



Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
Question No.	088
Topic	Insolvency law reform
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Committee member	Senator O'NEILL

Question

CHAIR: I want to segue ... to concerns that the committee raised about other insolvency matters in our report. Has ASIC taken any action over the past 12 months, particularly following the tabling of that report into corporate insolvency, to step up oversight of insolvency issues?

...

Ms O'Rourke: ... The other part of the PJC report that I think is important was some of the specific recommendations that went to the data that ASIC collects. As I said earlier, some of the recommendations would need additional either funding or law change to action, but there were some that went to data that we have been looking at immediately taking action in relation to. We've enhanced the publication of insolvency data in terms of its frequency and depth.

Mr Yanco: We're expanding in that area, and I think there's some law reform needed to do more. Some of recommendations from the committee that we looked at we thought needed law reform. I can't put my finger on it right now.

CHAIR: You can take that on notice. The committee put a lot of work into that report, and we're very keen to make sure it stays in people's focus.

Mr Yanco: I think that's with Treasury

Answer

The 12 July 2023 report from the Parliamentary Joint Committee on Corporations and Financial Services inquiry into 'Corporate insolvency in Australia' made 28 recommendations. Of these, four recommendations were made to ASIC. We set out below work we have undertaken and will undertake that relate to these four recommendations.

Recommendation 4 *The committee recommends that the Australian Securities and Investments Commission collect high quality, granular data in relation to insolvency and provide this data in a timely way to relevant government agencies and regulators.*

- Under current statutory provisions, ASIC collects some important data in relation to insolvency that we collate into data sets that can be published.
 - Law reform would be required for ASIC to collect additional data (that it currently has no power to do) to respond fully to some of the issues raised by the PJCCFS.
- ASIC publishes on ASIC.gov.au this statistical data, including data captured from Initial Statutory Reports (ISR) lodged by registered liquidators as part of its Series 3 statistical series.
 - In March 2020, ASIC changed the lodgement channel and format for the ISR. Data from the new ISR for the 2020, 2021 and 2022 financial years was published in January 2023 in Excel workbooks.
- Additional more granular data from ISR lodgements was published in August 2023 and December 2023 including the type of appointment, reasons for lodging, number of reports alleging offences and those that don't, offences reported to other agencies, existence and adequacy of company records and whether the registered liquidator intends to initiate recovery proceedings and what type.

- In June 2023 ASIC commenced the publication of a new statistical series (Series 5) that tracks the number of solvent members voluntary liquidations in Australia. This series is published quarterly by ASIC.
- ASIC has carried out thematic surveillance on the simplified liquidation process adopted in the period 1 January 2021 to 30 June 2023. This includes an analysis of data about creditors' profile, receipts and payments and remuneration drawn. A report of the findings is scheduled for release in June 2024.
- ASIC will continue to explore whether there are other ways of publishing the data we receive. We note some of these may require funding to enable extraction and collation.

Recommendation 10 *The committee recommends that the Australian Securities and Investments Commission collect and analyse data from an appropriately sized sample of voluntary and compulsory de-registrations, to provide greater visibility of the solvency status of deregistered companies.*

- There are currently over 3.3 million companies registered in Australia, the vast majority of which are not required to lodge any financial statements or accounts with ASIC.
- ASIC does not currently collect any data relating to the financial position of a company at the time it is deregistered either voluntarily or compulsorily as there is no legal basis for ASIC to collect such information.
- ASIC held discussions with the Australian Business Registry Services to determine alternative sources of information, however, they appear to be limited.
- ASIC is considering what steps it can take within the current legislative framework to make information about companies that are in the process of being deregistered more accessible to stakeholders.

Recommendation 19 *The committee recommends that the comprehensive review consider whether the current statutory reporting obligations for insolvency practitioners are best serving the integrity, efficiency, and efficacy of the Australian corporate insolvency framework, including (but not limited to):*

- *the ability of the Australian Securities and Investments Commission (ASIC) to appropriately process, utilise and respond to initial statutory reports on current resources; and*
- *the appropriateness of existing reporting thresholds, having regard to their regulatory value as well as the burden imposed on insolvency practitioners.*

The committee further recommends that in the interim, the government and ASIC consider whether any timely changes can be made to the regulations on reporting thresholds, and ASIC's response to insolvency practitioner reports.

- On 11 April 2024, ASIC released a consultation paper on proposed updates to its regulatory guidance for external administrators and controllers when reporting and lodging statutory reports about alleged misconduct. In May 2024, ASIC is holding round tables with professional bodies and other interested parties. Consultation closes on 6 June 2024
- The proposed updates provide greater clarity on ASIC's expectations of external administrators and controllers' compliance with the reporting obligations and ASIC's approach to the reports it receives.
- ASIC expects the proposed updates will provide improved guidance on reporting requirements, reducing unnecessary effort and expense.
- The reporting obligations are an important 'front line' information source for ASIC on possible offences or misconduct by companies. ASIC uses information from some of the reports received to monitor 'phoenix' behaviour, take administrative actions such as director bannings, and to identify appropriate cases for enforcement action. These reports are also the source of statistics about insolvency in Australia that ASIC publishes.
- ASIC is reviewing internal processes for requesting, assessing and actioning statutory reports lodged by registered liquidators namely the Initial Statutory Report (ISR) and the Supplementary Statutory Reports (SSR). ISRs provide valuable data about companies that enter into external administration and SSRs are an important resource in ASIC's regulatory toolkit that can form the basis for ASIC taking enforcement action or administrative banning action.

Recommendation 16 – *The committee recommends that the government consider changes to the Assetless Administration Fund to ensure that it is achieving its intended policy objectives.*

- ASIC continues to engage with Treasury regarding ASIC’s administration of the Assetless Administration Fund (AAF)
- The AAF provides grant funding to liquidators to cover costs of preliminary investigations and reports by liquidators into the failure of companies with few or no assets, where it appears to ASIC that enforcement action may result from the investigation and report.
- The AAF also funds a liquidator to take action to recover assets when fraudulent or illegal activity is suspected.
- ASIC administers the AAF through the government’s GrantConnect scheme and is governed by published Grant Guidelines. Applicants apply for funding through ASIC’s Regulatory Portal where dedicated teams assess each application.