



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Inquiry into Corporate Insolvency in Australia
Question No.	013
Topic	Root and branch review
Reference	Questions on notice via email dated 23 December 2022
Committee member	Senator Deborah O'Neill

Question

Several submitters have suggested a root and branch review of Australia's insolvency laws in the style of the 1988 Australian Law Reform Commission (ALRC) Harmer Review.

a. What is your view on whether there should be a root and branch review?

If supportive:

- b. Why would a root and branch review be required?
- c. What organisation would be most appropriate to conduct the review?
- d. Are there any other structural features you think a review should have – for example, its timing and consultation processes?
- e. In considering the structure, scope and approach of such a review, might Australia draw any insights from relatively recent reviews internationally (such as those undertaken in Singapore and the United States in the 2010s, for example)?
- f. The ALRC is currently undertaking a review of the legislative framework for corporations and financial services regulation. Will that review address the complexity of insolvency law, or should the root and branch review take a similar approach?
- g. Should the root and branch review address both the policy and legislative framework for insolvency?

Answer

Whether a root and branch review of Australia's insolvency laws is undertaken is a matter for government.

ASIC refers the Committee to paragraphs 236 to 242 of its submission at which ASIC notes commentary that the Inquiry provides an opportunity to consider a detailed 'root and branch' review of Australia's insolvency laws. ASIC notes this may include consideration of a single regulator for corporate and personal insolvency, and we set out factors ASIC considers would need to be taken into account.

As noted at paragraph 241 of ASIC's submission, ASIC is of the view that any reforms would also need to be considered and viewed in light of the work that the ALRC is doing on their Review of the Legislative Framework for Corporations and Financial Services Regulation, the potential simplification of aspects of Australia's corporate laws and the Modernising Business Registers program currently underway.