



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Inquiry into Corporate Insolvency in Australia
Question No.	014
Topic	Purpose of Australia's insolvency laws
Reference	Questions on notice via email dated 23 December 2022
Committee member	Senator Deborah O'Neill

Question

- a. What are the goals and purposes of Australia's corporate insolvency laws?
- b. Do you think those goals and purposes are clearly articulated at present? To the extent they are, are they in turn adequately realised in practice?
- c. The Australian economy has changed considerably since the Harmer report was released in 1988. Have the goals and purposes of Australia's insolvency law changed with it?
- d. Is there an appropriate balance between the interests of stakeholders with the mixture of creditor and debtor in-possession regimes that are currently in place?
- e. Are the goals and purposes themselves adequate and appropriate, or may they need reform?

Answer

ASIC refers the Committee to paragraphs 5 to 9 and 31 to 46 of its submission in which we outline the role the corporate insolvency regime plays in Australia's corporate regulatory framework and how it impacts the level and nature of economic activity.

ASIC notes that while Chapter 5 of the *Corporations Act, 2001* does not codify statutory objectives, broadly its aim is to balance the interests of businesses, creditors and the community when a company becomes insolvent, or approaches insolvency.

Statutory objectives are codified for the voluntary administration and small business restructuring regimes. In general terms the objective is to provide for the company's affairs to be administered in a way that saves the company or its business and, if that is not possible, maximises the return to creditors.

A specific objective of Small Business Restructuring is to leave the company in control of its affairs while a plan is developed to enter a restructuring plan with creditors.