure is not given notice of the application for that provisional measure, the debtor or other party in interest affected by the provisional measures has the right, upon urgent application, to be heard promptly[20] on whether the relief should be continued.	Yes - a debtor or other interested party who was not notified of the application for provisional relief is generally allowed to apply to the court to seek orders.
Modification or termination of provisional measures (para. 53)		
44	The insolvency law should specify that the court, at its own motion or at the request of the insolvency representative, the debtor, a creditor or any other person affected by the provisional measures, may review and modify or terminate those measures.	Yes, this is the position, except that a court would not ordinarily make orders on its own motion.
Termination of provisional measures (para. 53 and chap. I, para. 63)		
45	The insolvency law should specify that provisional measures terminate when: (a) An application for commencement is denied; (b) An order for provisional measures is successfully challenged under recommendation 43; and (c) The measures applicable on commencement take effect unless the court continues the effect of the provisional measures.	Yes - this is the position in relation to a provisional liquidation.
Measures applicable on commencement (paras. 30-34)		
46	The insolvency law should specify that, on commencement of insolvency proceedings:[21]	This is generally reflected under Australian insolvency laws.

[20] Any time limit included in the insolvency law should be short in order to prevent the loss of value of the debtor's business.
[21] These measures would generally be effective as at the time of the making of the order for commencement.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(a) commencement or continuation of individual actions or proceedings concerning the assets of the debtor and the rights, obligations or liabilities of the debtor are stayed; (b) Execution or other enforcement against the assets of the estate is stayed;	In corporate insolvency, see: • Division 6 of Part 5.3A CA • S 500 CA • Subdivisions E, F & G, Division 2 of Part 5.3B CA; • Division 1A of Part 5.4B CA. In personal insolvency see s 60 BA.
	(c) The right of a counterparty to terminate any contract with the debtor is suspended;[22] and	This is reflected under the ipso facto restrictions in ss 415D to 415G, 434J to 434M, 451E to 451H, 454N to 454S CA, but only in specific situations.
	(d) The right to transfer, encumber or otherwise dispose of any assets of the estate is suspended.[23]	This is reflected to some extent. The insolvency practitioner appointed under the insolvency process generally takes control of the debtor's assets to the exclusion of the debtor or the debtor's directors, subject to any rights that secured creditors and owners have (which can be limited under certain insolvency processes). For example, see ss 437D, 440B and 453R.
Exceptions to application of the stay (para. 35)		
47	The insolvency law may permit exceptions to the application of the stay or suspension under recommendation 46 and, where it does so, those exceptions should be clearly stated. Paragraph (a) of recommendation 46 should not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the	Yes - see comments in relation to recommendation 46(a) and (b) above.

[22] See below, paras. 114-119. This recommendation is not intended to preclude the termination of a contract if the contract provides for a termination date that happens to fall after the commencement of insolvency proceedings.
[23] The limitation on the right to transfer, encumber or otherwise dispose of assets of the estate may be subject to an exception in those cases where the continued operation of the business by the debtor is authorized and the debtor can transfer, encumber or otherwise dispose of assets in the ordinary course of business.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	debtor.[24]	
Additional measures available on commencement (para. 34)		
48	The insolvency law should specify that the court may grant relief additional to the measures applicable on commencement.[25]	Yes - this is reflected in all insolvency proceedings in Australia.
Duration of measures automatically applicable on commencement (paras. 54-58)		
49	The insolvency law should specify that the measures applicable on commencement of insolvency proceedings remain effective throughout those proceedings until: (a) The court grants relief from the measures;[26] (b) In reorganization proceedings, a reorganization plan becomes effective;[27] or (c) In the case of secured creditors in liquidation proceedings, a fixed time period specified in the law expires,[28] unless it is extended by the court for a further period on a showing that: (i) An extension is necessary to maximize the value of assets for the benefit of creditors; and (ii) The secured creditor will be protected against diminution of the value of the encumbered asset in which it has a security interest.	This is generally the position under insolvency proceedings in Australia, except that secured creditors in liquidation proceedings retain their rights from the commencement of the liquidation proceeding.
Protection from diminution of the value of encumbered assets (paras. 63-69)		

[24] See UNCITRAL Model Law on Cross-Border Insolvency, art. 20, para. 3, and Guide to Enactment, paras. 151 and 152 (see annex III). Where an issue arises as to quantification of a claim, the court may be requested to consider whether relief from the stay can be provided to enable an action or proceeding to be commenced for that purpose.
[25] The additional relief that may be available will depend upon the types of measure available in a particular jurisdiction and what measures, in addition to the measures applicable on commencement (such as under recommendation 46), might be appropriate in a particular insolvency proceeding.
[26] Relief should be granted on the grounds included in recommendation 51.
[27] A plan may become effective upon approval by creditors or following confirmation by the court, depending upon the requirements of the insolvency law (see chap. IV, paras. 54 and following).
[28] It is intended that the stay should apply to secured creditors only for a short period of time, such as between 30 and 60 days, and that the insolvency law should clearly state the period of application.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
50	The insolvency law should specify that, upon application to the court, a secured creditor should be entitled to protection of the value of the asset in which it has a security interest. The court may grant appropriate measures of protection that may include: (a) Cash payments by the estate; (b) Provision of additional security interests; or (c) Such other means as the court determines.	No - this is not reflected in Australian insolvency laws, however, the rights of secured creditors are protected via other means, such as: • the secured creditor retaining the right to enforce their security in certain circumstances (i.e. in liquidation and in for 'substantial' secured creditors in administration); • the insolvency practitioner having to account to the secured creditor for the proceeds of the sale of secured assets; • the secured creditor having the right to seek orders protecting their interests if need be.
Relief from measures applicable on commencement (paras. 60-62)		
51	The insolvency law should specify that a secured creditor may request the court to grant relief from the measures applicable on commencement of insolvency proceedings on grounds that may include that: (a) The encumbered asset is not necessary to a prospective reorganization or sale of the debtor's business; (b) The value of the encumbered asset is diminishing as a result of the commencement of insolvency proceedings and the secured creditor is not protected against that diminution of value; and (c) In reorganization, a plan is not approved within any applicable time limits.	Yes - for example, ss 440B(2) and 453R(2) CA allow the court to allow a secured creditor to apply for leave to enforce their security during a voluntary administration or restructuring.
Use and disposal of assets		
Purpose of legislative provisions		
The purpose of provisions on use and disposal of assets is to: (a) Permit the use and disposal of assets, including encumbered assets in the insolvency proceedings and specify the conditions for their use and disposal; (b) Permit and specify the conditions for the use of third party owned assets;		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
(c)	Establish the limits to powers of use and disposal;	
(d)	Notify creditors of proposed use and disposal, where appropriate; and	
(e)	Provide for the treatment of burdensome assets.	
Contents of legislative provisions		
Power to use and dispose of assets of the estate (para. 74)		
52	The insolvency law should permit: (a) The use and disposal of assets of the estate (including encumbered assets) in the ordinary course of business, except cash proceeds; and (b) The use and disposal of assets of the estate (including encumbered assets) outside the ordinary course of business, subject to the requirements of recommendations 55 and 58.	Yes, in part. Assets, including encumbered assets, are allowed to be dealt with in the ordinary course of business (e.g., s 442C(2) and 453L(2) CA). There is no general restriction on the use of cash proceeds, however restrictions could apply to such cash if it is a circulating asset, or the proceeds of circulating assets (i.e. under section 433 or 561 CA). See also comments in relation to recommendations 55 and 58.
Further encumbrance of encumbered assets (para. 84)		
53	The insolvency law should specify that an encumbered asset may be further encumbered, subject to the requirements of recommendations 65-67.	No - see comments about recommendations 65-67.
Use of third party-owned assets (paras. 90-91)		
54	The insolvency law should specify that the insolvency representative may use an asset owned by a third party and in the possession of the debtor provided specified conditions are satisfied, including: (a) The interests of the third party will be protected against diminution in the value of the asset; and (b) The costs under the contract of continued performance of the contract and use of the asset will be paid as an administrative expense.	Yes - Third party owners of property in the possession of the company are not allowed to take possession of their property during voluntary administration (see s 440B CA). The owner's interests are protected by the voluntary administrator becoming personally liable for rent or other amounts payable by the company in relation to the property for the period after the first five business days, unless certain notices are provided (s 443B CA)

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Procedure for notification of disposal (para. 82)		
55	The insolvency law should specify that adequate notice of any disposal conducted outside the ordinary course of business be given to creditors[29] and that they have the opportunity to be heard by the court.	Yes, in part. In VA and liquidation, there is no prohibition on an insolvency representative disposing of assets outside the ordinary course of business unless they are encumbered assets, in which case the secured creditor or the court must consent (e.g. s 442C(2) CA). In an SBR, disposal of assets outside of the ordinary course of business may only be with the restructuring practitioner's consent or court approval (s 453L(2) CA). In personal insolvency, there is no such requirement under the BA.
56	The insolvency law should specify that notification of public auctions be provided in a manner that will ensure that the information is likely to come to the attention of interested parties.	No - However, insolvency practitioners have various duties imposed on them which would require them to make sure auctions are well advertised in order to secure the best possible price for the assets being sold.
General methods of sale (paras. 79-82)		
57	The insolvency law should specify methods of sale for sales conducted outside the ordinary course of business that will maximize the price obtained for assets being sold in insolvency proceedings, and permit both public auctions and private sales.	Yes, in part. Section 420A CA imposes a duty on receivers to take all reasonable steps to ensure assets are sold for market value and some state laws impose similar duties on mortgagees and receivers (e.g. s *85 Property Law Act 1974* (Qld)). Otherwise, insolvency practitioners have various duties imposed on them (either under specific sections (e.g. s 442CB CA), because they are officers of the insolvent company, or under the general law) which would require them to take steps to secure the best possible price for the assets being sold.
Ability to sell assets of the estate free and clear of encumbrances and other interests (paras. 85 and 86)		

[29] When the assets are encumbered assets or subject to other interests, recommendation 58 also applies.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
58	The insolvency law should permit the insolvency representative to sell an asset that is encumbered or subject to other interest free and clear of that encumbrance and other interest, outside the ordinary course of business, provided that: (a) The insolvency representative gives notice of the proposed sale to the holders of encumbrances or other interests; (b) The holder is given the opportunity to be heard by the court where they object to the proposed sale; (c) Relief from the stay has not been granted; and (d) The priority of interests in the proceeds of sale of the asset is preserved.	The sale of encumbered assets outside the ordinary course of business generally requires the consent of the secured creditor or the approval of the court (e.g. s 442C(2) CA). In an SBR, disposal of an encumbered asset outside of the ordinary course of business would require the secured creditors and the restructuring practitioner's consent or court approval (s 453L(2) CA). Court approval for such sale generally requires the court to be satisfied that arrangements have been made to protect adequately the interests of the secured party. In personal insolvency, there is no such provision and the situation is the same as if the debtor was not insolvent. The consent of the secured creditor would be required under the terms of the security documents, or an order of the court would be required to sell without the secured creditor's consent.
Use of cash proceeds (paras. 92 and 93)		
59	The insolvency law should permit the insolvency representative to use and dispose of cash proceeds if: (a) The secured creditor with a security interest in those cash proceeds consents to such use or disposal; or (b) The secured creditor was given notice of the proposed use or disposal and an opportunity to be heard by the court; and (c) The interests of the secured creditor will be protected against diminution in the value of the cash proceeds.	As, for example, under US Bankruptcy Laws, Australian insolvency laws do not distinguish between the use of cash proceeds of secured assets and other secured assets.
Urgent sales (para. 77 and 80)		
60	The insolvency law should permit the urgent sale of an asset to be conducted outside the ordinary course of business, where the asset is, by its nature or because of other circumstances, perishable, susceptible to devaluation or otherwise in jeopardy. The insolvency law may provide that prior approval of the court or of creditors is not required in	Unless the assets are secured, sale outside of the ordinary course of business is generally allowed, except for in SBR, where permission of the restructuring practitioner is required. For secured assets, see recommendation 58. The sale of perishable property by the secured

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	such circumstances.	creditor is allowed in VA and SBR (ss 441C and 454E CA).
Disposal of assets to related persons (para. 81)		
61	The insolvency law should require any proposed disposal of an asset to a related person to be carefully scrutinized before being allowed to proceed.	No - disposals to related parties are not treated any differently to other disposals.
Burdensome assets (para. 88)		
62	The insolvency law should permit the insolvency representative to determine the treatment of any asset that is burdensome to the estate. In particular, the insolvency law may permit the insolvency representative to relinquish a burdensome asset following the provision of notice to creditors and the opportunity for creditors to object to the proposed action, except that where a secured claim exceeds the value of the encumbered asset and the asset is not required for a reorganization or sale of the business as a going concern, the insolvency law may permit the insolvency representative to relinquish the asset to the secured creditor without notice to other creditors.	Yes - liquidators (Division 7A of Part 5.6 CA) and bankruptcy trustees (s 133 BA) can disclaim onerous property. Insolvency practitioners can allow secured creditors to take possession of secured assets where the value is less than the debt secured against it.
Post-commencement finance		
Purpose of legislative provisions		
The purpose of provisions on post-commencement finance is:		
(a)	To facilitate finance to be obtained for the continued operation or survival of the business of the debtor or the preservation or enhancement of the value of the assets of the estate;	
(b)	To ensure appropriate protection for the providers of post-commencement finance; and	
(c)	To ensure appropriate protection for those parties whose rights may be affected by the provision of post-commencement finance.	
Contents of legislative provisions		
Attracting and authorizing post-commencement finance (paras. 94-100, 105 and 106)		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
63	The insolvency law should facilitate and provide incentives for post commencement finance to be obtained by the insolvency representative where the insolvency representative determines it to be necessary for the continued operation or survival of the business of the debtor or the preservation or enhancement of the value of the estate. The insolvency law may require the court to authorize or creditors to consent to the provision of post-commencement finance.	No - Australian insolvency laws do not facilitate and provide incentives for post commencement finance to be obtained by the insolvency representative. Unlike, for example, in the US and Singapore, there is no proper regime in Australian insolvency laws governing post commencement finance and allowing such finance to be ordered by the court to have priority over existing secured creditors.
Priority for post-commencement finance (paras. 101 and 102)		
64	The insolvency law should establish the priority that may be accorded to post-commencement finance, ensuring at least the payment of the post-commencement finance provider ahead of ordinary unsecured creditors, including those unsecured creditors with administrative priority.	In a VA, an administrator is personally liable for any post commencement finance (s 443A CA) unless the court orders otherwise (such orders are sought under s 447A CA). This personal liability gives post commencement finance priority over unsecured creditors and existing secured creditors' security over circulating assets (s 443E CA). There are no provisions dealing with the priority of post-commencement finance for other types of insolvency appointments.
Security for post-commencement finance (paras. 103 and 104)		
65	The insolvency law should enable a security interest to be granted for repayment of post-commencement finance, including a security interest on an unencumbered asset, including an after-acquired asset, or a junior or lower-priority security interest on an already encumbered asset of the estate.	No - this is not reflected in Australian insolvency laws
66	The law[30] should specify that a security interest over the assets of the estate to secure post-commencement finance does not have priority ahead of any existing security interest over the same assets unless the insolvency representative obtains the agreement of the existing secured creditor(s) or follows the procedure in recommendation 67.	No - this is not reflected in Australian insolvency laws

[30] This rule may be in a law other than the insolvency law, in which case the insolvency law should note the existence of the provision.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
67	The insolvency law should specify that, where the existing secured creditor does not agree, the court may authorize the creation of a security interest having priority over pre-existing security interests provided specified conditions are satisfied, including: (a) The existing secured creditor was given the opportunity to be heard by the court; (b) The debtor can prove that it cannot obtain the finance in any other way; and (c) The interests of the existing secured creditor will be protected.[31]	No - this is not reflected in Australian insolvency laws
Effect of conversion on post-commencement finance (para. 107)		
68	The insolvency law should specify that where reorganization proceedings are converted to liquidation, any priority accorded to post-commencement finance in the reorganization should continue to be recognized in the liquidation.[32]	No - this is not reflected in Australian insolvency laws
Treatment of contracts		
Purpose of legislative provisions		
The purpose of provisions on treatment of contracts is: (a) To establish the manner in which contracts, under which both the debtor and its counterparty have not yet fully performed their respective obligations, should be addressed in the insolvency law, including the relationship between the insolvency law and applicable law, with the objective of maximizing the value and reducing the liabilities of the estate; (b) To define the scope of the powers to deal with these contracts and the situations in which and by whom these powers may be exercised; (c) To identify the types of contract that should be excepted from the exercise of these powers; and (d) To identify the kinds of protection that will be available to counterparties to continued contracts.		

[31] See above, paras. 63-69.
[32] The same order of priority may not necessarily be recognized. For example, post-commencement finance may rank in priority after administrative claims relating to the costs of the liquidation.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Treatment of contracts not fully performed (paras. 108-112)		
69	The insolvency law should specify the treatment of contracts under which both the debtor and its counterparty have not yet fully performed their respective obligations.	Yes In corporate insolvency, this is done through the 'ipso facto' laws in ss 415D to 415G, 434J to 434M, 451E to 451H, 454N to 454S CA. In personal insolvency see ss 301, 302 BA.
Automatic termination and acceleration clauses (paras. 114-119)		
70	The insolvency law should specify that any contract clause that automatically terminates or accelerates a contract upon the occurrence of any of the following events is unenforceable as against the insolvency representative and the debtor: (a) An application for commencement, or commencement, of insolvency proceedings; (b) The appointment of an insolvency representative.[33]	Yes - in certain circumstances only. In corporate insolvency, this is done through the 'ipso facto' laws in ss 415D to 415G, 434J to 434M, 451E to 451H, 454N to 454S CA. In personal insolvency see ss 301, 302 BA.
71	The insolvency law should specify the contracts that are exempt from the operation of recommendation 70, such as financial contracts, or subject to special rules, such as labour contracts.	Yes, the laws identify which contracts are caught and which are not.
Continuation or rejection (paras. 120-122, 126 and 127)		
72	The insolvency law should specify that the insolvency representative may decide to continue the performance of a contract of which it is aware where continuation would be	There are no specific provisions which reflect this, but in practice insolvency practitioners may decide to cause the debtor to perform a contract, if the performance is in the best interests of creditors and the

[33] This recommendation would apply only to those contracts where such clauses could be overridden (see commentary above, paras. 143-145, on exceptions) and is not intended to be exclusive, but to establish a minimum: the court should be able to examine other contractual clauses that would have the effect of terminating a contract on the occurrence of similar events.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	beneficial to the insolvency estate.[34] The insolvency law should specify that: (a) The right to continue applies to the contract as a whole; and (b) The effect of continuation is that all terms of the contract are enforceable.	estate as a whole.
73	The insolvency law may permit the insolvency representative to decide to reject a contract.[35] The insolvency law should specify that the right to reject applies to the contract as a whole.	There are no specific provisions which reflect this, but insolvency practitioners may decide not to perform a contract if the performance was not in the best interests of creditors and the estate as a whole, leaving the counterparty with (often) only a remedy to terminate for repudiation and claim loss flowing from the breach of contract as an unsecured claim in the insolvency administration.
Timing and notice of decision to continue or reject (paras. 128 and 129)		
74	The insolvency law should specify a time period within which the insolvency representative is required to make a decision to continue or reject a contract, which time period may be extended by the court.	No - see recommendation 72.
75	The insolvency law should specify the time at which the rejection will be effective.	No - see recommendation 72.
76	The insolvency law should specify that where a contract is continued or rejected, the counterparty is to be given notice of the continuation or rejection, including its rights with respect to submitting a claim and the time in which the claim should be submitted, and permit the counterparty to be heard by the court.	No - see recommendation 72.
Right of the counterparty to request a decision (para. 125)		

[34] Provided the automatic stay on commencement of proceedings applies to prevent termination (pursuant to an automatic termination clause) of contracts with the debtor, all contracts should remain in place to enable the insolvency representative to consider the possibility of continuation, unless the contract has a termination date that happens to fall after the commencement of insolvency proceedings.
[35] An alternative to providing a power to reject contracts is the approach of those jurisdictions which provide that performance of a contract simply ceases unless the insolvency representative decides to continue its performance.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
77	Notwithstanding recommendation 74, the insolvency law should permit a counterparty to request the insolvency representative (within any specified time limit) to make a prompt decision and, in the event that the insolvency representative fails to act, to request the court to direct the insolvency representative to make a decision to continue or reject a contract.	No - see recommendation 72.
Consequences of failure to make a decision (paras. 123, 124 and 127)		
78	The insolvency law should specify the consequences of the failure of the insolvency representative to make a decision within the specified time period with respect to contracts of which it is aware. Failure by the insolvency representative to act within the specified time period should not operate to continue a contract of which the insolvency representative was not aware.[36]	No - see recommendation 72.
Continuation of contracts where the debtor is in breach (para. 130)		
79	The insolvency law should specify that where the debtor is in breach of a contract the insolvency representative can continue the performance of that contract, provided the breach is cured, the non-breaching counterparty is substantially returned to the economic position it was in before the breach and the estate is able to perform under the continued contract.	No - see recommendation 72.
Performance prior to continuation or rejection (para. 131)		
80	The insolvency law should specify that the insolvency representative may accept or require performance from the counterparty to a contract prior to continuation or rejection of the contract. Claims of the counterparty arising from performance accepted or required by the insolvency representative prior to continuation or rejection of the contract should be payable as an administrative expense: (a) If the counterparty has performed the contract the amount of the administrative expense should be the contractual price of the performance; or	No - see recommendation 72.

[36] See chap. III, para. 24, which refers to the debtor's obligation to provide information, including a list of contracts not fully performed.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(b) If the insolvency representative uses assets owned by a third party that are in the possession of the debtor subject to contract, that party should be protected against diminution of the value of those assets and have an administrative claim in accordance with subparagraph (a).	
Damages for subsequent breach of a continued contract (paras. 132 and 133)		
81	The insolvency law should specify that where a decision is made to continue performance of a contract, damages for the subsequent breach of that contract should be payable as an administrative expense.	No - see recommendation 72.
Damages arising from rejection (paras. 134 and 135)		
82	The insolvency law should specify that any damages arising from the rejection of a pre-commencement contract would be determined in accordance with applicable law and should be treated as an ordinary unsecured claim. The insolvency law may limit claims relating to the rejection of a long-term contract.	No - see recommendation 72. However, damages arising from the non-performance of a pre-commencement contract would be determined in accordance with applicable law and treated as an ordinary unsecured claim.
Assignment of contracts (paras. 139-142)		
83	The insolvency law may specify that the insolvency representative can decide to assign a contract, notwithstanding restrictions in the contract, provided the assignment would be beneficial to the estate.	No - There are no specific provisions which reflect this.
84	Where the counterparty objects to assignment of a contract, the insolvency law may permit the court to nonetheless approve the assignment provided: (a) The insolvency representative continues the contract; (b) The assignee can perform the assigned contractual obligations; (c) The counterparty is not substantially disadvantaged by the assignment; and	No - see recommendation 83.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(d) The debtor's breach under the contract is cured before assignment.	
85	The insolvency law may specify that, where the contract is assigned, the assignee will be substituted for the debtor as the contracting party with effect from the date of the assignment and the estate will have no further liability under the contract.	No - see recommendation 83.
Post-commencement contracts (para. 147)		
86	The insolvency law should specify that contracts entered into after the commencement of insolvency proceedings are post-commencement obligations of the estate. Claims arising from those contracts should be payable as an administrative expense.	Generally, yes - amounts owing under post-commencement contracts are payable either: • personally by the insolvency practitioner in VA (s 443A CA), with a right to be reimbursed from the estate (s 443D CA); • as an administrative expense in liquidation (s 556(1)(a), 556(1)(dd) CA) or bankruptcy (s 109(1)(a) BA).
Avoidance proceedings		
Purpose of legislative provisions		
The purpose of avoidance provisions is: (a) To reconstitute the integrity of the estate and ensure the equitable treatment of creditors; (b) To provide certainty for third parties by establishing clear rules for the circumstances in which transactions occurring prior to the commencement of insolvency proceedings involving the debtor or the debtor's property may be considered injurious and therefore subject to avoidance; (c) To enable the commencement of proceedings to avoid those transactions; and (d) To facilitate the recovery of money or assets from persons involved in transactions that have been avoided.		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Avoidable transactions44[37] (paras. 170-179)		
87	The insolvency law should include provisions that apply retroactively and are designed to overturn transactions, involving the debtor or assets of the estate, and that have the effect of either reducing the value of the estate or upsetting the principle of equitable treatment of creditors. The insolvency law should specify the following types of transaction as avoidable: (a) Transactions intended to defeat, delay or hinder the ability of creditors to collect claims where the effect of the transaction was to put assets beyond the reach of creditors or potential creditors or to otherwise prejudice the interests of creditors; (b) Transactions where a transfer of an interest in property or the undertaking of an obligation by the debtor was a gift or was made in exchange for a nominal or less than equivalent value or for inadequate value that occurred at a time when the debtor was insolvent or as a result of which the debtor became insolvent (undervalued transactions); and (c) Transactions involving creditors where a creditor obtained, or received the benefit of, more than its pro rata share of the debtor's assets that occurred at a time when the debtor was insolvent (preferential transactions).	Yes. These are covered by the following provisions: • In corporate insolvency - Division 2 of Part 5.7B CA; • In personal insolvency - Subdivision A, Division 3 of Part VI BA.
Security interests (para. 180)		
88	The insolvency law should specify that, notwithstanding that a security interest is effective and enforceable under law other than the insolvency law, it may be subject to the avoidance provisions of insolvency law on the same grounds as other transactions.	No - There are no specific provisions which reflect this, but the granting of security interests can be a voidable transaction depending on the circumstances surrounding the granting of the security and the courts are given powers to make orders releasing or discharging, wholly or partly, a security (e.g. s 588FF(1)(e) CA).

[37] The use of the word "transaction" in this section is intended to refer generally to the wide range of legal acts by which assets may be disposed of or obligations incurred including by way of a transfer, a payment, granting of a security interest, a guarantee, a loan or a release or an action to make a security interest effective against third parties and may include a composite series of transactions.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Establishing the suspect period (paras. 188-191)		
89	The insolvency law should specify that the transactions described in recommendation 87, subparagraphs (a)-(c), may be avoided if they occurred within a specified period (the suspect period) calculated retroactively from a specified date, being either the date of application for, or commencement of, the insolvency proceedings. The insolvency law may specify different suspect periods for different types of transaction.	Yes - the relevant provisions set out the time periods within which transactions must have occurred to be potentially voidable transactions (e.g. s 588FE CA, s 120(1) and 122(1) BA).
Transactions with related persons (paras. 182-184)		
90	The insolvency law may specify that the suspect period for avoidable transactions involving related persons is longer than for transactions with unrelated persons.	Yes - the 'suspect period' is longer for certain transactions involving related parties (e.g. s 588FE(4) CA, s 120(3)(a) BA).
91	The insolvency law should specify the categories of persons with sufficient connection to the debtor to be treated as related persons.[38]	Yes - this is done by the use of defined terms, such as 'related entity' (see s 9 CA, s 5 BA).
Transactions exempt from avoidance actions (para. 185)		
92	The insolvency law should specify the transactions that are exempt from avoidance, including financial contracts.	Yes - our insolvency laws exempt certain transactions from avoidance For corporate insolvency - see, for example, s 588FE(6B)(c) CA. For personal insolvency - payment of fines are protected from being preferences in bankruptcy s 123(4) BA.
Conduct of avoidance proceedings (paras. 192-195)		
93	The insolvency law should specify that the insolvency representative has the principal responsibility to commence avoidance proceedings.[39] The insolvency law may also permit any creditor to commence avoidance proceedings with the agreement of the insolvency	Yes - liquidators and bankruptcy trustees have the principal responsibility for commencing avoidance proceedings, although ASIC can also make orders about creditor-defeating dispositions by

[38] "Related person" is defined in the glossary (see Introduction, para. 12 (jj)).
[39] Issues relevant to avoidance may also arise in proceedings commenced by a person other than the insolvency representative, where the insolvency representative raises avoidance by way of defence against enforcement.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	representative and, where the insolvency representative does not agree, the creditor may seek leave of the court to commence such proceedings.	companies (Part 5.7B, Division 2, Subdivision D CA). Liquidators and bankruptcy trustees may assign their rights to bring avoidance proceedings to third parties, including creditors (section 100-5 *Insolvency Practice Schedule (Corporations) 2016* (**IPSC**) and section 100-5 *Insolvency Practice Schedule (Bankruptcy) 2016* (**IPSB**)).
Funding of avoidance proceedings (para. 196)		
94	The insolvency law should specify that the costs of avoidance proceedings be paid as administrative expenses.	Yes - the costs and outlays incurred in relation to avoidance proceedings are administrative expenses.
95	The insolvency law may provide alternative approaches to address the pursuit and funding of avoidance proceedings.	Australian insolvency laws do contemplate that creditors may fund liquidators and trustees to take avoidance proceedings (e.g. s 564 CA, s 109(10) BA). Insolvency practitioners can also seek funding for litigation funders to fund the cost of such proceedings.
Time limits for commencement of avoidance proceedings (para. 197)		
96	The insolvency law or applicable procedural law should specify the time period within which an avoidance proceeding may be commenced. That time period should begin to run on the commencement of insolvency proceedings. In respect of transactions referred to in recommendation 87 that have been concealed and that the insolvency representative could not be expected to discover, the insolvency law may provide that the time period commences at the time of discovery.	Yes - the avoidance provisions set out the time period within which an avoidance proceeding may be commenced and that generally begins from the commencement of the insolvency proceedings - e.g. see s 588FF(3) CA, s 127 BA). There are on provisions which provide for an extension of time for concealed transactions.
Elements of avoidance and defences (paras. 198-201)		
97	The insolvency law should specify the elements to be proved in order to avoid a particular transaction, the party responsible for proving those elements and specific defences to avoidance. Those defences may include that the transaction was entered into in the ordinary course of business prior to commencement of insolvency proceedings. The law may also establish presumptions and permit shifts in the burden of proof to facilitate the	Yes - these are reflected in the relevant provisions referred to for recommendation 87.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	conduct of avoidance proceedings.	
Liability of counterparties to avoided transactions (para. 202)		
98	The insolvency law should specify that a counterparty to a transaction that has been avoided must return to the estate the assets obtained or, if the court so orders, make a cash payment to the estate for the value of the transaction. The insolvency law should determine whether the counterparty to an avoided transaction would have an ordinary unsecured claim.	For corporate insolvency: • these recommendations are expressly reflected in the types of orders that a court can make - see s 588FF; • if an unfair preference is avoided, the creditor has an ordinary unsecured claim for the amount repaid. For personal insolvency, the BA provisions simply say that the transactions are void as against the trustee in bankruptcy and the trustee is left to seek orders consequential on such a finding.
99	The insolvency law may specify that, where the counterparty does not comply with the court order avoiding the transaction, in addition to avoidance and any other remedy, a claim by the counterparty may be disallowed.	No - this is not specifically provided for, but a liquidator or bankruptcy trustee could seek such orders from the court, if necessary.
Rights of set-off		
Purpose of legislative provisions		
The purpose of provisions on set-off is:		
(a)	To provide certainty with respect to the effect of the commencement of insolvency proceedings upon the exercise of set-off rights;	
(b)	To specify the types of obligation that may be set off after commencement of insolvency proceedings; and	
(c)	To specify the effect of other provisions of the law (e.g. avoidance provisions and the stay) on the exercise of rights of set-off.	
Contents of legislative provisions		
100	The insolvency law should protect a general right of set-off existing under law other than the insolvency law that arose prior to the commencement of insolvency proceedings,	Australian insolvency laws expressly provide set off rights in insolvency - s 553C CA, s 86 BA. Australian insolvency laws do not

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	subject to the application of avoidance provisions.	expressly provide that a right of set-off existing under the general law should be protected, but this has been held to be the case where the statutory rights of set-off under the insolvency laws do not apply - see *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd (in Liquidation) (Receivers and Managers Appointed)* [2018] WASCA 163. Australian insolvency laws do not expressly say that set-off is subject to the application of avoidance provisions. In *Metal Manufactures Pty Limited v. Gavin Morton as liquidator of MJ Woodman Electrical Contractors Pty Ltd (in liquidation) & Anor* Case B19/2022, the High Court held that set-off is not available against a voidable unfair preference claim. Based on this judgment, set-off may not be available against other voidable transaction claims.
Financial contracts and netting		
Purpose of legislative provisions		
The purpose of provisions on netting and set-off in the context of financial transactions on financial markets is to reduce the potential for systemic risk that could threaten the stability of financial markets by providing certainty with respect to the rights of parties to a financial contract when one of those parties fails to perform for reasons of insolvency. These recommendations are not intended to apply to transactions that are not financial contracts and they would remain subject to the law applicable to set-off and netting.		
Contents of legislative provisions		
101	The insolvency law should recognize contractual termination rights associated with financial contracts that permit the termination of those contracts and the set-off and netting of outstanding obligations under those contracts promptly after the commencement of insolvency proceedings. Where the insolvency law stays the termination of contracts or limits the enforceability of automatic termination clauses on commencement of insolvency proceedings, financial contracts should be exempt from such limitations.[40]	Yes - such financial netting contracts are exempt from the 'ipso facto' laws referred to above as to recommendation 70. See Regs 5.1.50, 5.2.50 and 5.3A.50 CR which protect certain netting rights from the 'ipso facto' restrictions.

[40] This will allow market participants to extend credit based on "net" positions and make it impossible for the debtor to "cherry-pick" contracts by performing some and breaching others, which is especially important with regard to financial contracts because of systemic risk.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
102	Once the financial contracts of the debtor have been terminated by a counterparty, the insolvency law should permit the counterparty to net or set off obligations under those terminated financial contracts to establish a net exposure position relative to the debtor. This termination and set-off to establish a net exposure should be permitted regardless of whether the termination of the contracts occurs prior to or after the commencement of insolvency proceedings. Where the insolvency law limits or stays the exercise of set-off rights upon commencement of insolvency proceedings, set-off and netting of financial contracts should be exempt from such limitations.	Yes - see recommendation 101.
103	Once the financial contracts of the debtor have been terminated, the insolvency law should permit counterparties to enforce and apply their security interest to obligations arising out of financial contracts. Financial contracts should be exempt from any stay under the insolvency law that applies to the enforcement of a security interest.	Yes - see recommendation 101.
104	The insolvency law should specify that routine pre-bankruptcy transfers consistent with market practice, such as the putting up of margin for financial contracts[41] and transfers to settle financial contract obligations,[42] should be exempt from avoidance.	No - there are no provisions which expressly provide for this.
105	The insolvency law should recognize and protect the finality of the netting, clearing and settlement of financial contracts through payment and settlement systems upon the insolvency of a participant in the system.	Yes - this is dealt with under the *Payment Systems and Netting Act 1998* (Cth) in relation to an 'approved netting arrangement' as defined in section 5.
106	Recommendations 101-105 should apply to all transactions that are considered to be "financial contracts", whether or not one of the counterparties is a financial institution.[43]	In order for the *Payment Systems and Netting Act 1998* (Cth) to apply to the transactions, one of the participants must be a participant in an 'approved RTGS system' (as defined in s 5).

[41] Margin" is the process of posting additional cash or securities as a security for the transactions in accordance with a contractual formula that accounts for fluctuations in the market value of the contract and the existing security. For example, on a swap, a margin of 105 per cent might be required to maintain the termination value of the contract. If the security position falls to 100 per cent, an additional margin might have to be posted.

[42] In some circumstances, a settlement payment might be viewed as a preference. In the example of a swap, settlement payments are to be made monthly or upon termination of the contract based on the market value of the contract. These payments are not value for value transfers, but rather payment of an accrued debt obligation that has matured. In countries that have a fixed suspect period for all transactions occurring before commencement, such a payment might also be subject to avoidance.

[43] Even if a given financial contract does not involve a financial institution, the impact of the insolvency of a counterparty could entail systemic risk.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
107	Financial contracts should be defined broadly enough to encompass existing varieties of financial contract and to accommodate new types of financial contract as they appear.	See above in relation to recommendation 105 as to the scope of arrangements covered by the *Payment Systems and Netting Act 1998* (Cth).
III - PARTICIPANTS		
The debtor[44]		
Purpose of legislative provisions		
The purpose of provisions concerning the debtor is:		
(a)	To establish the rights and obligations of the debtor during the insolvency proceedings;	
(b)	To address the remedies for failure of the debtor to meet its obligations; and	
(c)	To address issues relating to management of the debtor in insolvency proceedings.	
Content of legislative provisions		
Rights		
Right to be heard (paras. 20 and 21)		
	See recommendation 137.	
Right to participate and request information (para. 20)		
108	The insolvency law should specify that the debtor is entitled to participate in the insolvency proceedings, and to obtain information relating to those proceedings from the insolvency	In corporate insolvency, generally, an insolvency representative is only required to provide information to creditors, although members in

[44] Because the insolvency law will cover different types of business, whether sole traders, partnerships or some form of company, the question of the continuing role of the debtor properly raises questions of the role of the debtor's management or owners, depending upon the circumstances. For ease of reference, the Legislative Guide refers only to "the debtor", but it is intended that management and owners should be covered by the use of that term where appropriate.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	representative and the court.	a voluntary winding up can also request information (see Part 3, Division 70, Subdivisions D and E of IPSC and Part 3, Division 70 of the *Insolvency Practice Rules (Corporations) 2016* (**IPRC**). A director of a company, registered scheme or disclosing entity has a right of access to the financial records at all reasonable times: ss 290(1), 198F CA. A director can make an application to the court if they wish to have another person (such as an auditor) inspect the financial records on their behalf: s 290(2) CA. In personal insolvency, the debtor can request information from the bankruptcy trustee - see s 70-56 IPSB and s 70-17 of the *Insolvency Practice Rules (Bankruptcy) 2016* (**IPRB**).
Right to retain property to preserve the personal rights of the debtor (para. 20)		
109	Where the debtor is a natural person, the insolvency law should specify that the debtor is entitled to retain those assets excluded from the estate by the law.[45]	Yes - s 116(2) BA and regs 27-30 BR set out property that does not vest in the trustee.
Obligations of the debtor (paras. 22-27, 29 and 30)		
110	The insolvency law should clearly specify the debtor's obligations in respect of insolvency proceedings. Those obligations should arise on the commencement of, and continue throughout, those proceedings. The obligations should include obligations: (a) To cooperate with and assist the insolvency representative to perform its duties; (b) To provide accurate, reliable and complete information relating to its financial position and business affairs that might be requested by the court, the insolvency representative, creditors and/or the creditor committee, including lists of:[46] (i) Transactions occurring prior to commencement that involved the debtor or the	Yes - Both the CA and the BA set out these matters for the various types of insolvency administrations they cover. See ss 429, 438B, 475, 530A CA (these are continuing obligations - s 1314 CA) and s 77 BA.

[45] See chap. II, paras. 17-21 and recommendation 38.
[46] Subject to allowing the debtor the time necessary to collect the relevant information.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	assets of the debtor; (ii) Ongoing court, arbitration or administrative proceedings, including enforcement proceedings; (iii) Assets, liabilities, income and disbursements; (iv) Debtors and their obligations; and (v) Creditors and their claims prepared in cooperation with the insolvency representative and revised and amended by the debtor as claims are verified and admitted or denied; (c) To cooperate with the insolvency representative to enable the insolvency representative to take effective control of the estate and to facilitate or cooperate in the recovery by the insolvency representative of the assets, or control of the assets of the estate, wherever located[47] and business records; and (d) Where the debtor is a natural person, to provide notice to the court if it proposes or is forced to leave its habitual place of residence and, where the debtor is a legal person, to obtain the consent of the court or the insolvency representative to the movement of its the headquarters.	
Confidentiality (paras. 28, 52 and 115)		
111	The insolvency law should specify protections for information provided by the debtor or concerning the debtor[48] that is commercially sensitive or confidential.	No - this is not reflected in Australian insolvency law. However, both corporate and personal insolvency professionals deal with information regulated by Australian privacy legislation.
The debtor's role in continuation of the business (paras. 2-18)		
112	The insolvency law should specify the role of the debtor in the continuing operation of the business during insolvency proceedings. Different approaches may be taken, including:	Yes, to an extent. In corporate insolvency: • In an SBR the debtor's directors retain control of the debtor

[47] See the UNCITRAL Model Law on Cross-Border Insolvency (annex III).
[48] Information provided by the debtor may include information in control of the debtor, owned by the debtor or a third party and information concerning the debtor may be provided by creditors, financial institutions and others.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(a) Retention of full control of the business (debtor in possession), with appropriate protections including varying levels of control of the debtor and provision for displacement of the debtor in specified circumstances;[49] (b) Limited displacement, where the debtor may continue to operate the business on a day-to-day basis, subject to the supervision of an insolvency representative, in which event the division of responsibilities between the debtor and the insolvency representative should be specified in the law; or (c) Total displacement of the debtor from any role in the business and the appointment of an insolvency representative.	during the process, and undertake transactions that are in the ordinary course of business; • in a deed of company arrangement (**DOCA**) following voluntary administration, the directors can be given control of the debtor. Otherwise, generally, in all other administrations, the CA provides for the insolvency representative to take complete control of the debtor. In personal insolvency, a bankrupt can continue to operate a business, but cannot manage a corporation (s 206B CA).
113	The insolvency law should specify, where the debtor is a debtor in possession, those functions of the insolvency representative that may be performed by the debtor in possession.	See above in relation to recommendation 112. Part 5.3B CA outlines the small business restructuring practitioner's role under an SBR. The terms of a DOCA will provide the role of the insolvency representatives under a DOCA.
Sanctions for the debtor's failure to comply with its obligations (paras. 32 and 33)		
114	The insolvency law should permit the imposition of sanctions for the debtor's failure to comply with its obligations under the insolvency law.	In corporate insolvency, directors can be convicted for failing to provide a report regarding business affairs and all of the Company's books and records, see ss 475(1), 530A(1) and 530A(2) CA. In person insolvency, debtors can be guilty of offences for failing to comply with their obligations - see Part XIV BA.
The insolvency representative		
Purpose of legislative provisions		
The purpose of provisions concerning the insolvency representative is:		

[49] It should be noted that this option relies on a well-developed court structure and the application of protections that operate to displace the debtor in certain circumstances. (For a more detailed discussion, see above, paras. 16-18).

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
(a)	To specify qualifications required for appointment;	
(b)	To establish a mechanism for selection and appointment;	
(c)	To specify powers and functions; and	
(d)	To provide for remuneration, liability, removal and replacement.	
Contents of legislative provisions		
Qualifications (paras. 36-41)		
115	The insolvency law should specify the qualifications and qualities required for appointment as an insolvency representative, including integrity, independence, impartiality, requisite knowledge of relevant commercial law and experience in commercial and business matters. The insolvency law should also specify the grounds upon which a proposed insolvency representative may be disqualified from appointment.	Yes - in corporate insolvency, these matters are addressed in the IPSC and IPRC. See also ASIC Regulatory Guide RG 258 regarding liquidators. In personal insolvency, these matters are addressed in IPSB and IPRB. See also Inspector-General Practice Statement 13 published by the Australian Financial Security Authority (**AFSA**).
Conflict of interest (paras. 42 and 43)		
116	The insolvency law should require the disclosure of a conflict of interest, a lack of independence or circumstances that may lead to a conflict of interest or lack of independence by: (a) A person proposed for appointment as an insolvency representative, or a person appointed as an insolvency representative where the conflict of interest or the circumstances that may lead to a conflict of interest or lack of independence arise in the course of insolvency proceedings; and (b) Persons proposed for employment by the insolvency representative or the estate, including professionals or a person employed by the insolvency representative or the estate, where the conflict of interest or the circumstances that may lead to a conflict of interest or lack of independence arise in the course of insolvency proceedings.	In corporate insolvency an insolvency representative is required to provide a 'declaration of relevant relationships and indemnities' before accepting an appointment - see ss 436DA, 453D, 506A CA In person insolvency an insolvency representative must complete a consent to act before taking an appointment which declares they have no relationship with the debtor - s 156A BA.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
117	The insolvency law should specify that the obligation to disclose set forth in recommendation 116 should continue throughout the insolvency proceedings. The insolvency law should specify the consequences of a conflict of interest or lack of independence.	In corporate insolvency a 'declaration of relevant relationships and indemnities' must be updated as and when it becomes out of date - see ss 436DA, 453D, 506A CA. There may be various consequences of a conflict of interest or lack of independence. These include removal by the court upon the application of an interested party (i.e. under s 45-1 or Part 3, Division 90, Subdivision B IPSC), the appointment of a special liquidator, disciplinary action by ASIC (see Part 2, Division 40 IPSC). See also ASIC Regulatory Guide 258 Registered liquidators: Registration, disciplinary actions and insurance requirements. For personal insolvency, a bankruptcy trustee has an obligation to notify creditors of a conflict of interest when it arises - rule 42-20 IPSB. There may be various consequences of a conflict of interest or lack of independence including disciplinary action (see Part 2, Division 40 IPSB) or removal and sanction by the court (see Part 3, Division 90 IPSB).
Appointment (paras. 44-47)		
118	The insolvency law should establish a mechanism for selection and appointment of an insolvency representative. Different approaches may be taken, including appointment by the court; by an independent appointing authority; on the basis of a recommendation by creditors or the creditor committee; by the debtor; or by operation of insolvency law, where the insolvency representative is a government or administrative agency or official.	Yes - our insolvency laws set out the mechanism for selection and appointment of an insolvency representative for the various insolvency regimes available in both corporate and personal insolvency.
Remuneration (paras. 53-59)		
119	The insolvency law should establish a mechanism for fixing the remuneration of the insolvency representative and establish priority for payment of that remuneration.	Yes. For corporate insolvency see Part 3, Division 60 IPSC. For personal insolvency see Part 3, Division 60 IPSB.
Duties and functions of the insolvency representative (para. 49)		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
120	The insolvency law should specify that the insolvency representative has an obligation to protect and preserve the assets of the estate. The insolvency law should specify the insolvency representative's duties and functions with respect to the administration of the proceedings and preservation and protection of the estate, including continued operation of the debtor's business.	Yes - such matters are set out across numerous provisions in for the various insolvency regimes available in both corporate and personal insolvency.
Right to be heard (para. 116)		
	See recommendation 137.	See comments for recommendation 137.
Confidentiality (paras. 28, 52 and 115)		
	See recommendation 111.	See comments for recommendation 111.
Liability (paras. 60-65)		
121	The insolvency law should specify the consequences of the insolvency representative's failure to perform, or to properly perform, its duties and functions under the law and any related standard of liability imposed.	There may be various consequences for an insolvency representative's failure to perform, or to properly perform, its duties and functions under the law. In corporate insolvency, these include removal by the court upon the application of an interested party (i.e. under s 45-1 or Part 3, Division 90, Subdivision B IPSC), the appointment of a special liquidator, disciplinary action by ASIC (see Part 2, Division 40 IPSC) or orders that the insolvency representative make good loss cause by the breach (e.g. s 481(2) CA). See also ASIC Regulatory Guide 258 Registered liquidators: Registration, disciplinary actions and insurance requirements. In personal insolvency, these include disciplinary action (see Part 2, Division 40 IPSB) or removal and sanction by the court (see Part 3, Division 90 IPSB).

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Removal and replacement (paras. 73 and 74)		
122	The insolvency law should establish the grounds and procedure for removal of the insolvency representative. The grounds may include: (a) Incompetence, failure to perform or failure to exercise the proper degree of care in the performance of its powers and functions; (b) Inability to perform; (c) Lack of a particular or specialized qualification required by a specific case; (d) Engaging in illegal acts or conduct; (e) Conflict of interest or a lack of independence that would justify removal; or (f) Where the function of the insolvency representative changes.[50]	Yes For corporate insolvency, see Part 3, Division 90, Subdivision B IPSC. For personal insolvency, see Part 3, Division 90, Subdivision B IPSB. It should be noted that creditors can resolve to remove and replace insolvency representatives at meetings of creditors whether or not the insolvency representative has engaged in any specific conduct.
123	The insolvency law should establish a mechanism for removal of the insolvency representative that reflects the manner in which the insolvency representative was appointed and provides a right for the insolvency representative to be heard.	Yes - insolvency representatives have the right to be heard in any: • Meeting of creditors where a resolution to remove them is being considered; and • Court proceedings seeking their removal. Once removed: • in corporate insolvency, an external administrator who has been removed can only apply to the court to be reappointed once a new administrator has been appointed, see s 90-35 IPSC. • in personal insolvency, a trustee who has been removed can only apply to the court to be reappointed once a new trustee has been appointed, see s 90-35 IPSB.
124	In the event of the death, resignation or removal of the insolvency representative, the insolvency law should establish a mechanism for appointment of a replacement and specify whether or not court approval of the replacement is necessary.	Yes - in corporate insolvency, for example see ss 449C, 472 CA. In personal insolvency, see s 183 BA.

[50] Such as where the proceedings are converted from liquidation to reorganization.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Estates with insufficient assets to meet the costs of administration (para. 45 and chap. I, paras. 72-75)		
125	Where the insolvency law provides for an insolvency representative to be appointed to administer an estate with insufficient assets to meet the costs of administration, the insolvency law should also establish a mechanism for appointment and remuneration of that representative.	No - there is no special mechanism for insolvency representatives to be remunerated where the assets of the estate are insufficient to meet the costs of the administration. The result is that insolvency representatives must write off remuneration in excess of the available assets in the estate.
Creditors: participation in insolvency proceedings		
Purpose of legislative provisions		
The purpose of provisions on participation of creditors in insolvency proceedings is:		
(a)	To facilitate participation of creditors in insolvency proceedings;	
(b)	To provide a mechanism for the appointment of a creditor committee or other creditor representative where to do so would facilitate the participation of creditors in the insolvency proceedings;	
(c)	To ensure the right of creditors to access information on the insolvency proceedings; and	
(d)	To specify the functions and responsibilities of the creditor committee or other representative.	
Contents of legislative provisions		
Right to be heard		
	See recommendations 133 and 137.	See comments for recommendations 133 and 137
Confidentiality		
	See recommendation 111.	See comments for recommendation 111.
Participation by creditors (paras. 75-87)		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
126	The insolvency law should specify that creditors, both secured and unsecured, are entitled to participate in insolvency proceedings and identify what that participation may involve in terms of the functions that may be performed.	Yes - the provisions relating to each type of insolvency administration provide that secured and unsecured creditors are entitled to participate and also who unsecured and secured creditors are treated and may participate.
Voting by creditors (paras. 96-98)		
127	The insolvency law should specify the matters on which a vote of creditors is required and establish the relevant eligibility and voting requirements. In particular, the insolvency law should require creditors to vote on approval or rejection of a reorganization plan.	Yes. In corporate insolvency, see e.g., s 436, Division 5 of Part 5.3A CA, Division 75 of Part 3 IPSC, Division 75 of Part 3 IPRC. In personal insolvency, see e.g. s 74, Division 3 of Part X BA, Division 75 of Part 3 IPSB, Division 75 of Part 3 IPRB.
Convening meetings of creditors (paras. 91-94)		
128	The insolvency law may require a first meeting of creditors to be convened within a specified period of time after commencement to discuss matters specified in the insolvency law. The insolvency law may also permit the court, the insolvency representative or creditors holding a specific percentage of the total value of unsecured claims to request the convening of any other meeting of creditors and specify the circumstances in which such a meeting may be convened. The insolvency law should specify the party responsible for giving notice of such a meeting to creditors.	Yes. In corporate insolvency, see e.g. s 439A, CA, Division 75 of Part 3 IPSC, Division 75 of Part 3 IPRC In personal insolvency, see e.g. s 74, Division 3 of Part X BA, Division 75 of Part 3 IPSB, Division 75 of Part 3 IPRB.
Creditor representation (paras. 88-90)		
129	The insolvency law should facilitate the active participation of creditors in insolvency proceedings such as through a creditor committee, a special representative or other mechanism for representation.[51] The insolvency law should specify whether a committee or other representation is required in all insolvency proceedings. Where the interests and	Yes - this is reflected in Australian corporate and personal insolvency law via committees of inspection. In corporate insolvency, see e.g. s 436E, Division 80 of IPSC, Division

[51] See above, paras. 2-21 and recommendations 112 and 113, on the continuing role of the debtor in reorganization. Where the debtor remains in possession of the business, a creditor committee or other creditor representative will have an important role to play in overseeing and, where necessary, reporting on the activities of the debtor.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	categories of creditors involved in insolvency proceedings are diverse and participation will not be facilitated by the appointment of a single committee or representative, the insolvency law may provide for the appointment of different creditor committees or representatives.	80 of IPRC. In personal insolvency, see Division 80 of IPSB and Division 80 of IPRB.
130	Where the insolvency law permits a creditor committee or representative to be appointed, the relationship between the creditors and the creditor committee or representative should be clearly specified.[52]	Yes. In corporate insolvency, see e.g. s 436E, Division 80 of IPSC, Division 80 of IPRC. In personal insolvency, see Division 80 of IPSB and Division 80 of IPRB.
	The insolvency law should specify how the costs of the creditor committee would be paid.	There is no general provision for the costs of the creditor committee being paid, however, a member of a committee of inspection may, with the permission of the relevant insolvency representative, obtain such advice or assistance as the committee considers desirable in relation to the conduct of the administration. See section 80-50 IPSC and IPSB.
Creditors that may be appointed to a creditor committee (paras. 101-106)		
131	The insolvency law should specify the creditors that are eligible to be appointed to a committee. Creditors who may not be appointed to a creditor committee would include related persons and others who for any reason might not be impartial. The insolvency law should specify whether or not a creditor's claim must be admitted before the creditor is entitled to be appointed to a committee.	Yes. In corporate insolvency, see e.g. s 436E, Division 80 of IPSC, Division 80 of IPRC. In personal insolvency, see Division 80 of IPSB and Division 80 of IPRB.
Mechanism for appointment to a creditor committee (paras. 107-109)		
132	The insolvency law should establish a mechanism for appointment of a creditor committee.	Yes.

[52] In particular, the insolvency law should specify the distr bution of functions and powers between the creditors and the creditor committee and the mechanism for resolution of disputes between the creditors and the creditor committee.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	Different approaches may include selection of the creditor committee by creditors or appointment by the court or other administrative body.	In corporate insolvency, see e.g. s 436E, Division 80 of IPSC, Division 80 of IPRC. In personal insolvency, see Division 80 of IPSB and Division 80 of IPRB.
Rights and functions of a creditor committee (paras. 110-112)		
133	The insolvency law should specify the rights and functions of the creditor committee in insolvency proceedings, which may include: (a) Providing advice and assistance to the insolvency representative or the debtor-in-possession; (b) Participating in development of the reorganization plan; (c) Receiving notice of and being consulted on matters in which their class has an interest, including the sale of assets outside the ordinary course of business; (d) The right to hear the insolvency representative at any time; and (e) The right to be heard in the proceedings.	Australian insolvency law does specify the rights and functions of a committee of inspection. In corporate insolvency, see e.g. s 436E, Division 80 of IPSC, Division 80 of IPRC. In personal insolvency, see Division 80 of IPSB and Division 80 of IPRB.
Employment and remuneration of professionals by a creditor committee (para. 112)		
134	The insolvency law should permit a creditor committee, subject to approval by the court, to select, employ and remunerate professionals that may be needed to assist the creditor committee to perform its functions. The insolvency law should specify how the costs and remuneration of those professionals would be paid.	A member of a committee of inspection may, with the permission of the relevant insolvency representative, obtain such advice or assistance as the committee considers desirable in relation to the conduct of the administration. See section 80-50 IPSC and IPSB.
Liability of a creditor committee (para. 113)		
135	The insolvency law should specify that members of a creditor committee are exempt from liability for their actions in their capacity as members of the committee unless they are found to have acted fraudulently or to be guilty of wilful misconduct.	No - Australian corporate and personal insolvency law does not deal with the liability of a member of a committee of inspection, beyond providing a member cannot derive profit or advantage from the administration, see s 80-55 IPSC and s 80-55 IPSB.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Removal and replacement of members of a creditor committee (para. 114)		
136	The insolvency law should specify the grounds for removal of members of a creditor committee and provide for their replacement.[53]	Yes. For corporate insolvency see s 80-10 IPSC For personal insolvency see s 80-10 IPSB.
Party in interest's right to be heard and to appeal		
Purpose of legislative provisions		
The purpose of legislative provisions on review and appeal is: (a) To ensure that parties in interest have a right to be heard and seek relief from the court when their rights, interests in assets or duties under the insolvency law are affected; and (b) To establish procedures for providing relief and for appellate review.		
Contents of legislative provisions		
Right to be heard and to request review (paras. 116-119)		
137	The insolvency law should specify that a party in interest has a right to be heard on any issue in the insolvency proceedings that affects its rights, obligations or interests. For example, a party in interest should be entitled: (a) To object to any act that requires court approval; (b) To request review by the court of any act for which court approval was not required or not requested; and (c) To request any relief available to it in insolvency proceedings.	There are piecemeal provisions within the CA and BA that provide for interested parties to engage in various parts of the insolvency proceedings, but no provisions that provides a party the right to be heard on any issue in the proceedings that affects its rights, obligations or interests. There are provisions in the state uniform Corporations Rules (e.g. rule 2.13 *Corporations Proceedings Rules (Qld)*) that facilitate the court to grant leave, to be heard in a proceeding without becoming a party, to any person who is, or who claims to be a creditor, contributory or officer of a corporation; or an officer of a creditor, or contributory, of a

[53] Exercise of the power to remove will depend on the method of appointment of the committee.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		corporation; or any other interested person.
Right of appeal14 (para. 120)		
138	The insolvency law should specify that a party in interest may appeal from any order of the court in the insolvency proceedings that affects its rights, obligations or interests.	See above regarding recommendation 137.
IV - Reorganisation		
The reorganisation plan		
Purpose of legislative provisions		
The purpose of provisions relating to the reorganization plan is:		
(a)	To facilitate the rescue of businesses subject to the insolvency law, thereby preserving employment and, in appropriate cases, protecting investment;	
(b)	To identify those businesses which are capable of reorganization;	
(c)	To maximize the value of the estate;	
(d)	To facilitate the negotiation and approval of a reorganization plan and establish the effects of approval, including that the plan should bind the debtor, creditors and other parties in interest;	
(e)	To address the consequences of a failure to propose an acceptable reorganization plan or to secure approval of the plan, including conversion of the proceedings to liquidation in certain circumstances; and	
(f)	To provide for the implementation of the reorganization plan and the consequences of failure of implementation.	
Contents of legislative provisions		
Proposal of a reorganization plan (paras. 6-16)		
139	The insolvency law should specify that a plan may be proposed on or after the making of an application to commence insolvency proceedings or within a specified period of time	Yes For corporate insolvency, see, for example, Part 5.3A, Part 5.3B CA.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	after commencement of the insolvency proceedings: (a) The time period should be fixed by the insolvency law; (b) The court should be authorized to extend the time period in appropriate circumstances.	For personal insolvency, see, for example, Part IX BA.
140	The insolvency law should specify that a plan may be proposed on or after the making of an application to commence insolvency proceedings or within a specified period of time after commencement of the insolvency proceedings: where liquidation proceedings are converted to reorganization proceedings, the insolvency law should also address the impact of conversion on time limits for proposal of a plan.	Yes - see response to recommendation 139 above.
Preparation of a disclosure statement (para. 23)		
141	The insolvency law should require a plan to be accompanied by a disclosure statement that will enable those entitled to vote on approval of the plan to make an informed decision about the plan. The party that prepares the plan should also prepare the disclosure statement.	Yes - see response to recommendation 139 above.
Submission of the plan and disclosure statement (para. 23)		
142	The insolvency law should provide a mechanism for submission of the plan and disclosure statement to creditors and equity holders.	Yes - see response to recommendation 139 above.
Contents of a disclosure statement (paras. 24 and 25)		
143	The insolvency law should specify that the disclosure statement include:[54] (a) A summary of the plan; (b) Information relating to the financial situation of the debtor, including assets, liabilities	Yes. For corporate insolvency, see: • for voluntary administration, s 439A CA, section 75-225 IPRC;

[54] Where the insolvency representative does not prepare, or is not involved in the preparation of, the plan and the statement, the insolvency representative should be required to comment on both instruments. Information included in the disclosure statement should be subject to the obligations of confidentiality, discussed in chapter III, recommendation 111 and paras. 28, 52 and 115.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	and cash flow; (c) Non-financial information that might have an impact on the future performance of the debtor; (d) A comparison of the treatment afforded to creditors by the plan and what they would otherwise receive in liquidation; (e) The basis upon which the business would be able to keep trading and could be successfully reorganized; (f) Information showing that, having regard to the effect of the plan, adequate provision has been made for satisfaction of all obligations included in the plan; and (g) Information on the voting mechanisms applicable to approval of the plan.	• for SBR, ss 455A and 455B CA, reg 5.3B.14 CR. For personal insolvency see s 185C BA.
Content of a plan (paras. 18-22)		
144	The insolvency law should specify the minimum contents of a plan. The plan should: (a) Identify each class of creditors and the treatment provided for each class by the plan (e.g. how much they will receive and the timing of payment, if any); (b) Detail the treatment of equity holders; (c) Detail the terms and conditions of the plan; (d) Identify the debtor's role in implementation of the plan; (e) Identify those responsible for future management of the debtor and supervision of the implementation of the plan and indicate their affiliation with the debtor and their remuneration; and (f) Indicate how the plan will be implemented.	Yes. For corporate insolvency see: • for voluntary administration, reg 5.3A.06 and schedule 8A CR; • for SBR, reg 5.3B.15 CR.
Voting mechanisms (paras. 26-51)		
145	The insolvency law should establish a mechanism for voting on approval of the plan. The mechanism should address the creditors and equity holders who are entitled to vote on the plan; the manner in which the vote will be conducted, either at a meeting convened for that	Yes - this is reflected in Australian corporate and personal insolvency law.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	purpose or by mail or other means, including electronic means and the use of proxies; and whether or not creditors and equity holders should vote in classes according to their respective rights.	In corporate insolvency, see Division 75 of Part 3 IPSC, Division 75 of Part 3 IPRC In personal insolvency, see s 204 BA, Division 75 of Part 3 IPSB, Division 75 of Part 3 IPRB.
146	The insolvency law should specify that a creditor or equity holder whose rights are modified or affected by the plan should not be bound to the terms of the plan unless that creditor or equity holder has been the given the opportunity to vote on approval of the plan.	This is generally not reflected in Australian insolvency law, other than for schemes of arrangement. For example, in voluntary administration, members are not entitled to vote and all unsecured creditors and members are bound by a DOCA even if they voted against. In relation to schemes of arrangement creditor or equity holder whose rights are modified or affected by the scheme are entitled to vote.
147	The insolvency law should specify that where the plan provides that the rights of a creditor or equity holder or class of creditors or equity holders are not modified or affected by a plan, that creditor or equity holder or class of creditors or equity holders is not entitled to vote on approval of the plan.	This is generally not reflected in Australian insolvency law, other than for schemes of arrangement. For example, in voluntary administration, members are not entitled to vote and all creditors are entitled to vote, whether or not their rights are affected. In relation to schemes of arrangement, if a class of creditors is or member is not affected by the scheme, they would not be entitled to vote on the scheme.
148	The insolvency law should specify that creditors entitled to vote on approval of the plan should be separately classified according to their respective rights and that each class should vote separately.	This is only the case for schemes of arrangement, where voting is in classes.
149	The insolvency law should specify that all creditors and equity holders in a class should be offered the same treatment.	This is not reflected in Australian insolvency law.
Approval by classes (paras. 49-51, 54 and 55)		
150	Where voting on approval of the plan is conducted by reference to classes, the insolvency law should specify how the vote achieved in each class would be treated for the purposes	This is only the case for schemes of arrangement, where voting is in classes. The approach taken in Australia is that each class of creditor

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	of approval of the plan. Different approaches may be taken, including requiring approval by all classes or approval by a specified majority of the classes, but at least one class of creditors whose rights are modified or affected by the plan must approve the plan.	must vote in favour of a scheme and there is no ability for there to be a 'cram down' as there is, for example, in the US, UK or Singapore.
151	Where the insolvency law does not require a plan to be approved by all classes, the insolvency law should address the treatment of those classes which do not vote to approve a plan that is otherwise approved by the requisite classes. That treatment should be consistent with the grounds set forth in recommendation 152.	This is not applicable - see comments for recommendation 150.
Confirmation of an approved plan (paras. 56 and 60-63)		
152	Where the insolvency law requires court confirmation of an approved plan, the insolvency law should require the court to confirm the plan if the following conditions are satisfied: (a) The requisite approvals have been obtained and the approval process was properly conducted; (b) Creditors will receive at least as much under the plan as they would have received in liquidation, unless they have specifically agreed to receive lesser treatment; (c) The plan does not contain provisions contrary to law; (d) Administrative claims and expenses will be paid in full, except to the extent that the holder of the claim or expense agrees to different treatment; and (e) Except to the extent that affected classes of creditors have agreed otherwise, if a class of creditors has voted against the plan, that class shall receive under the plan full recognition of its ranking under the insolvency law and the distribution to that class under the plan should conform to that ranking.	Plans are not required to be approved by a court, other than for schemes of arrangement. The matters that a court will take into account in approving a scheme of arrangement include some, but not all of these matters (i.e. (a) and (c)).
Challenges to approval (where there is no requirement for confirmation) (paras. 57-59)		
153	Where a plan becomes binding on approval by creditors, without requiring confirmation by the court, the insolvency law should permit parties in interest, including the debtor, to challenge the approval of the plan. The insolvency law should specify criteria against which a challenge can be assessed, which should include:	Yes. In corporate insolvency, see: • Division 11 of Part 5.3A CA for the circumstances in which a

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(a) Whether the grounds set forth in recommendation 152 are satisfied; and (b) Fraud, in which case the requirements of recommendation 154 should apply.	DOCA can be challenged; • regs 5.3B.62, 5.3B 63 CR for the circumstance in which a restructuring plan can be challenged. In personal insolvency, see s 222 BA for the circumstances in which a personal insolvency agreement (**PIA**) may be challenged.
Challenges to a confirmed plan (para. 65)		
154	The insolvency law should permit a confirmed plan to be challenged on the basis of fraud. The insolvency law should specify: (a) A time limit for bringing such a challenge calculated by reference to the time the fraud is discovered; (b) The party that may bring such a challenge; and (c) That the challenge should be heard by the court.	There are no specific provisions dealing with challenging plans on the basis of fraud, but the circumstances in which a plan could be challenged referred to in relation to recommendation 153 would include fraud.
Amendment of a plan (paras. 52 and 66)		
155	The insolvency law should permit amendment of a plan and specify the parties that may propose amendments and the time at which the plan may be amended, including between submission and approval, approval and confirmation, after confirmation and during implementation, where the proceedings remain open.	In corporate insolvency, s 445A CA allows creditors to vary a DOCA. There is no similar ability for creditors to vary a restructuring plan under SBR. In personal insolvency, with the consent of the trustee of a PIA, creditors may vary a PIA - s 221A BA.
Approval of amendments (paras. 67 and 68)		
156	The insolvency law should establish the mechanism for approval of amendments to a plan that has been approved by creditors. That mechanism should require notice to be given to the creditors and other parties affected by the proposed modification; specify the party required to give notice; require the approval of creditors and other parties affected by the modification; and require the rules for confirmation (where confirmation is required) to be	Yes - see response to recommendation 155 above.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	satisfied. The insolvency law should also specify the consequences of failure to secure approval of proposed amendments.	
Supervision of implementation (para. 69)		
157	The law may establish a mechanism for supervising implementation of the plan, which may include supervision by the court, by a court-appointed supervisor, by the insolvency representative or by a creditor-appointed supervisor.[55]	Yes - implementation of DOCAs and PIAs are supervised by the insolvency representative, with creditors having rights to seek court orders if they are unhappy.
Conversion to liquidation (paras. 72-75)		
158	The insolvency law should provide that the court may convert reorganization proceedings to liquidation where: (a) A plan is not proposed within any time limit specified by the law and the court does not grant an extension of time; (b) A proposed plan is not approved; (c) An approved plan is not confirmed (where the insolvency law requires confirmation); (d) An approved or a confirmed plan is successfully challenged; or (e) There is substantial breach by the debtor of the terms of the plan or an inability to implement the plan.[56]	Yes In corporate insolvency, there are various ways that a DOCA can be terminated and a company enter liquidation., see Division 12 of Part 5.3A CA. In personal insolvency, a PIA can be set aside or terminated - see s 222 and 222C BA - and a debtor may then be bankrupted on the application of the PIA trustee or a creditor.
159	The insolvency law may specify that where there is a substantial breach by the debtor of the terms of the plan or an inability to implement the plan, the court may close the judicial proceedings and parties in interest may exercise their rights at law.	Yes In corporate insolvency, if a company breaches terms of a DOCA, the Court may terminate the DOCA and wind up the company, see s 445E CA. In personal insolvency, a PIA can be set aside or terminated by the court in such circumstances - see s 222 and 222C BA.

[55] Where the proceedings involve a debtor in possession, or where the proceedings conclude on approval of the plan, it may not be necessary to appoint a supervisor.
[56] This course of action is only available where the proceedings remain open during implementation: see chapter VI, paras. 18 and 19.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Expedited reorganization proceedings[57]		
Purpose of legislative provisions		
	The purpose of provisions relating to insolvency procedures that combine voluntary restructuring negotiations and acceptance of a plan with an expedited procedure conducted under the insolvency law for court confirmation of that plan is: (a) To recognize that voluntary restructuring negotiations, which typically involve restructuring of the debt due to lenders and other institutional creditors and major non-institutional creditors where their participation is crucial to the restructuring, but not involving all categories of creditor, is a cost effective, efficient tool for the rescue of financially troubled businesses; (b) To encourage and facilitate the use of informal negotiation; (c) To develop a procedure under the insolvency law that will: (i) Preserve the benefits of voluntary restructuring negotiations where a majority of each affected class of creditors agree to a plan; (ii) Minimize time delays and expense and ensure that the plan negotiated and agreed in voluntary restructuring negotiations is not lost; (iii) Bind those minority members of each affected class of creditors and equity holders who do not accept the negotiated plan; (iv) Be based upon the same substantive requirements, but shortened time periods, as reorganization proceedings under the insolvency law, including essentially the same safeguards; and To suspend, with appropriate safeguards, requirements in other laws that may prevent or inhibit the use of processes that delay the invocation of the insolvency law.[58]	Recommendations 160 to 168 are not specifically reflected in Australian insolvency laws. These recommendations appear to reflect the US 'pre-pack' sale procedure known as 'section 363 sales', where a sale of a distressed business is agreed in advance of a Chapter 11 US Bankruptcy filing and the sale obtains court approval shortly after the filing. However, sales of distressed businesses in Australia can be achieved quickly under voluntary administration by the terms of the sale being agreed in advance of the appointment of administrators and the administrators reviewing, approving and effecting the terms of sale soon after their appointment.

[57] Because these proceedings are based on the agreement achieved in voluntary restructuring negotiations, this section should be read in conjunction with part one, chapter II, paras. 2-18.
[58] For example, requirements for unanimous consent for adjustment of indebtedness outside of insolvency proceedings, liability for directors where the debtor continues to trade during the period when the out-of-court negotiations are being conducted, that do not recognize obligations for credit extended during such a period and that restrict conversion of debt to equity.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Commencement of expedited reorganization proceedings (paras. 84 and 85 and chapter I, paras. 12-18 and recommendations 10-12 on jurisdiction)		
160	The insolvency law should specify that expedited proceedings can be commenced on the application of any debtor that: (a) Is or is likely to be generally unable to pay its debts as they mature; (b) Has negotiated a reorganization plan and had it accepted by each affected class of creditors; and (c) Satisfies the jurisdictional requirements for commencement of full reorganization proceedings under the insolvency law.	Refer to the comments above about the purpose of these legislative provisions.
161	The insolvency law may additionally specify that an expedited proceeding can be commenced on the application of any debtor if: (a) The debtor's liabilities exceed or are likely to exceed its assets; and (b) The requirements of recommendation 160, subparagraphs (b) and (c), are satisfied.	Refer to the comments above about the purpose of these legislative provisions.
Application requirements (para. 89)		
162	The insolvency law should specify that the following additional materials should accompany an application for commencement of expedited reorganization proceedings: (a) The reorganization plan and disclosure statement; (b) A description of the voluntary restructuring negotiations that preceded the making of the application for commencement, including the information provided to affected creditors to enable them to make an informed decision about the plan; (c) Certification that unaffected creditors are being paid in the ordinary course of business and that the plan does not modify or affect the rights or claims of unaffected creditors without their agreement; (d) A report of the votes of affected classes of creditors demonstrating that those classes	Refer to the comments above about the purpose of these legislative provisions.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	have accepted the plan by the majorities specified in the insolvency law; (e) A financial analysis or other evidence that demonstrates that the plan satisfies all applicable requirements for reorganization; and (f) A list of the members of any creditor committee formed during the course of the voluntary restructuring negotiations.	
Commencement		
163	The insolvency law should specify that the application for commencement will automatically commence the proceedings or that the court will be required to promptly determine whether the debtor satisfies the requirements of recommendations 160 or 161 and if so, commence proceedings.	Refer to the comments above about the purpose of these legislative provisions.
Effects of commencement (para. 90)		
164	The insolvency law should specify that: (a) Provisions of the insolvency law that apply to full reorganization proceedings will also apply to expedited proceedings unless specified as modified or not applicable;[59] (b) Unless otherwise determined by the court, the effects of commencement should be limited to the debtor, individual creditors and classes of creditors and equity holders whose rights are modified or affected by the plan; (c) Any creditor committee formed during the course of the voluntary restructuring negotiations should be treated as a creditor committee appointed under the insolvency law; and (d) A hearing on the confirmation of the plan by the court should be held as expeditiously	Refer to the comments above about the purpose of these legislative provisions.

[59] Provisions of the insolvency law that generally would not be applicable or that could be modified would include full claim filing; notice and time periods for plan approval; the post-commencement mechanics of providing the plan and disclosure statement to creditors and other interested parties and for solicitation of votes and voting on the plan; appointment of an insolvency representative (who generally would not be appointed unless required by the plan); and provisions on amendment of the plan after confirmation. An exception to the provisions of the insolvency law
applicable to full reorganization proceedings would be that creditors not affected by the plan would be paid in the ordinary course of business during the implementation of the plan.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	as possible.	
Notice of commencement (para. 87 and chapter I, paras. 64-71 and recommendations 22-25)		
165	The insolvency law should specify that notice of the commencement of expedited proceedings is to be given to affected creditors and affected equity holders. The notice should specify: (a) The amount of each affected creditor's claim according to the debtor; (b) The time period for submitting a claim in a different amount if the affected creditor disagrees with the debtor's statement of the claim and the place where the claim can be submitted; (c) The time and procedure for challenging claims submitted by other parties; (d) The time and place for the hearing on confirmation of the plan and for the submission of any objection to confirmation; and (e) The impact of the plan on equity holders.	Refer to the comments above about the purpose of these legislative provisions.
Confirmation of the plan (paras. 60-63 and 88 and recommendation 152)		
166	The insolvency law should specify that the court will confirm the plan if: (a) The plan satisfies the substantive requirements for confirmation of a plan in full reorganization proceedings, in so far as those requirements apply to affected creditors and affected equity holders; (b) The notice given and the information provided to affected creditors and affected equity holders during the voluntary restructuring negotiations was sufficient to enable them to make an informed decision about the plan and any pre-commencement solicitation of acceptances to the plan complied with applicable law; (c) Unaffected creditors are being paid in the ordinary course of business and the plan does not modify or affect the rights or claims of unaffected creditors without their agreement; and (d) The financial analysis submitted with the application demonstrates that the plan	Refer to the comments above about the purpose of these legislative provisions.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	satisfies all applicable requirements for reorganization.	
Effect of a confirmed plan (para. 64)		
167	The insolvency law should specify that the effect of a plan confirmed by the court should be limited to the debtor and those creditors and equity holders affected by the plan.	Refer to the comments above about the purpose of these legislative provisions.
Failure of implementation of a confirmed plan (paras. 70, 71 and 91)		
168	The insolvency law may specify that where there is a substantial breach by the debtor of the terms of the plan or an inability to implement the plan, the court may close the judicial proceedings and parties in interest may exercise their rights at law.	Refer to the comments above about the purpose of these legislative provisions.
V - Management of proceedings		
Treatment of creditor claims		
Purpose of legislative provisions		
The purpose of provisions on creditor claims is:		
(a)	To define the claims that can or are required to be submitted and the treatment to be accorded to those claims;	
(b)	To enable persons who have a claim against a debtor to submit claims against the estate;	
(c)	To establish a mechanism for verification and admission of claims;	
(d)	To provide for review of disputed claims; and	
(e)	To ensure that similarly ranked creditors are treated equally.	
Contents of legislative provisions		
Requirement to submit (paras. 1 and 13)		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
169	The insolvency law should require creditors who wish to participate in the proceedings to submit a claim, which should specify the basis and amount of the claim. The law should minimize the formalities associated with submission of claims. The insolvency law should permit claims to be submitted using different means, including mail and electronic means.	Yes In corporate insolvency, see for example, ss 553 and 553D CA, regs 5.6.39 to 5.6.56 CR. In personal insolvency, see Division 1 of Part VI BA.
Undisputed claims (paras. 17-19, 35 and 36)		
170	The insolvency law may permit claims that are undisputed to be admitted by reference to the list of creditors and claims prepared by the debtor in cooperation with the insolvency representative[60] or the court or the insolvency representative may require a creditor to provide evidence of its claim. The insolvency law should not require that in all cases a creditor must appear in person to prove its claim.	Yes In corporate insolvency, see for example, ss 553 and 553D CA, regs 5.6.39 to 5.6.56 CR. In personal insolvency, see Division 1 of Part VI BA.
Claims that may be submitted (para. 1)		
171	The insolvency law should specify that claims that may be submitted include all rights to payment that arise from acts or omissions of the debtor[61] prior to commencement of the insolvency proceedings, whether mature or not, whether liquidated or unliquidated, whether fixed or contingent.	Yes In corporate insolvency see s 553(1) CA. In personal insolvency see s 82(1) BA.
	The law should identify claims that will not be affected by the insolvency proceedings.[62]	Yes In corporate insolvency: • penalties and fines (s 553B); and • claims for superannuation contributions if there is a superannuation guarantee charge relating to the amount claimed (s 553AB),

[60] See recommendation 110.
[61] This would include claims by third parties or a guarantor for payment arising from acts or omission of the debtor.
[62] Some insolvency laws provide, for example, that claims such as fines and penalties and taxes will not be affected by the insolvency proceedings. Where a claim is to be unaffected by the insolvency proceedings it would continue to exist and would not be included in any discharge.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		are not provable debts. In personal insolvency: • demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust are not provable in bankruptcy (s 82(2) BA); • penalties or fines imposed by a court in respect of an offence against a law (s 82(3) BA); and • student and training debts, are not provable in bankruptcy.
Secured claims (paras. 2-5)		
172	The insolvency law should specify whether secured creditors are required to submit claims.	Yes. In corporate insolvency, secured creditors: • are allowed to submit claims and vote in voluntary administration and SBR without forfeiting their security; • are entitled to submit claims in liquidation, but will be taken to have surrendered their security to the extent the claim is secured - see s 554E CA. In personal insolvency, a secured creditor may submit a claim, but may have to surrender their security in favour of the trustee - see ss 90 and 207 BA.
Equal treatment of similarly ranked creditors (paras. 10 and 21)		
173	The insolvency law should specify that all similarly ranked creditors, regardless of whether they are domestic or foreign creditors, are to be treated equally with respect to the submission and processing of their claims.	Yes In corporate insolvency see Subdivision D, Division 6 of Part 5.6 CA. In personal insolvency see s 108 BA.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Timing of submission of claims (paras. 13-16)		
174	The insolvency law should specify the period of time after the effective date of commencement of proceedings within which claims may be submitted. That time period should be adequate to allow creditors to submit their claims.[63]	Yes In corporate insolvency see reg 5.6.65 CR. In personal insolvency see s 140 BA.
Consequences of failure to submit a claim (paras. 24-27)		
175	Where the insolvency law requires a creditor to submit a claim, the insolvency law should specify the consequences of failure to submit a claim within any period of time specified for submission.	Yes In corporate insolvency see reg 5.6.65 CR. In personal insolvency see s 140 BA.
Foreign currency claims (para. 22)		
176	Where claims are denoted in foreign currency, the insolvency law should specify the circumstances in which those claims must be converted and the reasons for conversion. Where conversion is required, the insolvency law should specify that the claim will be converted into local currency by reference to a specified date, such as the effective date of commencement of insolvency proceedings.	Yes In corporate insolvency see s 554C CA. In personal insolvency see reg 24 BR.
Admission or denial of claims (paras. 29-40)		
177	The insolvency law should permit the insolvency representative to admit or deny any claim, in full or in part.[64] Where the claim is to be denied or subjected to treatment under recommendation 184 as a claim by a related person, whether in full or in part, notice of the reasons for the decision should be given to the creditor.	Yes In corporate insolvency, see regs 5.6.53 and 5.6.54 CR. In personal insolvency, see s 102(2) BA.

[63] Where proceedings involve foreign creditors, longer time periods may be required to facilitate submission of claims. Also, it is desirable that claims be submitted at an early stage of the proceedings so that the insolvency representative will be aware of the claims involved, of the encumbered assets affected and of the value of those assets and claims.
[64] In some jurisdictions, the court may be required to ratify the decision of the insolvency representative.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Unliquidated claims (para. 38)		
178	The insolvency law should permit unliquidated claims to be admitted provisionally, pending determination of the amount of the claim by the insolvency representative.	This is reflected to some extent. In corporate insolvency, claims can be admitted provisionally for voting purposes only at creditor meetings - e.g., see s 75-85 IPSC. Such admission or rejection does not impact whether the claim will be admitted or rejected for dividend purposes later on.
Valuation of secured claims (para. 38)		
179	The insolvency law should provide that the insolvency representative may determine the portion of a secured creditor's claim that is secured and the portion that is unsecured by valuing the encumbered asset.	Yes In corporate insolvency see s 554E CA. In personal insolvency, see s 90 BA.
Disputing a claim (para. 41)		
180	The insolvency law should permit a party in interest to dispute any submitted claim, either before or after admission, and to request review of that claim by the court.	This is not reflected in Australian insolvency law.
Review of claims denied or subjected to special treatment (paras. 32, 33 and 48)		
181	The insolvency law should permit creditors whose claims have been denied or subjected to treatment under recommendation 184 as a claim by a related person, whether in full or in part, to request the court to review their claim. The insolvency law may specify a period of time after notification of the decision within which that request may be made.	Yes In corporate insolvency, see reg 5.6.64 CR. In personal insolvency, see s 104 BA.
Provisional admission of disputed claims (para. 41)		
182	The insolvency law should specify that, claims disputed in the insolvency proceedings could be admitted provisionally by the insolvency representative pending resolution of the dispute by the court.	No, this is not reflected in Australian insolvency law, other than for claims being considered for the purposes of voting. In corporate insolvency, claims can be admitted for voting purposes and marked

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		objected to - see s 75-100(3) IPRC. There is no equivalent in personal insolvency.
Effects of admission (para. 43)		
183	The insolvency law should specify the effects of admission, including provisional admission, of a claim. These effects may include: (a) Entitling the creditor to participate in the proceedings and to be heard; (b) Permitting the creditor to vote at a meeting of creditors, including on approval of a plan; (c) Determining the priority to which the creditor's claim is entitled; (d) Determining the amount for which the creditor is entitled to vote; (e) Except in the case of provisional admission of a claim, permitting the creditor to participate in a distribution.[65]	Yes In corporate insolvency see e.g., reg 5.6.63 and ss 75-85 to 75-100 IPRC. In personal insolvency see s 108 and ss 75-85 to 75-100 IPRB.
Claims by related persons (para. 48)		
184	The insolvency law should specify that claims by related persons should be subject to scrutiny and, where justified:[66] (a) The voting rights of the related person may be restricted; (b) The amount of the claim of the related person may be reduced; or (c) The claim may be subordinated.[67]	This is reflected to some extent. In corporate insolvency related parties are not allowed to vote for a restructuring plan under an SBR - see reg 5.3.25(2)(c). Otherwise, related parties can vote in full for their debts, except where a related party has taken an assignment of a debt, in which case the related party is only allowed to vote for the amount of the consideration given for the debt - see s 75-110(7) IPRC. In personal insolvency, related parties can vote in full for their debts, except where a related party has taken an assignment of a debt, in which case the related party is only allowed to vote for the amount of

[65] However, when making a distribution, the insolvency representative may be required to take account of claims that have been provisionally admitted, or submitted but not yet admitted.
[66] Sufficient justification may involve situations where the debtor is undercapitalized or there has been self-dealing, as noted above, para. 48.
[67] On subordination, see below, paras. 55-61.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		the consideration given for the debt - see s 75-110(4) IPRB.
Priorities and distribution of proceeds		
Purpose of legislative provisions		
The purpose of provisions on priority and distribution is:		
(a)	To establish the order in which claims should be satisfied from the estate;	
(b)	To ensure that similarly ranked creditors are satisfied proportionately out of the assets of the estate; and	
(c)	To specify limited circumstances in which priority in distribution is permitted.	
Contents of legislative provisions		
Classes and treatment of creditors affected by commencement of insolvency proceedings		
185	The insolvency law should specify the classes of creditors that will be affected by the commencement of insolvency proceedings and the treatment of those classes in terms of priority and distribution.	Yes In corporate insolvency see Division 6 of Part 5.6 CA which governs such matters in liquidation. For a SBR, all debts and claims rank equally under a restructuring plan - see reg 5.3B.27(1)(a). A DOCA will set out these matters in relation to the DOCA. Generally a DOCA will incorporate the provisions in Division 6 of Part 5.6 CA, but that is not obligatory. In personal insolvency, see s 109 BA.
Establishing an order for satisfaction of claims (paras. 5 and 52)		
186	The insolvency law should establish the order in which claims are to be satisfied from the estate.	Yes In corporate insolvency see Subdivision D, Division 6 of Part 5.6 CA which deals with the priorities of payments of unsecured creditors. Secured creditors are paid in priority to unsecured creditors, subject

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		to certain exceptions (e.g. s 433 and 561 CA). In personal insolvency, see ss 108 and 109 BA which deal with the priorities of payments of unsecured creditors. Secured creditors are paid in priority to unsecured creditors.
Priority claims (paras. 53 and 67-71)		
187	The insolvency law should minimize the priorities accorded to unsecured claims. The law should set out clearly the classes of claims, if any, that will be entitled to be satisfied in priority in insolvency proceedings.	Yes - see the comments above for recommendation 186.
Secured claims (paras. 62-65)		
188	The insolvency law should specify that a secured claim should be satisfied from the encumbered asset in liquidation or pursuant to a reorganization plan, subject to claims that are superior in priority to the secured claim, if any. Claims superior in priority to secured claims should be minimized and clearly set forth in the insolvency law. To the extent that the value of the encumbered asset is insufficient to satisfy the secured creditor's claim, the secured creditor may participate as an ordinary unsecured creditor.	Yes - see the comments above for recommendation 186.
Ranking of claims other than secured claims (paras. 66-79)		
189	The insolvency law should specify that claims other than secured claims, are ranked in the following order:[68] (a) Administrative costs and expenses; (b) Claims with priority; (c) Ordinary unsecured claims; (d) Deferred claims or claims subordinated under the law.	Yes - this is generally reflected in Australian insolvency laws. See the comments above for recommendation 186.

[68] The insolvency law may provide for further ranking of claims within each of the ranks set forth in subparagraphs (a), (b) and (d). Where all creditors within a rank cannot be paid in full, the order of payment should reflect any further ranking specified in the insolvency law for claims of the same rank.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
190	The insolvency law should specify that in the event there is a surplus after all claims have been satisfied in full, the surplus is to be returned to the debtor.	In both corporate insolvency, surplus funds available after payment of all creditors would be distributed to members by way of a dividend. In personal insolvency, surplus funds available after payment of all creditors would be returned to the debtor.
Distribution in liquidation (paras. 40 and 80)		
191	The insolvency law should provide, as a general principle, that similarly ranked claims are paid pari passu. All similarly ranked claims in a particular class should be paid in full before the next rank is paid.	Yes In corporate insolvency see ss 555, 556 and 559 CA. In personal insolvency see ss 108 and 109 BA.
192	The insolvency law should specify that in making a distribution the insolvency representative is to be required to make provision for submitted claims that are not yet finally admitted.	Yes - an insolvency representative can make an interim distribution and retain sufficient funds to make a distribution to the creditor if, and when, their proof is admitted. In that case, a creditor will be entitled to be paid the distribution they failed to receive before other creditors receive any further distributions - see s 5.6.68 CR and s 144 BA.
193	The insolvency law should specify that, in liquidation proceedings, distributions are to be made promptly and that interim distributions may be made.	Yes In corporate insolvency - see regs 5.6.67 and 5.6.68 CR. In personal insolvency see - ss 140 and 144 BA.
VI - Conclusion of proceedings		
Discharge		

Purpose of legislative provisions

The purpose of provisions on discharge is:

(a) To enable a natural person debtor to be finally discharged from liabilities for pre-commencement debts, thus providing a fresh start;

(b) To establish the circumstances under which discharge will be granted and the terms of that discharge.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Discharge of a natural person debtor in liquidation (paras. 1, 2 and 4-13)		
194	Where natural persons are eligible as debtors under the insolvency law, the issue of discharge of those debtors from liability for pre-commencement debts should be addressed. The insolvency law may specify that the discharge may not apply until after the expiration of a specified period of time following commencement, during which period the debtor is expected to cooperate with the insolvency representative. Upon the expiration of such time period, the debtor may be discharged where the debtor has not acted fraudulently and has cooperated with the insolvency representative in performing its obligations under the insolvency law. The insolvency law may specify that the discharge is to be revoked where it was obtained fraudulently.	Yes - see Part VII BA.
195	Where the insolvency law provides that certain debts are excluded from a discharge, those debts should be kept to a minimum in order to facilitate the debtor's fresh start and be clearly set forth in the insolvency law.	Yes - see the comments for recommendation 171 as to which debts and claims are not provable in insolvency proceedings. In corporate insolvency, a DOCA can specify that the debtor will be discharged from such claims. Such debts and claims will not be released upon discharge from bankruptcy of a bankrupt, nor will certain other claims be released (see s 153 BA).
196	Where the insolvency law provides that conditions may be attached to a debtor's discharge, those conditions should be kept to a minimum in order to facilitate the debtor's fresh start and should be clearly set forth in the insolvency law.	This is reflected in personal insolvency - see s 153(2A) BA. It is not reflected in corporate insolvency.
Closure of proceedings		
Purpose of legislative provisions		
The purpose of provisions on conclusion of insolvency proceedings is to determine a procedure for closing the proceedings once their goal has been achieved.		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Reorganization (paras. 18 and 19)		
197	The law should specify the procedures by which reorganization proceedings should be closed.	Yes. In corporate insolvency see ss 439C, 445C, 453A CA, regs 5.3B.02 and 5.3B.31 CR. In personal insolvency see s 222D BA.
Liquidation (para. 16)		
198	The law should specify the procedures by which liquidation proceedings should be closed following final distribution or a determination that no distribution can be made.	Yes. For corporate insolvency see s 601AC CA. For personal insolvency, the insolvency proceeding ends after discharge of the bankrupt (Division 2, Part VII BA) and payment of a final dividend (s 145 BA).

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
PART 3 - TREATMENT OF ENTERPRISE GROUPS IN INSOLVENCY		Australia has not legislated any specific provisions in its insolvency laws which deal with the treatment of Enterprise Groups in insolvency. However, it is not uncommon for there to be an insolvency of an Enterprise Group and, in practice, Australian insolvency laws currently allow for that to occur. UNCITRAL issued a Model Law on Enterprise Group Insolvency with a Guide to Enactment in 2019 - UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment (2019) | United Nations Commission On International Trade Law. Consideration could be given to whether this model law should be enacted by Australia.
II - Addressing the insolvency of enterprise groups: domestic issues		
Application and commencement		
Joint application for commencement		
Purpose of legislative provisions		

The purpose of provisions on joint application[69] for commencement of insolvency proceedings with respect to two or more enterprise group members is:

(a) To facilitate coordinated consideration of an application for commencement of insolvency proceedings with respect to those enterprise group members;

(b) To enable the court to obtain information concerning the enterprise group that would facilitate the determination of whether commencement of insolvency proceedings with respect to those group members should be ordered;

(c) To promote efficiency and reduce costs; and

(d) To provide a mechanism[70] for the court to assess whether procedural coordination of those insolvency proceedings would be appropriate.

[69] A joint application for commencement does not affect the legal identity of each group member included in the application; each member remains separate and distinct.
[70] A joint application is not a prerequisite for procedural coordination, but may facilitate the court's consideration of whether an order for procedural coordination should be made

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Joint application for commencement of insolvency proceedings (paras. 8-9)		
199	The insolvency law may specify that a joint application for commencement of insolvency proceedings may be made with respect to two or more enterprise group members, each of which satisfies the applicable commencement standard.[71]	Yes - more than one debtor company in a group can be placed into insolvency at the same time. For example, this can happen: • in VA by the appointment of administrators to multiple companies at the same time; • by the members of multiple companies resolving to wind them up at the same time; or • by multiple group members filing proceedings in relation to a scheme of arrangement. Where the insolvency process is commenced by a court application filed by a creditor, generally separate court proceedings need to be commenced for each debtor, although the matters could be scheduled to be heard together.
Persons permitted to apply (para. 16)		
200	Where the insolvency law provides for joint applications in accordance with recommendation 199, the insolvency law should specify that a joint application may be made by: (a) Two or more enterprise group members, each of which satisfies the applicable commencement standard in recommendation 15; or	Yes - each debtor company that enters into a formal insolvency process must satisfy the applicable requirements.
	(b) A creditor, provided that: (i) it is a creditor of each group member to be included in the application; and	No - a joint application cannot be made. Where the insolvency process is commenced by a court application filed by a creditor, generally separate court proceedings need to be commenced for

[71] See recommendation 15, which addresses debtor applications and recommendation 16, which addresses creditor applications for commencement (UNCITRAL Legislative Guide, part two, chap. I)

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(ii) each of those group members satisfies the commencement standard in recommendation 16.	each debtor, however the matters could be scheduled to be heard together so that each company could be placed into insolvency at the same time.
Competent courts (paras. 17-20)		
201	For the purposes of recommendation 13, the words "commencement and conduct of insolvency proceedings, including matters arising in the course of those proceedings" include a joint application for commencement of insolvency proceedings with respect to two or more enterprise group members.[72]	Noted
Procedural coordination		
Purpose of legislative provisions		
The purpose of provisions on procedural coordination of insolvency proceedings with respect to two or more enterprise group members is:		
(a)	To facilitate coordination of the administration of those insolvency proceedings, while respecting the separate legal identity of each group member; and	
(b)	To promote cost-efficiency and a better return to creditors.	
Contents of legislative provisions		
Procedural coordination of two or more insolvency proceedings (paras. 22-25)		
202	The insolvency law should specify that the administration of insolvency proceedings with respect to two or more enterprise group members may be coordinated for procedural purposes.	Recommendations 202 to 210 are directed towards insolvency regimes where the insolvency proceedings are administered by the court (such as in the US) and so they are not directly applicable to Australia where the courts only have general oversight after the commencement of insolvency proceedings. Accordingly, these

[72] Recommendation 13 provides: "The insolvency law should clearly indicate (or include a reference to the relevant law that establishes) the court that has jurisdiction over the commencement and conduct of insolvency proceedings, including matters arising in the course of those proceedings." (UNCITRAL Legislative Guide, part two, chap. I) The criteria that might be relevant to determining the competent court is discussed in para. 18 above.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		recommendations are not specifically provided for in our insolvency laws, however, in practice the voluntary administration or liquidation of two or more enterprise group members can be, and is often, coordinated procedurally (such as holding concurrent meetings of creditors, issuing single reports to creditors for multiple companies, having a deed of company arrangement for multiple companies).
203	The insolvency law should specify that, at the request of a person permitted to make an application under recommendation 206 or on its own initiative, the court[73] may order procedural coordination.	See comments in relation to recommendation 202
204	Procedural coordination may involve, for example, the appointment of a single or the same insolvency representative; the establishment of a single creditor committee; cooperation between the courts, including coordination of hearings; cooperation between insolvency representatives, including information-sharing and coordination of negotiations; joint provision of notice; coordination between creditor committees; coordination of procedures for submission and verification of claims; and coordination of avoidance proceedings. The scope and extent of the procedural coordination should be specified by the court.	See comments in relation to recommendation 202
Application for procedural coordination		
	—Timing of application (paras. 27-28)	
205	The insolvency law should specify that an application for procedural coordination may be made at the same time as an application for commencement of insolvency proceedings or at any subsequent time.[74]	See comments in relation to recommendation 202
	—Persons permitted to apply (paras. 29-30)	

[73] Coordination might involve different courts competent with respect to different group members or a single court that is competent with respect to a number of different insolvency proceedings concerning members of the same group. Accordingly, an order for procedural coordination may require action by one or more than one court.
[74] The possibility of ordering procedural coordination at an advanced stage of the insolvency proceedings is discussed in para. 27 above.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
206	The insolvency law should specify that an application for procedural coordination may be made by: (a) An enterprise group member that is subject to an application for commencement of insolvency proceedings or subject to insolvency proceedings; (b) The insolvency representative of an enterprise group member; or (c) A creditor[75] of an enterprise group member that is subject to an application for commencement of insolvency proceedings or subject to insolvency proceedings.	See comments in relation to recommendation 202
Coordinating consideration of an application (para. 31)		
207	The insolvency law should specify that the court[76] may take appropriate steps to coordinate with any other competent court consideration of an application for procedural coordination of insolvency proceedings concerning two or more enterprise group members. Those steps might involve, for example, coordinated proceedings; coordinated hearings; sharing and disclosure of information.	See comments in relation to recommendation 202
Modification or termination of an order for procedural coordination (para. 37)		
208	The insolvency law should specify that an order for procedural coordination may be modified or terminated, provided that any actions or decisions already taken pursuant to the order should not be affected by the modification or termination. Where more than one court is involved in ordering procedural coordination, those courts may take appropriate steps to coordinate modification or termination of the procedural coordination.	See comments in relation to recommendation 202
Competent courts (paras. 31-32)		
209	For the purposes of recommendation 13, the words “commencement and conduct of insolvency proceedings, including matters arising in the course of those proceedings” include applications and orders for procedural coordination of insolvency proceedings with	See comments in relation to recommendation 202

[75] To be eligible to make an application for procedural coordination, a creditor does not have to be a creditor of all the group members in respect of which it is seeking procedural coordination.
[76] See the footnote to recommendation 203.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	respect to two or more enterprise group members.[77]	
Notice with respect to procedural coordination (paras. 33-36)		
210	The insolvency law should establish requirements for giving notice with respect to applications and orders for procedural coordination and modification or termination of procedural coordination, including the scope and extent of the order; the parties to whom notice should be given; the party responsible for giving notice; and the content of the notice.	See comments in relation to recommendation 202
Treatment of assets on commencement of insolvency proceedings		
Post-commencement finance		
Purpose of legislative provisions		
The purpose of provisions on post-commencement finance in the context of enterprise groups is: (a) To facilitate finance to be obtained by enterprise group members subject to insolvency proceedings for the continued operation or survival of their business or the preservation or enhancement of the value of their assets; (b) To facilitate the provision of finance by enterprise group members, including group members subject to insolvency proceedings; (c) To ensure appropriate protection for the providers and receivers of post-commencement finance and for those parties whose rights may be affected by the provision of that finance; and (d) To advance the objective of fair apportionment of the benefit and detriment associated with the provision of post-commencement finance among all group members involved.		
Contents of legislative provisions		
Post-commencement finance provided by a group member subject to insolvency proceedings to another group member subject to insolvency proceedings (paras. 62-67 and		

[77] The criteria that might be relevant to determining the competent court are discussed in para. 18 above.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
74)		
211	The insolvency law should permit an enterprise group member subject to insolvency proceedings to: (a) Advance post-commencement finance to other enterprise group members subject to insolvency proceedings; (b) Grant a security interest over its assets for post-commencement finance provided to another enterprise group member subject to insolvency proceedings; and (c) Provide a guarantee or other assurance of repayment for post-commencement finance provided to another enterprise group member subject to insolvency proceedings.	No - Australian insolvency laws do not provide for post commencement finance to be provided by one member of an enterprise group to another. However, this could be done with the agreement of the insolvency representative. If security was to be granted by another group member, existing secured creditors would need to consent.
212	The insolvency law should specify that post-commencement finance may be provided in accordance with recommendation 211, where the insolvency representative of the group member advancing finance, granting a security interest or providing a guarantee or other assurance: (a) Determines it to be necessary for the continued operation or survival of the business of that enterprise group member or for the preservation or enhancement of the value of its estate; and (b) Determines that any harm to creditors of that group member will be offset by the benefit to be derived from advancing finance, granting a security interest or providing a guarantee or other assurance.	No - this is not reflected in Australian insolvency laws, but the decision by an insolvency representative to cause a group member to provide finance to another, would likely take into account such considerations.
213	The insolvency law may require the court to authorize or creditors to consent to the advance of finance, grant of a security interest or provision of a guarantee or other assurance in accordance with recommendations 211 and 212.	No - this is not reflected in Australian insolvency laws
Post-commencement finance obtained by a group member subject to insolvency proceedings from another group member subject to insolvency proceedings (paras. 64-67)		
214	The insolvency law should specify that in accordance with recommendation 63, post-commencement finance may be obtained from an enterprise group member subject to	No - this is not reflected in Australian insolvency laws, but the decision by an insolvency representative to cause a group member to

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	insolvency proceedings by another group member subject to insolvency proceedings where the insolvency representative of the obtaining group member determines it to be necessary for the continued operation or survival of the business of that group member or for the preservation or enhancement of the value of its estate. The insolvency law may require the court to authorize or creditors to consent to the obtaining of that post-commencement finance.	provide finance to another, would likely take into account such considerations.
Priority for post-commencement finance (paras. 70-71)		
215	The insolvency law should specify the priority that applies to post-commencement finance provided by one enterprise group member subject to insolvency proceedings to another group member subject to insolvency proceedings.	No - this is not reflected in Australian insolvency laws.
Security for post-commencement finance (paras. 72-73)		
216	The insolvency law should specify that recommendations 65, 66 and 67 apply to the granting of a security interest in accordance with recommendation 211 *(b).*	No - this is not reflected in Australian insolvency laws.
Avoidance proceedings		
Purpose of legislative provisions		
The purpose of avoidance provisions among enterprise group members is to provide, in addition to the considerations set forth in recommendations 87-99, that the insolvency law may:		
(a)	Permit the court to take into account that the transaction took place in the context of an enterprise group; and	
(b)	Establish the circumstances that may be considered by the court.	
Contents of legislative provisions		
Avoidable transactions (paras. 79-80)		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
217	The insolvency law should specify that, in considering whether a transaction of the kind referred to in recommendation 87 (a), (b) or (c) that took place between enterprise group members or between an enterprise group member and other related persons should be avoided, the court may have regard to the circumstances in which the transaction took place. Those circumstances may include: the relationship between the parties to the transaction; the degree of integration between enterprise group members that are parties to the transaction; the purpose of the transaction; whether the transaction contributed to the operations of the group as a whole; and whether the transaction granted advantages to enterprise group members or other related persons that would not normally be granted between unrelated parties.	This is not specified in Australian insolvency law, but in practice, these matters would be taken into account when liquidators and courts consider whether such transactions between group members should be avoided.
Elements of avoidance and defences (para. 81)		
218	The insolvency law should specify the manner in which the elements referred to in recommendation 97 would apply to avoidance of transactions in the enterprise group context.[78]	No - this is not reflected in Australian insolvency law.
Remedies		
Purpose of legislative provisions		

The purpose of provisions on substantive consolidation is:

(a) To provide legislative authority for substantive consolidation, while respecting the basic principle of the separate legal identity of each enterprise group member;

(b) To specify the very limited circumstances in which the remedy of substantive consolidation may be available in order to ensure transparency and predictability; and

(c) To specify the effect of an order for substantive consolidation, including the treatment of security interests.

[78] That is, the elements to be proved in order to avoid a transaction, the burden of proof, specific defences to avoidance and the application of special presumptions; see generally UNCITRAL Legislative Guide (see footnote 3 above), part two, chap. II, paras. 148-203.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
The principle of separate legal identity (para. 105)		
219	The insolvency law should respect the separate legal identity of each enterprise group member. Exceptions to that general principle should be limited to the grounds set forth in recommendation 220.	Yes - this is reflected in Australian insolvency law.
Circumstances in which substantive consolidation may be available (paras. 106, 112-114)		
220	The insolvency law may specify that, at the request of a person permitted to make an application under recommendation 223, the court may order substantive consolidation with respect to two or more enterprise group members only in the following limited circumstances: (a) Where the court is satisfied that the assets or liabilities of the enterprise group members are intermingled to such an extent that the ownership of assets and responsibility for liabilities cannot be identified without disproportionate expense or delay; or (b) Where the court is satisfied that the enterprise group members are engaged in a fraudulent scheme or activity with no legitimate business purpose and that substantive consolidation is essential to rectify that scheme or activity.	Yes - this is generally reflected in the pooling provisions of Division 8 of Part 5.6 CA.
Exclusions from substantive consolidation (paras. 135-136)		
221	Where the insolvency law provides for substantive consolidation in accordance with recommendation 220, the insolvency law should permit the court to exclude specified assets and claims from an order for substantive consolidation and specify the circumstances in which those exclusions might be ordered.	Yes - this is generally reflected in the pooling provisions in Division 8 of Part 5.6 CA.
Application for substantive consolidation		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	—Timing of application (paras. 117-118)	
222	The insolvency law should specify that an application for substantive consolidation may be made at the same time as an application for commencement of insolvency proceedings with respect to enterprise group members or at any subsequent time.[79]	No, this is not reflected in Australian insolvency law. A pooling order can only be made on the application of a liquidator and so the application would be made after insolvency proceedings have already been commenced and liquidators appointed.
	—Persons permitted to apply (paras. 115-116)	
223	The insolvency law should specify the persons permitted to make an application for substantive consolidation, which may include an enterprise group member and a creditor or the insolvency representative of any such enterprise group member.	Yes- a pooling order can only be made on the application of a liquidator.
Effect of an order for substantive consolidation (129-133)		
224	The insolvency law should specify that an order for substantive consolidation has the following effects:[80] (a) The assets and liabilities of the substantively consolidated group members are treated as if they were part of a single insolvency estate; (b) Claims and debts between group members included in the order are extinguished; and (c) Claims against group members included in the order are treated as if they were claims against the single insolvency estate.	Yes - this is generally reflected in Australian insolvency law under a pooling.
Treatment of security interests in substantive consolidation (paras. 121-124)		
225	The insolvency law should specify that the rights and priorities of a creditor holding a security interest over an asset of an enterprise group member subject to an order for substantive consolidation should, as far as possible, be respected in substantive	Yes in respect of recommendation (a), but not (b) or (c). For recommendation (a), see s 571(9) and 579E(9) CA.

[79] The possibility of ordering substantive consolidation at an advanced stage of the insolvency proceedings is discussed in paras. 117-118 above.
[80] The effect on security interests is addressed in recommendation 225 and paragraphs 121-124 above.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	consolidation, unless: (a) The secured indebtedness is owed solely between enterprise group members and is extinguished by an order for substantive consolidation; (b) It is determined that the security interest was obtained by fraud in which the creditor participated; or (c) The transaction granting the security interest is subject to avoidance in accordance with recommendations 87, 88 or 217.	
Recognition of priorities in substantive consolidation (para. 125)		
226	The insolvency law should specify that the priorities established under insolvency law and applicable with respect to an individual enterprise group member prior to an order for substantive consolidation should, as far as possible, be recognized in substantive consolidation.	Yes - see s 571(5) and 579E(5) CA.
Meetings of creditors (para. 132)		
227	The insolvency law should specify that, to the extent that a meeting of creditors is required by the law to be held subsequent to an order for substantive consolidation, creditors of all consolidated group members are eligible to attend.	Yes - see s 579L CA.
Calculation of the suspect period in substantive consolidation (paras. 130-131)		
228	(1) The insolvency law should specify the date from which the suspect period with respect to avoidance of transactions of the type referred to in recommendation 87 should be calculated when substantive consolidation is ordered with respect to two or more enterprise group members. (2) The specified date from which the suspect period is calculated retrospectively in accordance with recommendation 89 may be: (a) A different date for each enterprise group member included in the substantive consolidation, being either the date of application for or commencement of insolvency	No - this is not reflected in Australian insolvency law.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	proceedings with respect to each such group member; or (b) A common date for all enterprise group members included in the substantive consolidation, being either (i) the earliest of the dates of application for, or commencement of, insolvency proceedings with respect to those group members; or (ii) the date on which all applications for commencement were made or all proceedings commenced.	
Modification of an order for substantive consolidation (para. 134)		
229	The insolvency law should specify that an order for substantive consolidation may be modified, provided that any actions or decisions already taken pursuant to the order are not affected by the modification.[81]	Yes - in part. Pooling determinations or orders may be modified by the court (s 579A-579C CA, s 579F-579H CA), however there is no requirement that actions or decisions already taken pursuant to the order are not affected by the modification.
Competent court (para. 137)		
230	For the purposes of recommendation 13, the words "commencement and conduct of insolvency proceedings, including matters arising in the course of those proceedings" include an application or order for substantive consolidation, including modification of that order.[82]	Noted.
Notice of substantive consolidation (paras. 126-128)		
231	The insolvency law should establish requirements for giving notice with respect to applications and orders for substantive consolidation and for modification of substantive consolidation, including the scope and extent of the order; the parties to whom notice should be given; the party responsible for giving notice; and the content of the notice.	Yes - see ss 573, 577, 578, 579K(3) and (4) CA.

[81] It is not intended that use of the term "modification" would include termination of an order for substantive consolidation.
[82] The criteria that might be relevant to determining which court is the competent court as discussed in para. 18 above.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Participants		
Purpose of legislative provisions		
The purpose of provisions on the appointment of insolvency representatives in an enterprise group context is:		
(a)	To permit the appointment of a single or the same insolvency representative to facilitate coordination of insolvency proceedings commenced with respect to two or more enterprise group members; and	
(b)	To encourage cooperation where two or more insolvency representatives are appointed, with a view to avoiding duplication of effort; facilitating the gathering of information on the financial and business affairs of the enterprise group as a whole; and reducing costs.	
Contents of legislative provisions		
Appointment of a single or the same insolvency representative (paras. 142-144)		
232	The insolvency law should specify that, where it is determined to be in the best interests of the administration of the insolvency proceedings with respect to two or more enterprise group members, a single or the same insolvency representative may be appointed to administer those proceedings.[83]	Yes - a single insolvency practitioner can act as the administrator or liquidator of a group of companies.
Conflict of interest (para. 144 and part two, chap. III, paras. 42-43)		
233	The insolvency law should specify measures to address any conflict of interest that might arise when a single or the same insolvency representative is appointed to administer insolvency proceedings with respect to two or more enterprise group members. Such measures may include the appointment of one or more additional insolvency representatives.	No - this is not expressly reflected in Australian insolvency law; however, the courts have addressed such conflicts by the use of special purpose liquidators.
Cooperation between two or more insolvency representatives (paras. 139-140)		

[83] Although recommendation 118 addresses selection and appointment of the insolvency representative, it does not recommend appointment by any particular authority, but leaves it up to the insolvency law. The same approach would apply in the enterprise group context; (see UNCITRAL Legislative Guide (see footnote 3 above), part two, chap. III, paras. 44-47).

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
234	The insolvency law may specify that when different insolvency representatives are appointed to administer insolvency proceedings with respect to two or more enterprise group members, those insolvency representatives should cooperate with each other to the maximum extent possible.[84]	No - this is not reflected in Australian insolvency law. However, such cooperation may be required under the professional codes of industry bodies - ie under the ARITA Code of Professional Practice.
Cooperation between two or more insolvency representatives in procedural coordination (paras. 139-140)		
235	The insolvency law should specify that, when more than one insolvency representative is appointed to administer insolvency proceedings that are subject to procedural coordination, those insolvency representatives should cooperate with each other to the maximum extent possible.	No - this is not reflected in Australian insolvency law.
Cooperation to the maximum extent possible between insolvency representatives (paras. 139-140)		
236	The insolvency law should specify that the cooperation to the maximum extent possible between insolvency representatives be implemented by any appropriate means, including: (a) Sharing and disclosure of information concerning the enterprise group members subject to insolvency proceedings, provided appropriate arrangements are made to protect confidential information; (b) Approval or implementation of agreements with respect to allocation of responsibilities between insolvency representatives, including one insolvency representative taking a coordinating role; (c) Coordination of the administration and supervision of the affairs of the group members subject to insolvency proceedings, including day-to-day operations where the business is to be continued; post-commencement finance; safeguarding of assets; use and disposition of assets; exercise of avoidance powers; communication with creditors and meetings of creditors; submission and admission of claims, including intra-group claims; and distributions to creditors; and (d) Coordination with respect to the proposal and negotiation of reorganization plans.	No - this is not reflected in Australian insolvency law.

[84] In addition to the provisions of the insolvency law with respect to cooperation and coordination, the court generally may indicate measures to be taken to that end in the course of administration of the proceedings.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Reorganisation of two or more enterprise group members		
Purpose of legislative provisions		
The purpose of provisions relating to reorganization plans in an enterprise group context is:		
(a)	To facilitate the coordinated reorganization of the businesses of enterprise group members subject to the insolvency law, thereby preserving employment and, in appropriate cases, protecting investment; and	
(b)	To facilitate the negotiation and proposal of coordinated reorganization plans in insolvency proceedings with respect to two or more enterprise group members.	
Contents of legislative provisions		
Coordinated reorganization plans (paras. 147-151)		
237	The insolvency law should permit coordinated reorganization plans to be proposed in insolvency proceedings with respect to two or more enterprise group members.	Yes - this is possible in voluntary administration by a DOCA for more than one company in an enterprise group.
Including a solvent group member in a reorganization plan for an insolvent group member (para. 152)		
238	The insolvency law should specify that an enterprise group member that is not subject to insolvency proceedings may voluntarily participate in a reorganization plan proposed for one or more enterprise group members subject to insolvency proceedings.	No - this is not reflected in Australian insolvency law, but it is still possible for a group member that is not subject to an insolvency proceeding to participate in a DOCA for other group members.
III - Addressing the insolvency of enterprise groups: international issues		
Promoting cross-border cooperation in enterprise group insolvencies		
Purpose of legislative provisions		
The purpose of provisions on access to courts and recognition of foreign insolvency proceedings with respect to enterprise group members is to ensure that access and recognition are available under applicable law.		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Access to courts and recognition of foreign proceedings		
239	The insolvency law should provide, in the context of insolvency proceedings with respect to enterprise group members: (a) Access to the courts for foreign representatives and creditors; and (b) Recognition of the foreign proceedings, if necessary under applicable law.	Yes - this is provided for by enactment of the UNCITRAL Model Law on Cross-Border Insolvency by the *Cross-Border Insolvency Act 2008* (Cth) and under Part 5.6, Division 9 CA.
Forms of cooperation involving courts		
Purpose of legislative provisions		
The purpose of legislative provisions on cooperation involving courts in the context of multinational enterprise groups is: (a) To authorize and facilitate cooperation between the courts seized of insolvency proceedings relating to different members of an enterprise group in different States; (b) To authorize and facilitate cooperation between the courts and the insolvency representatives appointed to administer those different proceedings; and (c) To facilitate and promote the use of various forms of cooperation to coordinate insolvency proceedings with respect to different enterprise group members in different States and establish the conditions and safeguards that should apply to those forms of cooperation to protect the substantive and procedural rights of parties and the authority and independence of the courts.		
Contents of legislative provisions[85]		
Cooperation between the court and foreign courts or foreign representatives[86] (paras. 14 and 37)		
240	The insolvency law should permit the court that is competent with respect to insolvency proceedings concerning an enterprise group member to cooperate to the maximum extent	Yes - this is provided for by enactment of the UNCITRAL Model Law on Cross-Border Insolvency by the *Cross-Border Insolvency Act 2008*

[85] These recommendations on cooperation are intended to be permissive, not directive and are consistent with the corresponding articles of the UNCITRAL Model Law (see footnote 1 above), articles 25, para. 1 and article 26, para. 1.
[86] See footnote 57 for the definition of "foreign representative".

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	possible with foreign courts or foreign representatives, either directly or through the insolvency representative or other person appointed to act at the direction of the court, to facilitate the coordination of those proceedings and insolvency proceedings commenced in other States with respect to members of the same enterprise group.	(Cth) and under Part 5.6, Division 9 CA.
Cooperation to the maximum extent possible involving courts (para. 14)		
241	The insolvency law should specify that cooperation to the maximum extent possible between the court and foreign courts or foreign representatives be implemented by any appropriate means, including, for example: (a) Communication of information by any means considered appropriate by the court, including provision to the foreign court or the foreign representative of copies of documents issued by the court or that have been or are to be filed with the court concerning the enterprise group members subject to insolvency proceedings or participation in communications with the foreign court or foreign representative; (b) Coordination of the administration and supervision of the affairs of the enterprise group members subject to insolvency proceedings; (c) Appointment of a person or body to act at the direction of the court; and (d) Approval or implementation of agreements concerning coordination of insolvency proceedings in accordance with recommendation 254. Direct communication between the court and foreign courts or foreign representatives[87] (paras. 15-20)	Yes - this is provided for by enactment of the UNCITRAL Model Law on Cross-Border Insolvency by the *Cross-Border Insolvency Act 2008* (Cth) and under Part 5.6, Division 9 CA.
242	The insolvency law should permit the court that is competent with respect to insolvency proceedings concerning an enterprise group member to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives concerning those proceedings and insolvency proceedings commenced in other States with respect to members of the same enterprise group to facilitate coordination of those proceedings.	Yes - this is provided for by enactment of the UNCITRAL Model Law on Cross-Border Insolvency by the *Cross-Border Insolvency Act 2008* (Cth) and under Part 5.6, Division 9 CA.

[87] See UNCITRAL Model Law (see footnote 1 above), article 25, para. 2 and article 26, para. 2.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Conditions applicable to cross-border communication involving courts (paras. 21-33)		
243	The insolvency law should specify that communication between the courts and between courts and foreign representatives should be subject to the following conditions: (a) The time, place and manner of communication should be determined between the courts or between the courts and foreign representatives; (b) Notice of any proposed communication should be provided to parties in interest in accordance with applicable law; (c) An insolvency representative should be entitled to participate in person in a communication. A party in interest may participate in a communication in accordance with applicable law and when determined by the court to be appropriate; (d) The communication may be recorded and a written transcript prepared as directed by the courts. That transcript may be treated as an official transcript of the communication and filed as part of the record of the proceedings; (e) Communications should be treated as confidential only in exceptional cases to the extent considered appropriate by the courts and in accordance with applicable law; and (f) Communication should respect the mandatory rules of the jurisdictions involved in the communication, as well as the substantive and procedural rights of parties in interest, in particular the confidentiality of information.	These matters are not reflected in Australian insolvency laws. However, such matters can be the subject of a co-ordination agreement that has previously been approved by the court, and is known to the parties, in the particular proceeding. The Federal Court of Australia has issued a practice not relating to such co-operation - see Cross-Border Insolvency Practice Note: Cooperation with Foreign Courts or Foreign Representatives (GPN-XBDR) (fedcourt.gov.au).
Effect of communication (para. 34)		
244	The insolvency law should specify that communication involving the courts shall not imply: (a) A compromise or waiver by the court of any powers, responsibilities or authority; (b) A substantive determination of any matter before the court; (c) A waiver by any of the parties of any of their substantive or procedural rights; or (d) A diminution of the effect of any of the orders made by the court.	These matters are not reflected in Australian insolvency laws, however, such matters are partly reflected in paragraph 2.6 of the Federal Court of Australia Cross-Border Insolvency Practice Note: Cooperation with Foreign Courts or Foreign Representatives (GPN-XBDR) (fedcourt.gov.au).

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Coordination of hearings (paras. 38-40)		
245	The insolvency law may permit the court to conduct a hearing in coordination with a foreign court. Where hearings are coordinated, they may be subject to certain conditions to safeguard the substantive and procedural rights of parties and the jurisdiction of each court. Those conditions might address the rules applicable to the conduct of the hearing; the requirements for the provision of notice; the method of communication to be used; the conditions applicable to the right to appear and be heard; the manner of submission of documents to the court and their availability to a foreign court; and limitation of the jurisdiction of each court to the parties appearing before it.[88] Notwithstanding the coordination of hearings, each court remains responsible for reaching its own decision on the matters before it.	These matters are not reflected in Australian insolvency laws, however, such matters are partly reflected in paragraph 2.6 of the Federal Court of Australia Cross-Border Insolvency Practice Note: Cooperation with Foreign Courts or Foreign Representatives (GPN-XBDR) (fedcourt.gov.au).
Forms of cooperation involving insolvency representatives		
Promoting cooperation		
Purpose of legislative provisions		
The purpose of legislative provisions on cooperation between insolvency representatives and between insolvency representatives and foreign courts in the context of multinational enterprise groups is: (a) To authorize and facilitate cooperation between insolvency representatives appointed to administer insolvency proceedings relating to different members of an enterprise group in different States and between those representatives and foreign courts; and (b) To facilitate and promote the use of various forms of cooperation between those insolvency representatives and between them and foreign courts and establish the conditions and safeguards that should apply to those forms of cooperation to protect the substantive and procedural rights of parties in interest.		
Contents of legislative provisions		
Cooperation between the insolvency representative and foreign courts		

[88] See also UNCITRAL Model Law (see footnote 1 above), article 10.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
246	The insolvency law should permit the insolvency representative appointed to administer insolvency proceedings with respect to an enterprise group member, in the exercise of its functions and subject to the supervision of the court, to cooperate to the maximum extent possible with foreign courts to facilitate coordination of those proceedings and insolvency proceedings commenced in other States with respect to members of the same enterprise group.	Yes - this is provided for by enactment of the UNCITRAL Model Law on Cross-Border Insolvency by the *Cross-Border Insolvency Act 2008* (Cth) and under Part 5.6, Division 9 CA.
Cooperation between insolvency representatives		
247	The insolvency law should permit the insolvency representative appointed to administer insolvency proceedings with respect to an enterprise group member, in the exercise of its functions and subject to the supervision of the court, to cooperate to the maximum extent possible with foreign representatives[89] appointed to administer insolvency proceedings commenced in other States with respect to members of the same enterprise group to facilitate coordination of those proceedings.	Yes - this is provided for by enactment of the UNCITRAL Model Law on Cross-Border Insolvency by the *Cross-Border Insolvency Act 2008* (Cth) and under Part 5.6, Division 9 CA.
Direct communication between the insolvency representative and foreign courts		
248	The insolvency law should permit an insolvency representative appointed to administer insolvency proceedings with respect to an enterprise group member, in the exercise of its functions and subject to the supervision of the court, to communicate directly with or to request information or assistance directly from foreign courts concerning those proceedings and insolvency proceedings commenced in other States with respect to members of the same enterprise group to facilitate coordination of those proceedings.	Yes - this is provided for by enactment of the UNCITRAL Model Law on Cross-Border Insolvency by the *Cross-Border Insolvency Act 2008* (Cth) and under Part 5.6, Division 9 CA.
Direct communication between insolvency representatives		
249	The insolvency law should permit an insolvency representative appointed to administer insolvency proceedings with respect to an enterprise group member, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign representatives appointed to administer insolvency proceedings commenced in other	Yes - this is provided for by enactment of the UNCITRAL Model Law on Cross-Border Insolvency by the *Cross-Border Insolvency Act 2008* (Cth) and under Part 5.6, Division 9 CA.

[89] See footnote 57 for the definition of a foreign representative, which would include an insolvency representative appointed on an interim basis.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	States with respect to members of the same enterprise group concerning those proceedings to facilitate coordination of those proceedings.	
Cooperation to the maximum extent possible between insolvency representatives		
250	The insolvency law should specify that cooperation to the maximum extent possible between insolvency representatives be implemented by any appropriate means, including: (a) Sharing and disclosure of information concerning the enterprise group members subject to insolvency proceedings, provided appropriate arrangements are made to protect confidential information; (b) Use of cross-border insolvency agreements[90] in accordance with recommendation 253; (c) Allocation of responsibilities between insolvency representatives, including one insolvency representative taking a coordinating role; (d) Coordination of the administration and supervision of the affairs of the enterprise group members subject to insolvency proceedings, including day-to-day operations where the business is to be continued; post-commencement finance; safeguarding of assets; use and disposition of assets; exercise of avoidance powers; communication with creditors and meetings of creditors; submission and admission of claims, including intra-group claims; and distributions to creditors; and (e) Coordination with respect to the proposal and negotiation of reorganization plans.	This is only reflected in Australian insolvency laws to the extent it is covered by Articles 26 and 27 of the UNCITRAL Model Law on Cross-Border Insolvency as enacted by the *Cross-Border Insolvency Act 2008* (Cth).
Appointment of a single or the same insolvency representative		

Purpose of legislative provisions

The purpose of legislative provisions on appointment of the insolvency representative in the context of multinational enterprise groups is, in the interests of promoting efficient and effective administration of insolvency proceedings with respect to members of the same enterprise group in different States,

(a) To authorize, where the court determines it to be in the best interests of the relevant insolvency proceedings, the appointment of a single or the same insolvency

[90] The UNCITRAL Practice Guide (see footnote 2 above) compiles practice with respect to the use and negotiation of these agreements, including a discussion of the issues typically addressed.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	representative to administer multiple proceedings; and	
(b)	To address any conflicts of interest that might arise where a single or the same insolvency representative is appointed.	
Contents of legislative provisions		
Appointment of a single or the same insolvency representative (paras. 43-46)		
251	The insolvency law should permit the court, in appropriate cases, to coordinate with foreign courts with respect to the appointment of a single or the same insolvency representative to administer insolvency proceedings concerning members of the same enterprise group in different States, provided that the insolvency representative is qualified to be appointed in each of the relevant States. To the extent required by applicable law, the insolvency representative would be subject to the supervision of each of the appointing courts.	Yes - this is provided for under the UNCITRAL Model Law on Cross-Border Insolvency as enacted by the *Cross-Border Insolvency Act 2008* (Cth) and under Part 5.6, Division 9 CA.
Conflict of interest (para. 47)		
252	The insolvency law should specify measures to address any conflict of interest that might arise when a single or the same insolvency representative is appointed to administer insolvency proceedings with respect to two or more enterprise group members in different States. Such measures may include the appointment of one or more additional insolvency representatives.	No - this is not specifically reflected in Australian insolvency law.
Use of cross-border insolvency agreements		
Purpose of legislative provisions		
The purpose of legislative provisions with respect to cross-border insolvency agreements is to ensure that the insolvency law:		
(a)	Permits the use of such agreements to facilitate cooperation with respect to insolvency proceedings in different States concerning members of the same enterprise group; and	
(b)	Authorizes the approval of such agreements by the court, as appropriate.	

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Authority to enter into cross-border insolvency agreements (paras. 48, 50, 53-54)		
253	The insolvency law should permit the insolvency representative and other parties in interest to enter into a cross-border insolvency agreement involving two or more members of an enterprise group in different States to facilitate coordination of insolvency proceedings with respect to those group members.	Yes - see Article 27 of the UNCITRAL Model Law on Cross-Border Insolvency as enacted by the *Cross-Border Insolvency Act 2008* (Cth).
Approval or implementation of cross-border insolvency agreements (paras. 53-54)		
254	The insolvency law should permit the court to approve or implement a cross-border insolvency agreement involving two or more members of an enterprise group in different States to facilitate coordination of the insolvency proceedings with respect to those enterprise group members.	Yes - see Article 27 of the UNCITRAL Model Law on Cross-Border Insolvency as enacted by the *Cross-Border Insolvency Act 2008* (Cth).
PART 4 - DIRECTORS' OBLIGATIONS IN THE PERIOD APPROACHING INSOLVENCY (INCLUDING IN ENTERPRISE GROUPS) SECOND EDITION		
II - Elements of directors' obligations in the period approaching insolvency		
The nature of the obligations		
Purpose of legislative provisions		

The purpose of provisions addressing the obligations of those responsible for making decisions concerning the management of a company that arise when insolvency is imminent or unavoidable is:

(a) To protect the legitimate interests of creditors and other stakeholders;

(b) To ensure that those responsible for making decisions concerning the management of a company are informed of their roles and responsibilities in those circumstances; and

(c) To provide appropriate remedies for breach of those obligations, which may be enforced after insolvency proceedings have commenced. Paragraphs (a)-(c) should be implemented in a way that does not:

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(i) Adversely affect successful business reorganization; (ii) Discourage participation in the management of companies, particularly those experiencing financial difficulties; or Prevent the exercise of reasonable business judgment or the taking of reasonable commercial risk.	
Contents of legislative provisions		
The obligations		
255	The law relating to insolvency should specify that from the point in time referred to in recommendation 257, the persons specified in accordance with recommendation 258 will have the obligations to have due regard to the interests of creditors and other stakeholders and to take reasonable steps: (a) To avoid insolvency; and (b) Where it is unavoidable, to minimize the extent of insolvency. *Reasonable steps for the purposes of recommendation 255*	No - this is not specifically reflected in Australian insolvency laws, however the case authorities provide that, when a company is in the zone of insolvency, a director's duty to act in the best interests of the company requires the director to take into account the interests of creditors when making decisions. This recommendation is more aligned with the wrongful trading laws which apply in the UK. Australia's insolvent trading laws (Subdivision B, Division 3 of Part 5.7B CA) go further than this recommendation.
256	For the purposes of recommendation 255, reasonable steps might include: (a) Evaluating the current financial situation of the company and ensuring proper accounts are being maintained and that they are up-to-date; being independently informed as to the current and ongoing financial situation of the company; holding regular board meetings to monitor the situation; seeking professional advice, including insolvency or legal advice; holding discussions with auditors; calling a shareholder meeting; modifying management practices to take account of the interests of creditors and other stakeholders; protecting the assets of the company so as to maximize value and avoid loss of key assets; considering the structure and functions of the business to examine viability and reduce expenditure; not committing the company to the types of transaction that might be subject to avoidance unless there is an appropriate business justification; continuing to trade in circumstances where it is appropriate to do so to maximize going concern value; holding negotiations with creditors or commencing other informal procedures, such as voluntary restructuring	Whilst these matters are not expressly legislated in Australian insolvency laws, the duties of directors of companies that are in the zone of insolvency would require them to do most, if not all, of these things. If the director suspects that the company could be insolvent, a director should put the company into a formal insolvency procedure and only continue to trade the company's business if they can take advantage of the safe harbour against insolvent trading.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	negotiations;[91] (b) Commencing or requesting the commencement of formal reorganization or liquidation proceedings.	
When the obligations arise: the period approaching insolvency		
Purpose of legislative provisions		
The purpose of provisions relating to timing is to identify when, in the period before the commencement of insolvency proceedings, the obligations arise.		
Contents of legislative provisions		
The time at which the obligation arises		
257	The law relating to insolvency should specify that the obligations in recommendation 255 arise at the point in time when the person specified in accordance with recommendation 258 knew, or ought reasonably to have known, that insolvency was imminent or unavoidable.	The obligations on directors: • to avoid insolvent trading under section 588G CA commence from when there are reasonable grounds for suspecting that the company is insolvent, or would become insolvent; • to take into account the interests of creditors when making decisions, commence when insolvency is imminent.
Identifying the parties who owe the obligations		
Purpose of legislative provisions		
The purpose of the provisions is to identify the persons owing the obligations in recommendation 255.		

[91] See part one, chap. II, paras. 2-18.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Contents of legislative provisions		
Persons owing the obligations		
258	The law relating to insolvency should specify the person owing the obligations in recommendation 255, which may include any person formally appointed as a director and any other person exercising factual control and performing the functions of a director.	The obligations referred to in relation to recommendations 256 and 257 above are imposed on 'directors' within the extended definition of director in section 9 CA.
Liability		
Purpose of legislative provisions		
The purpose of provisions on liability is:		
(a)	To provide rules for the circumstances in which the actions of a person subject to the obligations in recommendation 255 that occur prior to the commencement of insolvency proceedings may be considered injurious and therefore a breach of those obligations;	
(b)	To identify defences to an allegation of breach of the obligations; and	
(c)	To identify the consequences of that breach.	
Contents of legislative provisions		
Liability		
259	The law relating to insolvency should specify that where creditors have suffered loss or damage as a consequence of the breach of the obligations in recommendation 255 the person owing the obligations may be liable.	Directors can be personally liable for breaches of director's duties (s 1317H CA) or of the duty to prevent insolvent trading (s 588M CA).
260	The law relating to insolvency should provide that the liability arising from breach of the obligations in recommendation 255 is limited to the extent to which the breach caused loss or damage.	This is the measure of the damages which can be sought from a director for breach of the duties referred to in relation to recommendation 259, however, directors can also be guilty of offences for serious breaches of duties (ss 184, 588K CA).

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Elements of liability and defences		
261	The law relating to insolvency should specify: the elements to be proved in order to establish a breach of the obligations in recommendation 255 and that, as a consequence, creditors have suffered loss or damage; the party responsible for proving those elements; and specific defences to an allegation of breach of the obligations. Those defences may include that the person owing the obligations took reasonable steps of the kind referred to in recommendation 256.	Australian insolvency laws do set out these matters in relation to prosecution of claims against directors for breaches of duties, including insolvent trading.
Enforcement of the directors' liabilities		
Purpose of legislative provisions		
The purpose of provisions on enforcement of directors' liabilities is to establish appropriate remedies for breach of the obligations and facilitate the commencement and conduct of actions to recover compensation for that breach.		
Contents of legislative provisions		
Remedies		
262	The law relating to insolvency should specify that the remedies for liability found by the court to arise from a breach of the obligations in recommendation 255 should include payment in full to the insolvency estate of any damages assessed by the court.	This is reflected in Australian insolvency laws in respect of breaches of director's duties, including insolvent trading, which cause loss to the company.
Conduct of actions for breach of the obligation		
263	The law relating to insolvency should specify that the cause of action for loss or damage suffered as a result of the breach of the obligations in recommendation 255 belongs to the insolvency estate and the insolvency representative has the principal responsibility for pursuing an action for breach of those obligations.	This is reflected in Australian insolvency laws in respect of breaches of director's duties, including insolvent trading, which cause loss to the company.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	The law relating to insolvency may also permit a creditor or any other party in interest with the agreement of the insolvency representative to commence such an action. Where the insolvency representative does not agree, the creditor or other party in interest may seek leave of the court to commence such an action	This is reflected in Australian insolvency laws in respect of claims for insolvent trading.
Funding of actions for breach of the obligation		
264	The law relating to insolvency should specify that the costs of an action against the person owing the obligations be paid as administrative expenses.[92]	Yes - this is the case if the claim is brought by the insolvency representative.
265	The law relating to insolvency may provide alternative approaches to address the pursuit and funding of such actions.	Australian insolvency laws do contemplate that creditors may fund liquidators to take recovery action against directors (e.g. s 564 CA). Insolvency practitioners can also seek funding from ASIC or litigation funders to fund the cost of such proceedings.
Additional measures		
266	In order to deter behaviour of the kind leading to liability under recommendation 259, the law relating to insolvency may include remedies additional[93] to the payment of compensation provided in recommendation 262.	Directors can also be guilty of offences for serious breaches of duties (ss 184, 588K CA).
II - Elements of the obligations of directors of enterprise group members in the period approaching insolvency		
The nature of the obligations		
Purpose of legislative provisions		
The purpose of provisions addressing the obligations of those responsible for making decisions concerning the management of an enterprise group member that arise when		

[92] For an explanation of "administrative expenses", see the glossary in the Introduction to the Guide, para. 12(a).
[93] The additional remedies that may be available will depend upon the types of remedies available in a particular jurisdiction and what, in addition to the payment of compensation, might be proportionate to the behaviour in question and appropriate in the circumstances of the particular case. Examples of such remedies are discussed in paras. 33-35 of this chapter.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	insolvency is imminent or unavoidable is: (a) To protect the legitimate interests of creditors and other stakeholders of the enterprise group member; (b) To ensure that those responsible for making decisions concerning the management of an enterprise group member are informed of their roles and responsibilities in those circumstances; (c) To recognize the impact of the enterprise group member's position in the enterprise group upon the manner in which the enterprise group member should be managed to address its imminent or unavoidable insolvency and the obligations of those responsible for making decisions concerning the management of that enterprise group member, including in situations where they are also responsible for making decisions concerning the management of other enterprise group members; and (d) To permit an enterprise group member to be managed, where appropriate, in a manner that will maximize value of the enterprise group by promoting approaches to resolve insolvency for the enterprise group as a whole or for some of its parts, while taking reasonable steps to ensure that the creditors of that enterprise group member and its other stakeholders are no worse off than if that enterprise group member had not been managed so as to promote such approaches to resolution. Paragraphs (a)–(d) should be implemented in a way that does not: (a) Unnecessarily adversely affect successful business reorganization of the enterprise group member, taking into account the possible benefit of maximizing the value of the enterprise group and promoting a group insolvency solution for the enterprise group as a whole or some of its parts; the position of the enterprise group member in the enterprise group; and the degree of integration between enterprise group members; (b) Discourage participation in the management of companies, particularly those experiencing financial difficulty; or (c) Prevent the exercise of reasonable business judgment or the taking of reasonable commercial risk.	
	Contents of legislative provisions	
	The obligations	
267	(a) The law relating to insolvency should specify that the obligations established in recommendation 255 will apply to a person specified in accordance with recommendation 258 with respect to a company that is a member of an enterprise group; (b) Insofar as not inconsistent with those obligations, the person referred to in subparagraph (a) may take reasonable steps to promote a group insolvency solution that addresses the insolvency of the enterprise group as a whole or some of its parts. In so doing, the person may take into account the possible benefits of maximizing the	(a) The laws in respect of breaches of director's duties, including insolvent trading, apply to a company that is a member of an enterprise group. (b) A director can take reasonable steps to promote a group insolvency solution that addresses the insolvency of the enterprise group as a whole or some of its parts, but a director must act in the best interest of each company in the group and

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	value of the enterprise group as a whole, while taking reasonable steps to ensure that the creditors of the enterprise group member and its other stakeholders are no worse off than if that enterprise group member had not been managed so as to promote such a group insolvency solution.	cannot sacrifice the interests of one for another (unless permitted to do so under s 187 CA).
Reasonable steps for the purposes of recommendation 267		
268	For the purposes of recommendations 255 and 267, and to the extent not inconsistent with the obligations of the person referred to in recommendation 267, subparagraph (a) to the enterprise group member to which that person was appointed, reasonable steps in the enterprise group context might include, in addition to the steps outlined in recommendation 256: 1. (a) Evaluating the current financial situation of the enterprise group member and of the enterprise group to consider whether more value might be preserved or created by considering a group insolvency solution for the enterprise group as a whole or some of its parts; (b) Considering the financial and other obligations of the enterprise group member to other enterprise group members, whether transactions should be entered into with other enterprise group members, and possible sources and availability of finance; (c) Evaluating whether the enterprise group member's creditors and other stakeholders would be better off under a group insolvency solution for the enterprise group as a whole or some of its parts; (d) Assisting the implementation of a group insolvency solution for the enterprise group as a whole or some of its parts; (e) Holding and participating in informal negotiations with creditors, such as voluntary restructuring negotiations,[94] where organized for the enterprise group as a whole or some of its parts; and (f) Considering whether formal insolvency proceedings should be commenced.	Yes, Whilst these matters are not expressly legislated in Australian insolvency laws, the duties of directors of companies that are in the zone of insolvency would require them to do most, if not all, of these things. If the director suspects that one or more companies in an enterprise group could be insolvent, a director should put the companies into a formal insolvency procedure and only continue to trade the company's business if they can take advantage of the safe harbour against insolvent trading.

[94] See part one, chap. II, paras. 2-18.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	2. Where formal insolvency proceedings are to be commenced, considering the court in which they should be commenced, whether a joint application[95] with other relevant enterprise group members is possible or appropriate and whether proceedings should be procedurally coordinated.[96]	Yes - directors should consider whether a number of companies in an enterprise group should be put into voluntary administration or liquidation together with the same administrators or liquidators to enable a coordinated approach to the insolvency.
Conflict of obligations		
Purpose of legislative provisions		
The purpose of provisions on conflict of obligations is to address the situation where a director of one enterprise group member holds that position or a management or executive position in another or other enterprise group members, whether the parent or a controlled enterprise group member. That situation may give rise, in the period approaching insolvency, to a conflict between the obligations owed to the different enterprise group members, which may have an impact upon the steps to be taken to discharge those obligations.		
Contents of legislative provisions		
Conflict of obligations		
269	The law relating to insolvency should address the situation where, from the point of time referred to in recommendation 257, a director of an enterprise group member who holds that position or a management or executive position in one or more other enterprise group members has a conflict between the obligations owed in relation to the creditors and other stakeholders of those different enterprise group members.	Australian insolvency laws do not specifically address this issue. Directors are expected to act in the best interest of each company they are a director of. Conflicts between obligations owed to different members of an enterprise group must be dealt with through practical means - including those referred to in recommendation 270.
Reasonable steps to manage a conflict of obligations		
270	The insolvency law may specify that a director faced with a conflict of obligations should take reasonable steps to manage such conflict. Reasonable steps may include: (a) Obtaining advice to establish the nature and extent of the different obligations;	Australian insolvency laws do not specifically provide for these matters, but directors will often take one or more of these steps in order to address conflicts.

[95] See recommendations 199-201.
[96] See recommendations 202-210.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(b) Identifying the persons to whom the conflict of obligations must be disclosed and disclosing relevant information, including, in particular, the nature and extent of the conflict; (c) Identifying when the director should not (i) participate in any decision by the boards of directors of any of the relevant enterprise group members on the matters giving rise to a conflict of obligations, or (ii) be present at any board meeting at which such matters are to be considered; (d) Seeking the appointment of an additional director when the conflict of obligations cannot be reconciled; and (e) As a last resort, where there is no alternative course of action available, resigning from the relevant board(s) of directors.	
PART 5 - INSOLVENCY LAW FOR MICRO AND SMALL ENTERPRISES		
A. Key objectives of a simplified insolvency regime		
271	States should provide for a simplified insolvency regime and for that purpose consider the following key objectives: (a) Putting in place expeditious, simple, flexible and low-cost insolvency proceedings (henceforth referred to as “simplified insolvency proceedings”); (b) Making simplified insolvency proceedings available and easily accessible to micro- and small-sized enterprises (MSEs); (c) Promoting the MSE debtor’s fresh start by enabling expedient liquidation of non-viable MSEs and reorganization of viable MSEs through simplified insolvency proceedings; (d) Ensuring protection of persons affected by simplified insolvency proceedings, including creditors, employees and other stakeholders (henceforth referred to as “parties in interest”) throughout simplified insolvency proceedings; (e) Providing effective measures to facilitate participation by creditors and other parties in interest in simplified insolvency proceedings, and to address creditor disengagement; (f) Implementing an effective sanctions regime to prevent abuse or improper use of the	Australia has legislated simplified insolvency regimes for companies. These are: • SBR - Part 5.3B CA and CR; and • Simplified Liquidation (**SL**) - Subdivision B, Division 3 of Part 5.5 CA, Division 2 of Part 5.5 CR. Australia has also legislated a simplified restructuring regime for individual debtors under the Debt Agreement (**DA**) regime in Part IX of the BA. However, given the low thresholds involved for an individual to seek to use the DA regime, it will often not be available for an individual debtor that operates an enterprise.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	simplified insolvency regime and to impose appropriate penalties for misconduct; (g) Addressing concerns over stigmatization because of insolvency; and (h) (Where reorganization is feasible, preserving employment and investment. Those objectives are in addition to the objectives of an effective insolvency law as set out in recommendations 1–5 of the UNCITRAL Legislative Guide on Insolvency Law (the "Guide"), such as the provision of certainty in the market to promote economic stability and growth, maximization of value of assets, preservation of the insolvency estate to allow equitable distribution to creditors, equitable treatment of similarly situated creditors, ensuring transparency and predictability, recognition of existing creditor rights and establishment of clear rules for ranking of priority.	
B. Scope of a simplified insolvency regime		
Application to all micro and small-sized enterprises		
272	States should ensure that a simplified insolvency regime applies to all MSEs. Aspects of the regime may differ depending on the type of MSE.	Yes In corporate insolvency, the eligibility criteria (reg 5.3B.03 CR for SBR and s 500AA CA and reg 5.5.03 CR for SL) sets eligibility by reference to debt owed, and other statutory responsibilities and does not discriminate between types of MSEs. In personal insolvency, the eligibility requirement to propose a DA is by reference to thresholds on debts owed, property owned and income (s 185C(4)(b) & (5) BA) and that they have not been subject to a personal insolvency proceeding in the last 10 years (s 185C(4)(a)). The debtor must also be insolvent (s 185C(1)).
Comprehensive treatment of all debts of individual entrepreneurs		
273	States should ensure that all debts of an individual entrepreneur are addressed in a single simplified insolvency proceeding unless the State decides to subject some debts of individual entrepreneurs to other insolvency regimes, in which case procedural	An individual debtor, if they meet the thresholds, could restructure their entire debts via a DA.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	consolidation or coordination of linked insolvency proceedings should be ensured.	
Types of simplified insolvency proceedings		
274	States should ensure that a simplified insolvency regime provides for simplified liquidation and simplified reorganization.	Yes - see response to recommendations 271 and 272.
C. Institutional framework		
Competent authority and an independent professional		
275	The insolvency law providing for a simplified insolvency regime should: (a) Clearly indicate the competent authority; (b) Specify the functions of the competent authority and any independent professional used in the administration of simplified insolvency; and (c) Specify mechanisms for review and appeal of the decisions of the competent authority and any independent professional used in the administration of simplified insolvency proceedings.	For an SBR, a registered liquidator must be appointed as restructuring practitioner with oversight from ASIC and specified courts. In an SL, a registered liquidator must be appointed as liquidator with oversight from ASIC and specified courts. For a DA, a registered debt agreement administrator must be appointed, with oversight from the Inspector-General in Bankruptcy and specified courts.
Possible functions of the competent authority		
276	The insolvency law providing for a simplified insolvency regime may specify, for example, the following functions of the competent authority: (a) Verification of eligibility requirements for commencement of a simplified insolvency proceeding; (b) Verification of accuracy of information provided to the competent authority by the debtor, creditors and other parties in interest, including as regards the debtor's assets, liabilities and recent transactions; (c) Resolution of disputes concerning the type of proceeding to commence;	For SBR and SL, the relevant provisions set out in response to recommendation 271 set out the role and functions of the court and the registered liquidator. For a DA, the relevant provisions set out in response to recommendation 271 set out the role and functions of the court and the debt agreement administrator.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(d) Conversion of one proceeding to another; (e) Exercise of control over the insolvency estate; (f) Verification and review of the reorganization plan and the liquidation schedule for compliance with law; (g) Supervision of the implementation of a debt repayment or reorganization plan and verification of the implementation of the plan; (h) Decisions related to the stay of proceedings, relief from the stay, creditors' objections or opposition, disputes, approval of a liquidation schedule and confirmation of a reorganization plan; and (i) Oversight of compliance by the parties with their obligations under the simplified insolvency regime, including any obligations owed to employees under the insolvency law and other laws applicable within insolvency proceedings.	
Appointment of persons to assist the competent authority in the performance of its functions		
277	The insolvency law providing for a simplified insolvency regime should allow the competent authority to appoint one or more persons, including independent professionals, to assist it in the performance of its functions.	'Competent authority' is not defined, but given recommendation 275(a) refers to recommendation 13, it appear a 'competent authority' refers a court. However, in Australia, is more appropriate to consider the person registered to conduct insolvency processes as the 'competent authority' - ie a registered liquidator or registered debt agreement administrator. SBRs nor SLs are conducted by registered liquidators. ASIC is the body that registers liquidators. DAs are conducted by debt agreement administrators. The Inspector-General in Bankruptcy registers debt agreement administrators.
Possible functions of an independent professional		
278	If the insolvency law providing for a simplified insolvency regime envisages the use of an independent professional in the administration of simplified insolvency proceedings, it should allocate the functions of the competent authority, such as those illustrated in	See response to recommendation 277.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	recommendation 6, between the competent authority and an independent professional. That law may provide for such allocation to be determined by the competent authority itself.	
Support with the use of a simplified insolvency regime		
279	The insolvency law providing for a simplified insolvency regime should specify measures to make assistance and support with the use of a simplified insolvency regime readily available and easily accessible. Such measures may include services of an independent professional; templates, schedules and standard forms; and an enabling framework for the use of electronic means where information and communications technology in the State so permits and in accordance with other applicable law of that State.	Yes, in part. For SBR and SL, independent registered liquidators conduct the process. In SBR and SL there are various approved published by ASIC - see Insolvency forms – Updated for restructuring and simplified liquidation processes | ASIC For DA, independent debt agreement administrators conduct the process. Debt agreement proposals must be lodged by a debt agreement administrator via an online portal.
Mechanisms for covering costs of administering simplified insolvency proceedings		
280	The insolvency law providing for a simplified insolvency regime should specify mechanisms for covering the costs of administering simplified insolvency proceedings where assets and sources of revenue of the debtor are insufficient to meet those costs.	Under SBR, the payment of the restructuring practitioner's fees are set out in the restructuring plan. Under SL, there is no specific provisions for payment of the liquidators' fees where the assets and sources of revenue of the debtor are insufficient to meet those costs. Under DA, the debt agreement administrator's fees are paid by the debtor up front (to set up the proposal) and/or under the terms of the debt agreement (a fee for managing the proposal). If the fees of an SL are more than the available assets, the SL could seek funding for certain actions from ASIC from the assetless administration fund or seek funding from creditors or third party funders.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
D. Main features of a simplified insolvency regime		
Default procedures and treatment		
281	The insolvency law providing for a simplified insolvency regime should specify the default procedures and treatment that apply unless any party in interest objects or intervenes with a request for a different procedure or treatment or other circumstances exist that justify a different procedure or treatment.	Yes, each of the SBR, SL and DA procedures operate on the basis of default procedures unless there is objection or intervention by interested parties.
Short time periods		
282	The insolvency law providing for a simplified insolvency regime should specify short time periods for all procedural steps in simplified insolvency proceedings, narrow grounds for their extension and the maximum number, if any, of permitted extensions.	Generally, yes. Each of the SBR, SL and DA procedures set out the time periods that procedural steps need to be taken, which are often short, and the ability to extend these time periods is generally limited.
Reduced formalities		
283	Consistent with the objective of establishing a cost-effective simplified insolvency regime, the insolvency law providing for a simplified insolvency regime should reduce formalities for all procedural steps in simplified insolvency proceedings, including for submission of claims, for obtaining approvals and for giving notices and notifications.	Generally, no. The SBR process is still a complex process and the laws which apply to it are generally as complex as in a voluntary administration (and often mirror the same provisions which apply to voluntary administration). The SL laws reduce the requirement of some formalities - see s 500AE(2) CA (removal of certain investigation and meeting requirements), regs 5.5.04 (reduction in voidable transactions able to be claimed), 5.6.39 (proofs of debt to be provided by a particular date 14 days after notice calling for proof of debts is given), 5.6.65(1A) (requirement for 2 months' notice before declaring dividend not applicable), 5.6.67A CR (liquidator may declare only one dividend; no right to dividend of creditor who has not proved debt in time).

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		However, there is still a requirement to conduct investigations and report to ASIC under reg 5.5.05 CR if liquidators consider officers may have committed offences. The DA process is quite streamlined and efficient. See also response to recommendation 282.
Debtor-in-possession in simplified reorganization proceedings		
Debtor-in-possession as the default approach		
284	The insolvency law providing for a simplified insolvency regime should specify that, in simplified reorganization proceedings, the debtor remains in control of its assets and the day-to-day operation of its business with appropriate supervision and assistance of the competent authority.	Yes for SBR and DA, but not for SL.
Rights and obligations of the debtor-in-possession		
285	The insolvency law providing for a simplified insolvency regime should specify the rights and obligations of the debtor-in-possession, in particular as regards the use and disposal of assets,[97] post-commencement finance[98] and treatment of contracts,[99] and allow the competent authority to specify them on a case-by-case basis.	Yes for SBR and DA. For SBR see for example: • Reg 5.3B.15 CR - restructuring plan must identify property and how it is dealt with. • Reg 5.3B.30 CR- protections of company's property from persons bound by restructuring plan. • Reg 5.3B.39 CR- rules regarding restructuring practitioner's disposal of encumbered property. • s 453L CA - identifies directors' responsibilities when dealing with

[97] See recommendations 52–62 of the Guide that will be applicable, mutatis mutandis, in a simplified insolvency regime. References to the insolvency representative in those recommendations should be read as references to the debtor-in-possession unless limited or total displacement of the debtor from the operation of the business takes place.
[98] Idem., but with reference to recommendations 63–68 of the Guide.
[99] Idem., but with reference to recommendations 69–86 and 100–107 of the Guide.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		company property. For DA see Division 1-3 of Part IX BA.
Limited or total displacement of the debtor-in-possession		
286	The insolvency law providing for a simplified insolvency regime should specify: (a) Circumstances justifying limited or total displacement of the debtor-in-possession in simplified reorganization proceedings; (b) Persons who may displace the debtor-in-possession in simplified reorganization proceedings; and (c) That the competent authority should be authorized to decide on displacement and terms of displacement on a case-by-case basis.	No - there are no provisions for the debtor in possession process under SBR or DA to be displaced and another person take control of the debtor. For SBR, a restructuring, or a restructuring plan, can be terminated (see regs 5.3B.02 and 5.3B.31 CR), in which case the company could then be wound up by a creditor. For DA, a debt agreement can be terminated by vote of creditors (s 185PC BA), order of the court (s 185Q BA), or bankruptcy of the debtor (s 185R BA). If terminated by order of the court, the debtor can be bankrupted by the court if the application was by a creditor who applied for an order that the debtor be bankrupted (s 185Q(5) BA).
Possible involvement of the debtor in the liquidation of the insolvency estate		
287	The insolvency law providing for a simplified insolvency regime may specify circumstances under which the competent authority may allow the debtor's involvement in the liquidation of the insolvency estate and the extent of such involvement.	In a SL, the same laws apply as to the ability of the directors to be involved in the liquidation as in a standard liquidation.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Deemed approval		
288	The insolvency law providing for a simplified insolvency regime should specify the matters which require approval of creditors and establish the relevant approval requirements.	Yes - the laws for SBR, SL and DA all reflect this. For example: • in SBR, a restructuring plan must be approved by a majority in value of creditors - reg 5.3B.25 CR; • the SL process must not be followed if 25% of creditors in value request that the SL process not followed - s 500A(2)(c) CA; • a DA must be approved by a majority in value of creditors - s 185EC BA.
	It should also specify that approvals on those matters are deemed to be obtained where: (a) Those matters have been notified by the competent authority to relevant creditors in accordance with procedures and time periods established for such purpose in the insolvency law providing for a simplified insolvency regime or by the competent authority; and (b) Neither objection nor sufficient opposition as regards those matters is communicated to the competent authority in accordance with procedures and time periods established for such purpose in the insolvency law providing for a simplified insolvency regime or by the competent authority.	This is not reflected in Australian insolvency laws.
E. Participants		
Rights and obligations of parties in interest		
289	The insolvency law providing for a simplified insolvency regime should specify rights and obligations of the MSE debtor, of the creditors and of other parties in interest, including employees where applicable under national law, such as: (a) The right to be heard and request review on any issue in the simplified insolvency proceedings that affects their rights, obligations or interests; (b) The right to participate in the simplified insolvency proceedings and to obtain	Yes, Australian insolvency laws for SBR, SL and DA do specify rights and obligations of the debtor, of the creditors and of other parties in interest, including employees.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	information relating to the proceeding from the competent authority subject to appropriate protection of information that is commercially sensitive, confidential or private; (c) Where the debtor is an individual entrepreneur, the right of the debtor to retain the assets excluded from the insolvency estate by law.	
Obligations of the debtor		
290	The insolvency law providing for a simplified insolvency regime should specify the obligations of the MSE debtor that should arise on the commencement of, and continue throughout, the proceedings. The obligations should include the following: (a) To cooperate with and assist the competent authority to perform its functions, including, where applicable, to take effective control of the estate, wherever located, and of business records, and to facilitate or cooperate in the recovery of the assets; (b) To provide accurate, reliable and complete information relating to its financial position and business affairs, subject to allowing the debtor the time necessary to collect the relevant information, with the assistance of the competent authority where required, including an independent professional where appointed, and subject to appropriate protection of commercially sensitive, confidential and private information; (c) To provide notice of the change of a habitual place of residence or place of business; (d) To adhere to the terms of the liquidation schedule or reorganization plan; and (e) In the day-to-day operation of the business, to have otherwise due regard to the interests of creditors and other parties in interest.	Yes - the obligations of the relevant debtor in an SBR, SL or DA persist throughout the SBR, SL or DA and they generally reflect, as applicable, the matters referred to in paragraphs (a) to (e).
Protection of employees' rights and interests in simplified insolvency proceedings		
291	The insolvency law providing for a simplified insolvency regime should require the competent authority to ensure that all requirements of insolvency law and other laws applicable within insolvency proceedings relating to the protection of employees' rights and interests in insolvency are complied with in simplified insolvency proceedings. Those requirements may include, in particular, the requirement to keep the MSE debtor's	Yes - this is the case in SBR and SL. In a DA, employees would only be kept informed if they were creditors covered by the debt agreement.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	employees properly informed, either directly or through their representatives, about the commencement of a simplified insolvency proceeding and all matters arising from that proceeding affecting their employment status and entitlements.	
F. Eligibility, application and commencement		
Eligibility		
292	The insolvency law providing for a simplified insolvency regime should establish the criteria that debtors must meet in order to be eligible for simplified insolvency proceedings, minimizing the number of such criteria, and specify under what conditions creditors of the eligible debtors may also apply for commencement of simplified insolvency proceedings with respect to those debtors.	Yes - see comments for recommendation 272.
Commencement criteria and procedures		
293	The insolvency law providing for a simplified insolvency regime should: (a) Establish transparent, certain and simple criteria and procedures for commencement of simplified insolvency proceedings; (b) Enable applications for simplified insolvency proceedings to be made and dealt with in a speedy, efficient and cost-effective manner; and (c) Establish safeguards to protect debtors, creditors and other parties in interest, including employees, from abuse of the application procedure.	Yes, this is generally reflected in the SBR, SL and DA laws. (a) For SBR see Subdivisions A and B, Division 2 of Part 5.3B CA, for SL see s 500A CA, for DA see Divisions 2 and 3 of Part IX BA; (b) There is no application required to commence an SBR, SL or DA; (c) There are many such safeguards included.
Commencement on debtor application		
Application		
294	The insolvency law providing for a simplified insolvency regime should allow eligible debtors to apply for commencement of a simplified insolvency proceeding at an early stage of financial distress without the need to prove insolvency.	No - this is not reflected. SBR, SL and DA all require that the debtor is either insolvent or likely to become insolvent at some future point in time.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Information to be included in the application		
295	The insolvency law providing for a simplified insolvency regime should specify information that the debtor must include in its application for commencement of a simplified insolvency proceeding, keeping the disclosure obligation at the stage of application to the minimum. It should require that information to be accurate, reliable and complete.	For SBR, there is no application required to commence an SBR. For SL, the company will already be under liquidation and no application is required to change to an SL. For DA, the debt agreement proposal lodged with the Official Receiver does provide information to be disclosed in a statement of affairs completed by the debtor and a prescribed explanatory statement - see s 185C(2), (2B) and (2D) BA.
Effective date of commencement		
296	The insolvency law providing for a simplified insolvency regime should specify that where the application for commencement is made by the debtor: (a) The application for commencement will automatically commence a simplified insolvency proceeding; or (b) The competent authority will promptly determine its jurisdiction and whether the debtor is eligible and, if so, commence a simplified insolvency proceeding.	This is not reflected in Australian insolvency laws, as no application is required to be made to commence an SBR, SL or DA.
Commencement on creditor application		
297	The insolvency law providing for a simplified insolvency regime should specify that a simplified insolvency proceeding may be commenced on the application of a creditor of a debtor which is eligible for simplified insolvency proceedings, provided that: (a) Notice of application is promptly given to the debtor; (b) The debtor is given the opportunity to respond to the application, by contesting the application, consenting to the application or requesting the commencement of a proceeding different from the one applied for by the creditor; and (c) A simplified insolvency proceeding of the type to be determined by the competent authority commences without agreement of the debtor only after it is established that the debtor is insolvent.	No - not for SBR or DA. For SL, a creditor can apply to wind a company up and the liquidator decides whether it is eligible for simplified liquidation.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Denial of application		
Possible grounds for denial of application		
298	The insolvency law providing for a simplified insolvency regime should specify that, where the decision to commence a simplified insolvency proceeding is to be made by the competent authority, the competent authority should deny the application if it finds that: (a) It does not have jurisdiction; (b) The applicant is ineligible; or (c) The application is an improper use of the simplified insolvency regime.	No court application is required to commence an SBR, SL or DA, however for a DA, the Official Receiver can decide that the eligibility requirements are not met and decide not to send the proposal to the debtor's creditors.
Prompt notice of denial of application		
299	The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly give notice of its decision to deny the application to the applicant, and where the application was made by a creditor, also to the debtor.	This is not applicable to SBR or SL. If the Official Receiver decides that a debtor is not eligible to give a debt agreement proposal, the Official Receiver would notify the debt agreement administrator that lodged it. See also the comments for recommendation 298.
Possible consequences of denial of application		
300	The insolvency law providing for a simplified insolvency regime should set out possible consequences of denial of application, including that a different type of insolvency proceeding may commence if criteria set out in the insolvency law for the commencement of that other type of insolvency proceeding are met.	See the comments for recommendation 298. The giving of a debt agreement proposal by a debtor to the Official Receiver is an act of bankruptcy, upon which a creditor can apply to bankrupt the debtor.
Possible imposition of costs and sanctions against the applicant		
301	The insolvency law providing for a simplified insolvency regime should allow the competent authority, where it has denied an application to commence a simplified insolvency proceeding under recommendation 298, to impose costs or sanctions, where appropriate, against the applicant for submitting the application.	No - this is not reflected in Australia's insolvency laws - see the comments for recommendation 298.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Notice of commencement of proceedings		
302	The insolvency law providing for a simplified insolvency regime should require that: (a) The competent authority should give the notice of the commencement of the simplified insolvency proceeding using the means appropriate to ensure that the information is likely to come to the attention of parties in interest; and (b) The debtor and all known creditors should be individually notified by the competent authority of the commencement of the simplified insolvency proceeding unless the competent authority considers that, under the circumstances, some other form of notice would be more appropriate.	Notice is required to be given of the commencement under SBR, SL and DA. SBR - see reg 5.3B.21 CR - notice of restructuring plan to be given to each creditor by the restructuring practitioner as soon as practicable after company executes restructuring plan. SL - see reg 5.5.6 CR; s 500A CA. DA - see s 185EA BA.
Content of the notice of commencement of a simplified insolvency proceeding		
303	The insolvency law providing for a simplified insolvency regime should specify that the notice of commencement of a simplified insolvency proceeding is to include: (a) The effective date of the commencement of the simplified insolvency proceeding; (b) Information concerning the application of the stay and its effects; (c) Information concerning submission of claims or that the list of claims prepared by the debtor will be used for verification; (d) Where submission of claims by creditors is required, the procedures and time period for submission and proof of claims and the consequences of failure to do so (see recommendation 321 below); and (e) Time period for expressing objection to the commencement of a simplified insolvency proceeding (see recommendation 304 below).	Yes, this is generally reflected for SBR (see 5.3B.50 CR) and DA (see s 185EA BA). For SL - see s 500A(3) CA for the statement to be provided to creditors and members by the liquidator.
Creditor objection to the commencement of a simplified insolvency proceeding		
304	The insolvency law providing for a simplified insolvency regime should specify that creditors may object to the commencement of a simplified insolvency proceeding or a particular type	This is reflected for SL - see s 500A(3)(c) CA - the simplified liquidation process will not be adopted if at least 25% in value of the

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	thereof or to the commencement of any insolvency proceeding with respect to the debtor, provided they do so within the time period established in the insolvency law as notified to them by the competent authority in the notice of the commencement of the simplified insolvency proceeding (see recommendations 302 and 303 above).	creditors direct the liquidator in writing not to do so. This is not reflected for SBR and DA, although: • In SBR, creditors can vote not to accept the restructuring plan, in which case the restructuring will end; • In DA, creditors can vote against the debt agreement proposal, in which case a debt agreement will not be entered into.
Possible consequences on claims of creditors not notified of the commencement of the simplified insolvency proceeding		
305	The insolvency law providing for a simplified insolvency regime should specify consequences on claims of creditors not notified of the commencement of the simplified insolvency proceeding.	For SBR - A creditor not sent the restructuring plan and other information required under reg 5.3B.21 CR could apply to the court and seek to void or terminate the plan under regs 5.3B.62 or 5.3B.63 CR. For SL - if a creditor was not provided notice under s 500A(3), the creditor could apply for orders that the SL process not apply. For DA, if creditors were not sent a copy of the debt agreement proposal by the Official Receiver because they were not disclosed in the debtor's statement of affairs, the Official Receiver may cancel any acceptance of a debt agreement proposal. If a debt agreement proposal was accepted, a creditor who became aware they were not provided a copy of the proposal to vote could apply to the court for orders.
Dismissal of a simplified insolvency proceeding after its commencement		
Possible grounds for dismissal of the proceeding		
306	The insolvency law providing for a simplified insolvency regime should permit the competent authority to dismiss the proceeding if, after its commencement, the competent authority determines, for example, that:	Yes For SBR - see s 453J CA, reg 5.3B.02(1) CR. For SL - see s 500AC CA.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(a) The proceeding constitutes an improper use of the simplified insolvency regime; or (b) The applicant is ineligible.	For DA - see ss 185E, 185ED BA.
Prompt notice of the dismissal of the proceeding		
307	The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly give notice of its decision to dismiss the proceeding using the procedure that was used for giving notice of the commencement of the simplified insolvency proceeding.	Yes For SBR - see reg 5.3B.51 CR. For SL - see s 500AC(2) CA, reg 5.5.08(3) CR. For DA - see s 185ED(3).
Possible consequences of dismissal of the proceeding		
308	The insolvency law providing for a simplified insolvency regime should set out possible consequences of the dismissal of the proceeding, including that a different type of insolvency proceeding may commence if criteria set out in the insolvency law for the commencement of that other type of insolvency proceeding are met.	This is the case for: • DA - the giving of a debt agreement proposal by a debtor to the Official Receiver is an act of bankruptcy, upon which a creditor can apply to bankrupt the debtor (s 40 BA); • SL - the liquidation would cease to be a SL and would revert to a usual liquidation. See also reg 5.5.08 CR.
Possible imposition of costs and sanctions against the applicant		
309	Where the proceeding is dismissed, the insolvency law providing for a simplified insolvency regime should allow the competent authority to impose costs or sanctions, where appropriate, against the applicant for commencement of the proceeding.	If the SBR or SL procedure, or a debt agreement, was terminated by a court order, costs could be awarded against the respondent to the application.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
G. Notices and notifications		
Procedures for giving notices		
310	The insolvency law providing for a simplified insolvency regime should require the competent authority to give notices related to simplified insolvency proceedings and use simplified and cost-effective procedures for such purpose.	Yes - see the comments for recommendations 303 and 307. There is no specific provision for notices to be given in a simplified way, but they could be given electronically.
Individual notification		
311	The insolvency law providing for a simplified insolvency regime should require that the debtor and any known creditor should be individually notified by the competent authority of all matters on which their approval is required, unless the competent authority considers that, under the circumstances, some other form of notification would be more appropriate.	Yes - there are various requirements under the laws relating to SBR, SL and DA requiring notice of particular matters to creditors and the debtor. See also the comments for recommendations 303 and 307.
Appropriate means of giving notice		
312	The insolvency law providing for a simplified insolvency regime should specify that the means of giving notice must be appropriate to ensure that the information is likely to come to the attention of the intended party in interest.	There are no specific provisions under SBR, SL or DA which provide different means of giving notices. The general provisions applying to the giving of notices under the CA (including s 600G CA) and BA apply.
H. Constitution, protection and preservation of the insolvency estate		
Constitution of the insolvency estate		
313	The insolvency law providing for a simplified insolvency regime should identify: (a) Assets that will constitute the insolvency estate, including assets of the debtor, assets acquired after commencement of the simplified insolvency proceeding and assets recovered through avoidance or other actions;	Yes - each of the laws relating to SBR, SL and DA identify these matters.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(b) Where the MSE debtor is an individual entrepreneur, assets excluded from the estate that the MSE debtor is entitled to retain.	
Undisclosed or concealed assets		
314	The insolvency law providing for a simplified insolvency regime should specify that any undisclosed or concealed assets form part of the insolvency estate.	For SBR and DA, the debtor retains all their assets other than the payments being made to the creditors under the restructuring plan or debt agreement, but there are obligations on the debtor to disclose all assets. In an SBR, if the restructuring practitioner becomes aware of non-disclosure, the restructuring practitioner may terminate the restructuring. In a DA, of the Official Receiver becomes aware of non-disclosure, they can cancel a debt agreement proposal if not approved yet by creditors (s 185ED(2) BA) or apply to court for an order avoiding a debt agreement (s 185T BA). In an SL, such undisclosed or concealed assets form part of the insolvency estate.
Date from which the insolvency estate is to be constituted		
315	The insolvency law providing for a simplified insolvency regime should specify the effective date of commencement of a simplified insolvency proceeding as the date from which the estate is to be constituted.	Yes An SBR commences on the date a restructuring practitioner is appointed - s 453A CA. An SL commences on the date determined by the liquidator, which must be at least 10 business days after giving notice under section 500A(3) to each member and creditor. A DA commences when entered on the National Personal Insolvency Index by the Official Receiver under s 185H BA.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Avoidance in simplified insolvency proceedings		
316	The insolvency law providing for a simplified insolvency regime should ensure that avoidance mechanisms available under the insolvency law[100] can be used in a timely and effective manner to maximize returns in simplified insolvency proceedings. The competent authority should be allowed to convert a simplified insolvency proceeding to a different type of insolvency proceeding where the conduct of avoidance proceedings necessitates doing so.	This is not reflected under the SBR or DA process. There is no ability to convert them quickly to liquidation or bankruptcy. In SL, the liquidator retains most of their powers to recover voidable transactions, although the transactions that can be recovered as unfair preferences are reduced - see reg 5.5.04 CR.
Stay of proceedings		
Scope and duration of the stay		
317	The insolvency law providing for a simplified insolvency regime should specify that the stay of proceedings applies on commencement and throughout simplified insolvency proceedings unless: (a) it is lifted or suspended by the competent authority on its own motion or upon request of any party in interest; or (b) the relief from the stay is granted by the competent authority upon request of any party in interest. Any exceptions to the application of the stay should be clearly stated in the law.	There is a stay which applies in SBR, SL and DA. For SBR see Subdivisions E, F and G of Division 2 of Part 5.3B CA and regs 5.3B.12, 5.3B 30 and 5.3B.64 CR. For DA see s 185K BA. For SL, the stay under s 500 CA continues to apply under a SL.
Rights not affected by the stay		
318	The insolvency law providing for a simplified insolvency regime should specify that the stay does not affect: (a) The right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor; (b) The right of a secured creditor, upon application to the competent authority, to protection of the value of the asset(s) in which it has a security interest; (c) The right of a third party, upon application to the competent authority, to protection of	See comments for recommendation 318. In SBR and SL, creditors can apply to the court for orders that the stays referred to do not apply to them. For a DA, there is no such provisions, and the creditor would have to seek a termination or avoidance of the DA for the stay under s 185K to end.

[100] See recommendations 87–99 of the Guide.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	the value of its asset(s) in the possession of the debtor; and (d) The right of any party in interest to request the competent authority to grant relief from the stay.	
I. Treatment of creditor claims		
Claims affected by simplified insolvency proceedings		
319	The insolvency law providing for a simplified insolvency regime should specify claims that will be affected by simplified insolvency proceedings, which should include claims of secured creditors, and claims that will not be affected by simplified insolvency proceedings.	Yes For SBR - see reg 5.3B.29 CR. For DA - the provable claims of all creditors are bound by a debt agreement. For secured creditors, they have a provable claim to the extent their debt exceeds the value of their security (s 185C(2)(g) BA). Secured creditors are not prevented from enforcing their security - s 185XA BA. For SL - there is no difference in relation to which claims are affected as in an ordinary liquidation.
Admission of claims on the basis of the list of creditors and claims prepared by the debtor		
320	The insolvency law providing for a simplified insolvency regime may require the debtor to prepare the list of creditors and claims, with the assistance of the competent authority or an independent professional where necessary, unless the circumstances justify that the competent authority prepares the list itself with the assistance of the debtor or entrusts an independent professional with that task. It should specify that: (a) The list so prepared should be circulated by the competent authority to all listed creditors for verification, indicating the time period for communicating any objection or concern as regards the list to the competent authority; (b) In the absence of any objection or concern communicated to the competent authority or the independent professional as applicable within the established time period, the	For SBR: • reg 5.3B.16 CR- the restructuring proposal statement prepared by the company must include a schedule of debts and claims; • reg 5.3B.21 CR - a creditor can approve or disagree with the company's assessment of the debt; • reg 5.3B.22 CR- a creditor may dispute the schedule of debts and claims before the restructuring plan is made; • reg 5.3B.60 CR - the court may make orders in respect of disputed debt.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	claims are deemed to be undisputed and admitted as listed; (c) In case of objection or concern, the competent authority takes action with respect to disputed claim(s) (see recommendation 324 below).	For SL - the director's report on company activities and property (**ROCAP**) will contain the director's understanding of the creditors and the amount owed, however, the liquidator must verify and determine which creditors to admit to proof and for how much, as the liquidator would in an ordinary liquidation (see reg 5.6.39 (1A) -(4) and reg 5.6.48 CR). For a DA, the debt agreement proposal prepared by the debt agreement administrator and submitted to the Official Receiver will include a statement of affairs provided by the debtor which sets out the claims of all creditors.
Submission of claims by creditors		
321	The insolvency law providing for a simplified insolvency regime should allow the competent authority, when circumstances of the case so justify, to require creditors to submit their claims to the competent authority, specifying the basis and amount of the claim. It should require in such case that: (a) The procedures and the time period for submission of the claims and consequences of failure to submit a claim in accordance with those procedures and time period should be specified by the competent authority in the notice of commencement of the simplified insolvency proceeding (see recommendations 302 and 303 above) or in a separate notice; (b) A reasonable period of time should be given to creditors to submit their claims expeditiously; (c) Formalities associated with submission of claims should be minimized and the use of electronic means for such purpose should be enabled where information and communication technology in the State so permits and in accordance with other applicable law of that State.	For SBR, the restructuring proposal statement prepared by the company (and which is sent to creditors by the restructuring practitioner), must include a schedule of debts and claims (reg 5.3B.16 CR). Creditors can then approve or disagree with the company's assessment of the debt (reg 5.3B.21 CR) and the restructuring practitioner must decide whether to amend the amount of the claim or not (reg 5.3B.22(7) CR). If the creditor still disagrees, the court may make orders in respect of disputed debt (reg 5.3B.60 CR). For SL creditors must submit particulars of their debt or claim within 14 days after the liquidator asks for such particulars - reg 5.6.39 CR. For a DA, creditors submit a 'claim and vote form' online and the Official Receiver then assesses the amount for which the creditor will be admitted as a creditor.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Admission or denial of claims		
322	The insolvency law providing for a simplified insolvency regime should allow the competent authority to: (a) Admit or deny any claim, in full or in part; (b) Subject claims by related persons to a special scrutiny and treatment, in full or in part; and (c) Determine the portion of a secured creditor's claim that is secured and the portion that is unsecured by valuing the encumbered asset.	For SBR, see the comments for recommendation 321. In relation to (c), a restructuring plan must provide that a secured creditor is taken, for the purposes of working out the amount payable to the creditor under the plan, to be a creditor only to the extent (if any) by which the amount of the creditor's admissible debt or claim exceeds the value of the creditor's security interest - reg 5.3B.27(1)(e)(i) CR. For SL, the ordinary rules apply to the assessment of proof of debts and payment of dividends in liquidation. See regs 5.6.11 to 5.6.70A CR. There is no special scrutiny for related party proofs of debt except for voting purposes, where a related party has taken an assignment of a debt, in which case the related party is only allowed to vote for the amount of the consideration given for the debt - see s 75-110(7) IPRC. For a DA, creditors submit a 'claim and vote form' online and the Official Receiver then assesses the amount for which the creditor will be admitted as a creditor. In relation to (c), a debt agreement proposal must provide that a secured creditor is taken, for the purposes of working out the amount payable to the creditor under the plan, to be a creditor only to the extent (if any) by which the amount of the creditor's admissible debt or claim exceeds the value of the creditor's security interest - s 185C(2)(g) BA.
Prompt notice of denial of claims or subjecting them to a special scrutiny or treatment		
323	Where the claim is to be denied or subjected to a special scrutiny or treatment, the insolvency law providing for a simplified insolvency regime should require the competent authority to give prompt notice of the decision and the reasons for the decision to the creditor concerned, indicating the time period within which the creditor can request review of that decision.	SBR - this is reflected in the SBR laws. See the comments for recommendation 321. SL - see re 5.6.54 CR - liquidator must provide grounds within 7 days of rejection of a proof of debt and must advise the creditor that they can apply to court to review the decision within not less than 14 days after service of the notice.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		For DA there is no similar provision.
Treatment of disputed claims		
324	The insolvency law providing for a simplified insolvency regime should permit a party in interest to dispute any claim, either before or after admission, and request review of that claim. It should authorize the competent authority or another competent State body to review a disputed claim and decide on its treatment, including by allowing the proceeding to continue with respect to undisputed claims.	None of the SBR, SL or DA laws allow have any specific procedure to allow an interested party to dispute the claim of another party and seek its review, although such an interested party could apply to the court for orders about the claim if they wished.
Effects of admission		
325	The insolvency law providing for a simplified insolvency regime should specify the effects of admission of a claim, including entitling the creditor whose claim has been admitted to participate in the simplified insolvency proceeding, to be heard, to participate in a distribution and to be counted according to the amount and class of the claim for determining sufficient opposition and establishing the priority to which the creditor's claim is entitled.	Yes - this is reflected in the laws relating to SBRs, SLs and DAs.
J. Features of simplified liquidation proceedings		
Decision on a procedure to be used		
326	The insolvency law providing for a simplified insolvency regime should require that the competent authority, after commencement of a simplified liquidation proceeding, should promptly determine whether the sale and disposal of the assets of the insolvency estate and distribution of proceeds to creditors will take place in the proceeding: (a) Where it is determined that the sale and disposal of the assets of the insolvency estate and distribution of proceeds to creditors will take place, the insolvency law providing for a simplified insolvency regime should require the preparation, notification and approval of the liquidation schedule (see recommendations 327–334 below); (b) Where it is determined that the sale and disposal of the assets of the insolvency	For SBR, the proposal for a restructuring plan put forward by the company sets out whether there will be a sale and disposal of any assets in order to provide cash to distribute to creditors under the plan. In SL, the liquidator is generally obliged to convert all the company's assets to cash. For DA, the debt agreement will set out whether there will be any sale or disposal of assets in order to provide cash to distribute to creditors

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	estate and distribution of proceeds to creditors will not take place, the insolvency law providing for a simplified insolvency regime should require the competent authority to close the simplified liquidation proceeding (see recommendations 335–337 below).	under the plan.
Procedure involving the sale and disposal of assets and distribution of proceeds		
Preparation of the liquidation schedule		
327	The insolvency law providing for a simplified insolvency regime may require the competent authority to prepare the liquidation schedule unless circumstances of the case justify entrusting the preparation of the liquidation schedule to the debtor, an independent professional or another person.	There is no requirement in SBR for a liquidation schedule to be prepared, but it is possible that one may be prepared and provided to creditors to assist them decide whether to vote in favour of a restructuring plan. In SL, if the liquidation was commenced voluntarily, the liquidator will have prepared a liquidation schedule as part of the information sent to creditors under section 497 CA (see ASIC form 509). A liquidator in an SL must also provide creditors with a report under IPRC 70-40 within 3 months of their appointment, which may contain an estimated outcome for the liquidation. There is no such requirement in DA.
Time period for preparing a liquidation schedule		
328	The insolvency law providing for a simplified insolvency regime should specify the maximum time period for preparing a liquidation schedule after commencement of a simplified liquidation proceeding, keeping it short, and authorize the competent authority to establish a shorter time period where the circumstances of the case so justify. It should also specify that any time period established by the competent authority must be notified to the person responsible for preparing the liquidation schedule and to (other) known parties in interest.	This is not reflected in Australian insolvency laws. See the comments for recommendation 327.
Minimum contents of the liquidation schedule		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
329	The insolvency law providing for a simplified insolvency regime should specify the contents of a liquidation schedule, keeping it to the minimum, including that the liquidation schedule should: (a) Identify the party responsible for the realization of the assets of the insolvency estate; (b) List assets of the debtor, specifying those that are subject to security interests; (c) Specify the means of realization of the assets (public auction or private sale or other means); (d) List amounts and priorities of the admitted claims; and (e) Indicate the timing and method of distribution of proceeds from the realization of the assets.	This is not reflected in Australian insolvency laws. See the comments for recommendation 327.
Notification of the liquidation schedule to all known parties in interest		
330	The insolvency law providing for a simplified insolvency regime should require the competent authority to give notice of the liquidation schedule to all known parties in interest, specifying a short period for expressing any objection to the liquidation schedule.	This is not reflected in Australian insolvency laws. See the comments for recommendation 327.
Prior review of the liquidation schedule by the competent authority		
331	Where the liquidation schedule is prepared by a person other than the competent authority, the insolvency law providing for a simplified insolvency regime should require the competent authority, before giving notice of the liquidation schedule, to review the liquidation schedule to ascertain its compliance with the law and when it is not so compliant, to make any required modifications to the liquidation schedule to ensure that it is compliant.	This is not reflected in Australian insolvency laws. See the comments for recommendation 327.
Approval of the liquidation schedule		
332	The insolvency law providing for a simplified insolvency regime should require the competent authority to approve the liquidation schedule if it receives no objection within the established time period and there are no other grounds for the competent authority to reject	This is not reflected in Australian insolvency laws. See the comments for recommendation 327.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	the liquidation schedule.	
Treatment of objections		
333	Where there is objection, the insolvency law providing for a simplified insolvency regime should allow the competent authority either to modify the liquidation schedule, approve it unmodified or convert the proceeding to a different type of insolvency proceeding.	This is not reflected in Australian insolvency laws. See the comments for recommendation 327.
Prompt distribution of proceeds in accordance with the insolvency law		
334	The insolvency law providing for a simplified insolvency regime should require distributions to be made promptly and in accordance with the insolvency law.	In SBR, a restructuring plan must not provide for payments to creditors beyond 3 years from the day the restructuring plan was made - reg 5.3B.15(4) CR. In SL there is no specific provisions reflecting this, but the process is somewhat more streamlined than an ordinary liquidation and so distributions should be made earlier. For a DA, payments under a DA must not go beyond 3 years from the date the DA is made unless the debtor has an specified interest in real property, in which case payments can be made over 5 years - see s 185C(2AA) and (2AB).
Procedure not involving the sale and disposal of assets and distribution of proceeds		
Notice of a decision to proceed with the closure of the proceeding		
335	The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly notify the debtor, all known creditors and other known parties in interest about its determination that no sale and disposal of the assets of the insolvency estate and no distribution of proceeds to creditors will take place in the proceeding and its decision therefore to proceed with the closure of the proceeding. It should require the notice: (a) to include reasons for that determination and the list of creditors, assets and liabilities of the debtor; and (b) to specify a short time period for	This is not reflected in Australian insolvency laws.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	expressing any objection to that decision.	
Decision to close the proceeding in the absence of objection		
336	The insolvency law providing for a simplified insolvency regime should require the competent authority, in the absence of any objection to its decision to proceed with the closure of the proceeding, to close the proceeding.[101]	In SBR: • the restructuring ends in the circumstances set out in reg 5.3B.02 CR; and • a restructuring plan terminates in the circumstances set out in reg 5.3B.31 CR. In SL, the liquidation ends upon the occurrence of anything listed in s 500AC CA. A DA ends in the circumstances set out in Division 5 of Part IX of the BA.
Treatment of objections		
337	Where the competent authority receives an objection to its decision to proceed with the closure of the proceeding, the insolvency law providing for a simplified insolvency regime should permit the competent authority to commence verification of reasons for the objection, following which the competent authority may decide: (a) To revoke its decision and commence a simplified liquidation proceeding involving the sale and disposal of assets and distribution of proceeds; (b) To convert a simplified liquidation proceeding to a different type of insolvency proceeding; or (c) To close the proceeding.[102]	This is not reflected in Australian insolvency laws. See the comments for recommendation 336.

[101] The competent authority would be expected to take a decision on discharge not later than at the time of the closure of the proceeding even if discharge itself may take effect later, for example, after expiration of the monitoring period or implementation of a debt repayment plan. See section L for related recommendations on discharge.
[102] Idem.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
K. Features of simplified reorganization proceedings		
Preparation of a reorganization plan		
338	The insolvency law providing for a simplified insolvency regime should allow the competent authority to appoint, where necessary, an independent professional to assist the debtor with the preparation of the reorganization plan or decide that circumstances of the case justify entrusting the preparation of the plan to an independent professional.	In an SBR, the restructuring practitioner appointed will generally assist the company to prepare the restructuring plan. For a DA, the debt agreement proposal will be prepared by the debt agreement administrator from information provided by, and in consultation with, the debtor.
Time period for the proposal of a reorganization plan		
339	The insolvency law providing for a simplified insolvency regime should fix the maximum time period for the proposal of a reorganization plan after commencement of a simplified reorganization proceeding and authorize the competent authority, where the circumstances of the case so justify, to establish a shorter time period subject to its possible extension up to the maximum period specified in the law.	This is reflected in Australian insolvency laws. See the comments for recommendation 334.
Notice of the time period established for the proposal of a reorganization plan		
340	The insolvency law providing for a simplified insolvency regime should require the competent authority to give notice of the time period that it established for the proposal of a reorganization plan to the person responsible for preparing the reorganization plan and to (other) parties in interest.	For SBR, the time limits for proposing a restructuring plan are set out in reg 5.3B.17 CR. For a DA, there is no specific legislated time period after receiving a debt agreement proposal that the Official Receiver must process it and send it to creditors. This is not applicable to SL.
Consequences of not submitting the reorganization plan within the established time period		
341	The insolvency law providing for a simplified insolvency regime should specify that, if the reorganization plan is not submitted within the established time period, an insolvent debtor	This is not reflected in Australia's insolvency laws. There is no deeming of entering into liquidation proceedings in this circumstance.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	is deemed to enter the liquidation proceeding while, for a solvent debtor, the reorganization proceeding will terminate.	In an SBR, the restructuring simply terminates (reg 5.3B.02 CR). This is not applicable to SL or DA.
Alternative plan		
342	The insolvency law providing for a simplified insolvency regime may envisage the possibility for creditors to file an alternative plan. Where it does so, it should specify the conditions and the time period for exercising such an option.	This is not reflected in Australia's insolvency laws.
Content of the reorganization plan		
343	The insolvency law providing for a simplified insolvency regime should specify the minimum contents of a plan, including: (a) The list of assets of the debtor, specifying those that are subject to security interests; (b) The terms and conditions of the plan; (c) The list of creditors and the treatment provided for each creditor by the plan (e.g., how much they will receive and the timing of payment, if any); (d) A comparison of the treatment afforded to creditors by the plan and what they would otherwise receive in liquidation; and (e) Proposed ways of implementing the plan.	In SBR, a restructuring plan must include the matters set out in reg 5.3B.15 CR, which includes some of these matters. For a DA, a debt agreement proposal must include the matters set out in s 185C BA, which includes some of these matters. This is not applicable to SL.
Notification of the reorganization plan to all known parties in interest		
344	The insolvency law providing for a simplified insolvency regime could require the competent authority or an independent professional to ascertain compliance of the reorganization plan with the procedural requirements as provided in the law, and upon making any required modification to ensure that it is so compliant, to notify the plan to all known parties in interest to enable them to object or express opposition to the proposed plan. The notice should explain the consequences of any abstention and specify the time period for expressing any objection or opposition to the plan.	This is reflected in the SBR and DA process. For SBR, the restructuring practitioner must make a declaration that the restructuring plan is complaint with the CA and CR or notify company of defects in restructuring plan - reg 5.3B.18 and 5.3B.19 CR. For a DA, the Official Receiver must be satisfied that the debt agreement proposal meets the various requirements set out in s 185C

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
		BA before processing it - s 185E BA. This is not applicable to SL.
Effect of the plan on unnotified creditors		
345	The insolvency law providing for a simplified insolvency regime should specify that a creditor whose rights are modified or affected by the plan should not be bound by the terms of the plan unless that creditor has been given the opportunity to express opposition on the approval of the plan.	For both SBR and DA, creditors are given the opportunity to approve or dis-approve of the restructuring plan or debt agreement before it becomes binding on them. See also our comments for recommendation 305.
Approval of the reorganization plan by creditors		
Undisputed reorganization plan		
346	The insolvency law providing for a simplified insolvency regime should specify that the plan is deemed to be approved by creditors if the requirements under recommendation 288 are fulfilled.	See the comments for recommendation 288.
Disputed plan		
347	The insolvency law providing for a simplified insolvency regime should: (a) Allow the modification of the plan to address objection or sufficient opposition to the plan; (b) Establish a short time period for introducing modifications and transmitting a modified plan to all known parties in interest; (c) Require the competent authority to transmit any modified plan to all known parties in interest indicating a short time period for expressing any objection or opposition to the modified plan; (d) Require the competent authority to terminate the simplified reorganization proceedings for a solvent debtor or convert the simplified reorganization proceeding to	This is not reflected in Australia's insolvency laws. See the comments for recommendation 350 in relation to how a plan can be amended.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	a simplified liquidation proceeding for an insolvent debtor (i) if modification of the original plan to address objection or sufficient opposition is not possible or (ii) if objection or sufficient opposition to the modified plan is communicated to the competent authority within the established time period; and (e) Specify that the modified plan is approved by creditors if the competent authority receives no objection and no sufficient opposition to the modified plan within the established time period.	
Confirmation of the plan by the competent authority		
348	The insolvency law providing for a simplified insolvency regime should require the competent authority to confirm the plan approved by creditors. It should require the competent authority, before confirming the plan, to ascertain that the creditor approval process was properly conducted, creditors will receive at least as much under the plan as they would have received in liquidation, unless they have specifically agreed to receive lesser treatment, and the plan does not contain provisions contrary to law.	This is not reflected in Australia's insolvency laws.
Challenges to the confirmed plan		
349	The insolvency law providing for a simplified insolvency regime should permit the confirmed plan to be challenged on the basis of fraud. It should specify: (a) A time period for bringing such a challenge calculated by reference to the time the fraud is discovered; (b) The party that may bring such a challenge; (c) That the challenge should be heard by the relevant review body; and (d) That a simplified reorganization proceeding may be converted to a simplified liquidation proceeding or a different type of insolvency proceeding where the confirmed plan is successfully challenged.	There are no specific provisions permitting a restructuring plan in an SBR to be challenged for fraud, however, if fraud was found, the court could be asked to void or terminate the restructuring plan under reg 5.3B.62 or 5.3B.63 CR here are no specific provisions permitting a DA o be challenged for fraud, however, if fraud was found, the court could be asked to void or terminate the debt agreement under Division 6 of Part IX BA or s 185Q BA. This is not applicable to SL.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Amendment of a plan		
350	The insolvency law providing for a simplified insolvency regime should permit the amendment of a plan and specify: (a) The parties that may propose amendments; (b) The time at which the plan may be amended, including between submission and approval and during implementation, and a mechanism for communicating amendments to the competent authority; and (c) The mechanism for approval of amendments of the confirmed plan, which should include a notice by the competent authority of proposed amendments to all parties in interest affected by the amendments, the approval of the amendments by those parties, the confirmation of the amended plan by the competent authority, and the consequences of failure to secure approval of proposed amendments.	In SBR, a restructuring plan can only be varied by the court - see reg 5.3B.61 CR. A DA may be varied by agreement of the majority of creditors in value under the process set out in Division 4 of Part IX BA. This is not applicable to SL.
Supervision of the implementation of the plan		
351	The insolvency law providing for a simplified insolvency regime may entrust supervision of the implementation of the plan to the competent authority or an independent professional as applicable.	In SBR, the implementation of the restructuring plan is supervised by the restructuring practitioner - see reg 5.3B.37 CR. The implementation of a DA is supervised by the debt agreement administrator - see s 185LA BA. This is not applicable to SL.
Consequences of the failure to implement the plan		
352	The insolvency law providing for a simplified insolvency regime should specify that, where there is substantial breach by the debtor of the terms of the plan or inability to implement the plan, the competent authority may on its own motion or at the request of any party in interest: (a) Convert the simplified reorganization proceeding to a simplified liquidation proceeding or a different type of insolvency proceeding;	This is not reflected in Australia's insolvency laws. For SBR, if there is substantial breach by the debtor of the terms of the restructuring plan or inability to implement the restructuring plan, the court could terminate the restructuring plan under reg 5.3B.63 CR For a DA, if there is substantial breach by the debtor of the terms of the DA or inability to implement the DA, the DA could be terminated

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	(b) Close the simplified reorganization proceeding and parties in interest may exercise their rights at law;	by the Official Receiver under s 185QA BA or by the court under s 185Q.
	(c) If closed, reopen the simplified reorganization proceeding;	This is not applicable to SL.
	(d) If closed, open a simplified liquidation proceeding; or	
	(e) Grant any other appropriate type of relief.	
Conversion of a simplified reorganization to a liquidation		
353	The insolvency law providing for a simplified insolvency regime should provide that at any point during a simplified reorganization proceeding, the competent authority may, on its own motion or at the request of a party in interest or an independent professional, where appointed, decide that the proceeding be discontinued and converted to a liquidation, if the competent authority determines that the debtor is insolvent and there is no prospect for viable reorganization. Where the competent authority considers conversion to liquidation before submission of a reorganization plan, the competent authority should be mindful of the time needed to prepare and submit a reorganization plan (see recommendations 339 and 340 above) and may consult the independent professional in making the decision, if one has been appointed.	This is not reflected in Australia's insolvency laws.
L. Discharge		
Discharge in simplified liquidation proceedings		
Decision on discharge		
354	The insolvency law providing for a simplified insolvency regime should specify that, in a simplified liquidation proceeding, discharge should be granted expeditiously.	In an SL, creditors claims are 'discharged' only upon them having received payment of any dividend and the company being deregistered at the end of the liquidation. In SL the liquidation process is somewhat more streamlined than an ordinary liquidation and so discharge should be made earlier than in an ordinary liquidation.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Discharge conditional upon expiration of a monitoring period		
355	Where the insolvency law provides that discharge may not apply until after the expiration of a specified period of time following commencement of insolvency proceedings during which period the debtor is expected to cooperate with the competent authority ("monitoring period"), the insolvency law providing for a simplified insolvency regime should: (a) Fix the maximum duration of the monitoring period, which should be short; (b) Allow the competent authority to establish a shorter duration of the monitoring period on a case-by-case basis; (c) Specify that, after expiration of the monitoring period, the debtor should be discharged upon decision of the competent authority where the debtor has not acted fraudulently and has cooperated with the competent authority in performing its obligations under the insolvency law.	This is not reflected in Australia's insolvency laws.
Discharge conditional upon the implementation of a debt repayment plan		
356	The insolvency law providing for a simplified insolvency regime may specify that full discharge may be conditional upon the implementation of a debt repayment plan. In such case, it should allow the competent authority to specify the duration of the debt repayment plan ("discharge period") and require the discharge procedures to include verification by the competent authority: (a) Before the debt repayment plan becomes effective, that the debt repayment obligations reflect the situation of the individual entrepreneur and are proportionate to his or her disposable income and assets during the discharge period, taking into account the equitable interest of creditors; and (b) On expiry of the discharge period, that the individual entrepreneur has fulfilled his or her repayment obligations under the debt repayment plan, in which case the individual entrepreneur is discharged upon confirmation by the competent authority of the fulfilment of the debt repayment plan by the debtor.	Under SBR, discharge of debts occurs when creditors have been paid the full amount they are required to be paid under the restructuring plan and the plan terminates. Under a DA, the debtor is released from their provable debts when the debt agreement has been fully complied with - ss 185N and 185 NA BA. For SL see the comments for recommendation 354.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Discharge in simplified reorganization proceedings		
357	The insolvency law providing for a simplified insolvency regime may specify that full discharge in simplified reorganization is conditional upon successful implementation of the reorganization plan and it shall take immediate effect upon confirmation by the competent authority of such implementation.	See the comments for recommendation 356.
General provisions		
Conditions for discharge		
358	Where the insolvency law providing for a simplified insolvency regime specifies that conditions may be attached to the MSE debtor's discharge, those conditions should be kept to a minimum and clearly set forth in the insolvency law.	See the comments for recommendation 356.
Exclusions from discharge		
359	Where the insolvency law providing for a simplified insolvency regime specifies that certain debts are excluded from a discharge, those debts should be kept to a minimum and clearly set forth in the insolvency law.	The debts that will be excluded from discharge under SBR and SL are those that are not provable in corporate insolvency proceedings generally under the CA. The debts that will be excluded from discharge under a DA are those that are not provable in personal insolvency proceedings generally under the BA.
Criteria for denying discharge		
360	The insolvency law providing for a simplified insolvency regime should specify criteria for denying a discharge, keeping them to a minimum.	See the comments for recommendation 359.
Criteria for revoking a discharge granted		

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
361	The insolvency law providing for a simplified insolvency regime should specify criteria for revoking a discharge granted. In particular, it may specify that the discharge is to be revoked where it was obtained fraudulently.	There are no specific criteria in Australia's insolvency laws which specify criteria for revoking a discharge granted. Such revocation would have to be sought from the court.
M. Closure of proceedings		
362	The insolvency law providing for a simplified insolvency regime should specify minimal and simple procedures by which simplified insolvency proceedings should be closed.	In SBR: • the restructuring ends in the circumstances set out in reg 5.3B.02 CR and the restructuring practitioner must give notice to ASIC and the creditors - reg 5.3B.53 CR; and • a restructuring plan terminates in the circumstances set out in reg 5.3B.31 CR and the restructuring practitioner must give notice to ASIC and the creditors - reg 5.3B.57 CR. In SL, the liquidation ends upon the occurrence of anything listed in s 500AC CA. If the SL ends for reason other than payment of final dividend, the liquidator must lodge notice with ASIC within 2 days of cessation - reg 5.5.08 CR. Otherwise, the liquidator must lodge with ASIC the usual end of administration forms. A DA ends in the circumstances set out in Division 5 of Part IX of the BA. If the DA ended because it was fully complied with, the debt agreement administrator must, within 5 business days after the end of the DA, notify the Official Receiver, in writing, of the end of the DA - s 185N(5) BA.
N. Treatment of personal guarantees; procedural consolidation and coordination		
Treatment of personal guarantees		
363	A simplified insolvency regime should address, including through procedural consolidation or coordination of linked proceedings, the treatment of personal guarantees provided for business needs of the MSE debtor by individual entrepreneurs, owners of limited liability	In SBR personal guarantees given by directors or their spouses or relatives cannot be enforced during restructuring - s 453W CA. There is no provisions in the DA laws which deal with personal

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	MSEs or their family members.	guarantees given by others of the debtor's debts. There are no provisions for procedural consolidation or coordination of linked proceedings.
Procedural consolidation or coordination of linked business, consumer and personal insolvency proceedings		
Orders of procedural consolidation and coordination		
364	The insolvency law may require procedural consolidation or coordination of linked business, consumer and personal insolvency proceedings in order to address comprehensively intertwined business, consumer and personal debts of individual entrepreneurs, owners of limited liability MSEs and their family members. The law may specify that, in such cases, the competent authority or another competent State body, as the case may be, may order procedural consolidation or coordination of linked proceedings on its own motion or upon request of any party in interest, which may be made at the time of application for commencement of insolvency proceedings or at any subsequent time.	This is not reflected in Australia's insolvency laws. One of the primary issues often facing directors of companies that operate MSE businesses is that they give personal guarantees of business debts and often mortgage their home to fund the business and so there is little incentive to attempt to restructure the business debts if they can't also restructure their personal business-related debts. There is merit in looking at how such personal liabilities of the directors can be dealt with jointly with the business debts in a consolidated proceeding.
Modification or termination of an order for procedural consolidation or coordination		
365	The insolvency law should specify that an order for procedural consolidation or coordination may be modified or terminated, provided that any actions or decisions already taken pursuant to the order are not affected by the modification or termination. Where more than one State body is involved in ordering procedural consolidation or coordination, those State bodies may take appropriate steps to coordinate modification or termination of procedural consolidation or coordination.	See the comments for recommendation 364.
Notice of procedural consolidation and coordination		
366	The insolvency law should establish requirements for giving notice with respect to applications and orders for procedural consolidation or coordination and modification or termination of procedural consolidation or coordination, including the scope and extent of the order, the parties to whom notice should be given, the party responsible for giving	See the comments for recommendation 364.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
	notice and the content of the notice.	
O. Conversion		
Conditions for conversion		
367	The insolvency law should provide for conversion between different types of proceedings in appropriate circumstances and subject to applicable eligibility and other requirements.	There are no provisions for conversion of SBR or DA to other processes. In SL, a liquidator can cease to follow the SL process - reg 5.5.08 CR. A SL could also appoint a voluntary administrator.
Procedures for conversion		
368	The insolvency law should address procedures for conversion, including notification to all known parties in interest about the conversion, and mechanisms for addressing objections to that course of action.	See comments for recommendation 367.
Effect of conversion on post-commencement finance		
369	The insolvency law should specify that where a simplified reorganization proceeding is converted to a liquidation proceeding, any priority accorded to post-commencement finance in the simplified reorganization proceeding should continue to be recognized in the liquidation proceeding.	See comments for recommendation 367.
Other effects of conversion		
370	The insolvency law should address other effects of conversion, including on deadlines for actions, the stay of proceedings and other steps taken in the proceeding being converted.	See comments for recommendation 367.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
P. Appropriate safeguards and sanctions		
371	The insolvency law providing for a simplified insolvency regime should build in appropriate safeguards to prevent abuses and improper use of a simplified insolvency regime and permit the imposition of sanctions for abuse or improper use of the simplified insolvency regime, for failure to comply with the obligations under the insolvency law and for non-compliance with other provisions of the insolvency law.	Yes For SBR, for example: • s 453C CA prescribes circumstances in which a company is unable to take advantage of a restructure; • ss 453L CA and 453M CA limit the transactions that directors can cause the company to enter into during restructuring and provide impositions if that is breached; • reg 5.3B.27 CR prescribes terms for a restructuring plan, which if not complied with will cause restructuring plan to be void; • reg 5.3B.62 prescribes when a court may void a restructuring plan where it does not comply with the CA or CR; • CA section 453J provides when a restructuring practitioner may terminate restructuring plan. For DA, for example: • The Official Receiver must review and approve a DA proposal - s 185EA BA; • A court can terminate or void a DA - s 185Q, Division 6 of Part IX BA; • The court may inquire in the conduct of debt agreement administrators (s 185ZCB BA) and may order them to make good loss caused (s 185ZCA BA). in SL, s 500AA CA prescribes circumstances in which a company is unable to take advantage of simplified liquidation and a liquidator can cease to use the SL process at their discretion - reg 5.5.08 CR.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Q. Pre-commencement aspects		
Obligations of persons exercising control over MSEs in the period approaching insolvency		
372	The law relating to insolvency should specify that, at the point in time when the persons exercising control over the business knew or should have known that insolvency was imminent or unavoidable, they should have due regard for the interests of creditors and other stakeholders and take reasonable steps at an early stage of financial distress to avoid insolvency and, where it is unavoidable, to minimize the extent of insolvency. Reasonable steps might include: (a) Evaluating the current financial situation of the business; (b) Seeking professional advice where appropriate; (c) Not committing the business to the types of transaction that might be subject to avoidance unless there is an appropriate business justification; (d) Protecting the assets so as to maximize value and avoid loss of key assets; (e) Ensuring that management practices take into account the interests of creditors and other stakeholders; (f) Considering holding informal debt restructuring negotiations with creditors; and (g) Applying for commencement of insolvency proceedings if it is required or appropriate to do so.	No - this is not specifically reflected in Australian insolvency laws, however the case authorities provide that, when a company is in the zone of insolvency, a director's duty to act in the best interests of the company requires the director to take into account the interests of creditors when making decisions. This recommendation is more aligned with the wrongful trading laws which apply in the UK. Australia's insolvent trading laws (Subdivision B, Division 3 of Part 5.7B CA) go further than this recommendation.
Early rescue mechanisms		
373	As a means of encouraging the early rescue of MSEs, a State should consider establishing mechanisms for providing early signals of financial distress to MSEs, increasing financial and business management literacy among MSE managers and owners and promoting their access to professional advice. These mechanisms should be available and easily accessible to MSEs.	This is not currently reflected in Australia's insolvency laws. This recommendation reflects recommendation 23 of the submission made by the Law Council of Australia dated 1 December 2022 to the Parliamentary Joint Committee on Corporations and Financial Services.

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Informal debt restructuring negotiations		
Removing disincentives for the use of informal debt restructuring negotiations		
374	For the purpose of avoiding MSE insolvency, the State may consider identifying and removing disincentives for the use of informal debt restructuring negotiations.	Noted - this has not been done to date. The main disincentives for informal debt restructuring negotiations are - • the insolvent trading laws if the directors cannot access the safe harbour against insolvent trading); • directors often give personal guarantees of business debts and often mortgage their home to fund the business and so there is little incentive to attempt to restructure the business debts if they can't restructure their personal business-related debts.
Providing incentives for participation in informal debt restructuring negotiations		
375	The State may consider providing appropriate incentives for the participation of creditors, including public bodies, and other relevant stakeholders, in particular employees, in informal debt restructuring negotiations.	This is not reflected in Australia's insolvency laws.
Institutional support with the use of informal debt restructuring negotiations		
376	The State may consider providing for: (a) Involvement of a competent public or private body, where necessary, to facilitate informal debt restructuring negotiations between creditors and debtors and between creditors; (b) A neutral forum to facilitate negotiation and resolution of debtor-creditor and inter-creditor issues; and (c) Mechanisms for covering or reducing the costs of the services mentioned in subparagraphs (a) and (b) above.	There is no such program of institutional support with the use of informal debt restructuring negotiations. .

Number	Recommendation	Is the recommendation reflected in Australian Insolvency Laws?
Pre-commencement business rescue finance		
377	The law should: (a) Facilitate and provide incentives for finance to be obtained by MSEs in financial distress before commencement of insolvency proceedings for the purpose of rescuing business and avoiding insolvency; (b) Subject to proper verification of appropriateness of that finance and protection of parties whose rights may be affected by the provision of such finance, provide appropriate protection for the providers of such finance, including the payment of such finance provider at least ahead of ordinary unsecured creditors; (c) Provide appropriate protection for those parties whose rights may be affected by the provision of such finance.	This is not specifically reflected in Australia's insolvency laws, however, MSEs can obtain short term working capital finance through invoice or debtor financing, where the financier obtains a super priority over existing general security holders over the invoices - s 64 *Personal Property Securities Act 2009* (Cth).