

Parliamentary Joint Committee on Corporations and Financial Services

Corporate Insolvency in Australia

Attorney-General's Department

Hearing date: 13 December 2022

Question date: 22 December 2022

Deborah O'Neill asked the following question:

2. In your submission, you outline four aspects of the bankruptcy regime which interact with corporate insolvency, including, for example, registration on the PPS Register, the default priority rules and the vesting provisions in liquidations.
- a. Could these measures be strengthened, or their application be broadened, to improve the liquidation process?
 - b. Are there any other measures that could be taken from the personal insolvency regime that could improve the corporate insolvency regime?
 - c. Are there aspects of the corporate insolvency regime that could be reflected in the personal bankruptcy framework?

The response to the question is as follows:

The bankruptcy regime relates to personal insolvency and provides a framework to allow individuals in severe financial stress to discharge unmanageable debts, while providing for the realisation of a debtor's available assets for distribution to affected creditors. Corporate insolvency relates to the insolvency of incorporated companies. While there may be situations in a corporate insolvency which flow into personal insolvency (for example where a director has provided a director's guarantee over a corporate loan), the systems are separate.

With regard to questions (b) and (c) above, the elements of corporate and personal insolvency have been developed for the specific circumstances of each regime. Adopting elements from either regime would require careful consideration and analysis. The department is considering stakeholder views on the matter and will continue to monitor outcomes of the inquiry.

With regard to question (a), the four aspects listed in the Attorney-General's Department's submission to the inquiry relate to the personal property securities (PPS) regime in a corporate insolvency context, in response to 2(d) of the terms of reference of the inquiry. The PPS framework regulates the creation, legal effect and enforcement of security interests in personal property, and applies regardless of the form of the transaction or identity of the grantor (corporation, an individual or other entity). The department will monitor outcomes of the inquiry in relation to the PPS regime and personal insolvency system. However, any potential reform is a matter for Government.