SCOLA
Society of Corporate Law Academics (SCOLA)

Parliamentary Joint Committee on Corporations and Financial Services: Inquiry into Corporate Insolvency in Australia

Answers to Questions on Notice

17 February 2023

Background

1. On 14 December 2022, members of the Society of Corporate Law Academics' (the **Society**) appeared before a hearing of the Committee.

2. The Committee asked the Society to take questions on notice. The Society has convened an expert panel led by Professor Jason Harris. The panel's answers to each question follow.

Questions on notice from Senator O'Neill

Question 1

3. **Senator O'Neill** asked:

> At page 1 of your submission, you drew attention to the fact that 'insolvency law is interconnected with the broader economy, financial system and affects many people within the community. Any change to insolvency law can have ripple effects that flow through not only corporate insolvency law but throughout corporate and commercial law.' How can that be assessed and taken into account in this inquiry or a potential future root and branch review?

4. Any future root and branch review should include terms of reference that seek to obtain submissions from disciplines other than law, particularly economics and social sciences. Empirical evidence as to the effect of insolvency would be useful for a future inquiry as this data is mostly lacking in corporate insolvency law. Personal bankruptcy law has been investigated in detail by a team of scholars at Melbourne Law School led by Professor Ian Ramsay but this has been greatly facilitated by the provision of data for research by AFSA. Unfortunately, ASIC does not provide data on corporate insolvency for research purposes without paying fees that academic researchers are unable to pay.

Question 2

5. **Senator O'Neill** asked:

> At page 1 of your submission, you noted that 'Well-functioning markets require an efficient and effective insolvency system to give creditors confidence to extend credit and to give employees, shareholders, customers and suppliers confidence that obligations will be met, and if not, will be dealt with in a fair and effective manner by an insolvency practitioner'. How can the efficiency and effectiveness be estimated for the current insolvency system or proposed reforms?

6. Funded empirical research, particularly involving economics and social science, could provide data to assist with determining this question.

Question 3

7. **Senator O'Neill** asked:

> In your submission on page 2 you noted that 'When a small business goes into insolvency, the current law requires that different people be appointed as corporate liquidators and personal bankruptcy trustees, which just increases the level of cost and complexity involved in what is likely a small asset pool of personal and corporate assets'. In other jurisdictions overseas, is a single insolvency practitioner appointed and if so, how are the competing interests of the two sets of creditors managed?

8. In other jurisdictions such as New Zealand, Singapore and the UK, there is a government regulator (Official Assignee or Official Receiver) who performs both personal and corporate appointments. Taking a corporate appointment and also the personal appointment over a director of the company who has entered bankruptcy could raise independence/conflict of interest. In Australia, there is no

prohibition on insolvency practitioners taking both personal and corporate appointments, although the ARITA's PSI 1 Independence notes that common appointments may be used 'where similar commercial and practical reasons allow a practitioner to be both the liquidator of a director's company and the trustee of that director's bankruptcy', but also notes that 'care must be taken because there is a high risk of both actual and perceived lack of independence in these types of Appointments' at [1.7.2]. Several cases have allowed bankruptcy trustees to also take appointments as liquidators of associated companies, particularly where there is an overlap between the business and financial affairs of the individual and the company: see *Pascoe v Ambernap Pty Ltd* [2008] FCA 1975; *Re Solomons* [2013] FCA 1273.

9. Our point is not that common appointments should necessarily be the standard form of appointments, but rather than many MSMEs have extensive overlapping financial affairs and it may save money if a single practitioner was appointed, provided that any potential claims between the two estates could be managed appropriately (eg through the appointment of a special purpose trustee). It may also be possible to affect a substantive consolidation between the 2 estates to form a single asset pool and single creditor pool. This is often undertaken in corporate group insolvencies. The World Bank and the Asian Business Law Institute both recommend that hybrid insolvency procedures be included to recognise the overlap between personal and corporate finances in many MSMEs.

Question 4

10. **Senator O'Neill** asked:

> In your submission on page 2 you recommended the use of alternative dispute resolution to deal with financial distress, rather than formal liquidation or restructuring. What data is there on the extent to which small businesses facing insolvency are accessing alternative dispute resolution now?

11. We are not aware of any data on such procedures, but are aware that international guidelines are increasingly promoting ADR for insolvency disputes.

12. **Senator O'Neill** further asked**:**

> What barriers are there to accessing alternative dispute resolution for small businesses facing insolvency?

13. Many MSMEs have difficulty in accessing appropriate advice either through inadequate funds to do so and/or because of a lack of awareness of who are high trust advisors compared with untrustworthy advisors. We recommend promoting a register of advisors through the ASBFEO and state small business ombuds as they commonly play a key role in facilitating dispute resolution involving small businesses.

Additional question 1: Root and branch review

Root and Branch review: 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.

Question 1(a): What is your view on whether there should be a root and branch review?

14. We strongly support a broad root and branch review.

Question 1(b): Why would a root and branch review be required?

15. The Australian economy, business practices, sources of finance, asset bases of most businesses and social attitudes have changed significantly since the Harmer Review in the mid-1980s (the report was released in 1988, but the hearings and consultations occurred over several years prior to that). Australia is in a global race for capital and insolvency law plays a foundational role in making a capital market attractive to international capital flows. Our fellow OECD members and other developed nations (in particular Singapore) have been active in reviewing and updating their insolvency and restructuring laws. Australia needs to ensure that our insolvency and restructuring laws are attractive to international creditors or Australian companies will face higher costs of capital and the community will suffer from businesses failing when they could have been saved. Effective restructuring laws facilitate corporate rescue and this provides benefits to preserving the tax base and competition levels, protecting jobs, maximising enterprise value and minimising flow-on adverse effects to suppliers and customers, not to mention supporting the personal dignity that business owners have through continuing in business and mitigation of adverse personal effects of the distress caused by insolvency (including health and wellbeing effects, family breakdown, domestic violence and mental health problems). In short, providing an effective insolvency and restructuring regime provides a significant benefit to the economy and to the broader community.

Question 1(c): What organisation would be most appropriate to conduct the review?

16. The Australian Law Reform Commission or the Productivity Commission. Alternatively, a joint task force involving the profession and academia (such as the American Bankruptcy Institute's Commission on Chapter 11 Bankruptcy in 2014) could also be used. The former Corporations and Markets Advisory Committee would have been appropriate for such an undertaking.

Question 1(d): Are there any other structural features you think a review should have – for example, its timing and consultation processes?

17. A 3 year timeframe would be appropriate and would allow a series of discussion papers, public and private consultations and broad engagement with stakeholders (not just lawyers and insolvency practitioners).

Question 1(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)?

18. Major reviews undertaken in Singapore (reporting in 2013) and the United States in 2014 took several years to complete. We strongly suggest that any such review needs to start with an assessment of how the insolvency regime currently works, what it costs, what it produces and who undertakes what action. A root and branch review should not be focussed simply on tinkering with insolvency law provisions. A rethinking of insolvency is needed to ensure that the law creates realistic and necessary goals and allocates work (and funding) to appropriate and effective bodies and professionals.

Question 1(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?

19. Unfortunately not, as the ALRC reference is focussed on Ch 7 financial services law, although some outcomes of the ALRC review may result in clearer legislative drafting and a more integrated corporations statute that will benefit corporate insolvency.

Question 1(g): Should the root and branch review address both the policy and legislative framework for insolvency?

20. Yes. We need to consider why we have insolvency law, what goals it can and should aim for and how best to achieve those goals. This should include whether Australia should have a unified insolvency statute (as many other countries have), whether there should be a single insolvency regulator and what the balance between public and private work within insolvency should be (eg should there be a government liquidator?).

Additional question 2: Purpose of Australia's insolvency laws

Question 2(a): What are the goals and purposes of Australia's corporate insolvency laws?

21. Both the Australian Harmer Review and the Cork Report in the UK (in 1982) provided a long list of goals and aims of insolvency law. Other international reports and guidelines provided by INSOL, UNCITRAL and the World Bank also list numerous goals.

22. We suggest that one of the first tasks of a root and branch review should be to determine what the goals of an effective modern insolvency law should be. These goals need to be realistic and achievable. There is little point in designing and insolvency regime around unsecured creditor rights and powers if unsecured creditors rarely receive any financial return in insolvencies and hence are rationally apathetic.

Question 2(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?

23. No, they are not. Most provisions in the current insolvency law are not linked to explicit statutory purposes (Part 5.3A and Part 5.3B are notable exceptions). As to whether the goals are achieved in practice, that is difficult to determine without access to data on corporate insolvency matters from ASIC. We are not told how long insolvency appointments last for, what they cost or what their results are. ASIC previously published the EX01 Schedule B report that provided estimates of returns to unsecured creditors and that provided for estimates that in 96% of cases was 11% or less, but in 92% of cases it was nil returns, and in only 4% of cases was it between 0-11%. In the vast majority of insolvencies general unsecured creditors receive nothing.

Question 2(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?

24. This is a question that is better answered by an economist or business historian. However, we suggest that businesses have shifted from fixed assets to intangibles as the primary asset class as the value in most businesses lay in contracts with customers. This makes effective restructuring laws all the more important because being able to trade on a business to realise the value of WIP and executory contracts is the highest value asset.

Question 2(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?

25. No, the balance will be different for each country, based on business practices and expectations and social attitudes to debt and business failure. Australia has traditionally been a creditor-friendly jurisdiction and has taken a harsh attitude to business failure. This may be contrasted with DIP regimes in North America (but increasingly in the EU and UK) that provide debtors with more time and flexibility to devise a restructuring plan for approval by creditors. While the recently introduced Pt 5.3B is referred to as a DIP regime, there are several areas where the debtor management needs to seek approval from the restructuring practitioner and the procedure is at best a quasi-DIP regime.

Question 2(e): Are the goals and purposes themselves adequate and appropriate, or may they need reform?

26. The goals and purposes need to be considered fresh by a root and branch review.

Additional question 3: Major reforms

Question 3(a): What are the main gaps, discrepancies, or failings of Australia's current corporate insolvency laws?

27. The major gap is in the failure to adequately address insolvent trading trusts. There is also a lack of flexibility to implement fast track asset sales due to stringent independence rules compared with pre-negotiated and pre-packed transactions that are permitted in many other jurisdictions.

Question 3(b): Are there major reforms that are required?

28. Simplification and streamlining insolvency processes is badly needed. Chapter 5 of the *Corporations Act 2001* (Cth) is bloated and imposes many obligations that are unnecessary and uncommercial.

Question 3(c): Are any adjustments needed to preference claims and the use of litigation funding?

29. Based on a review of the submissions made to this inquiry, preference claims generate considerable disdain from the business community and are perceived to be used mostly to satisfy the professional fees of insolvency practitioners and litigation funders. It may be asked whether threatening litigation is necessary just to ensure the insolvency practitioner is paid for the work that the legislation obliges them to complete even if there are little or no assets left. A simplification of preference provisions is badly needed. Consideration may be given to adopting a default mechanism rather than requiring proof of several elements of law that are broad and give rise to conflicting court decisions.

Additional question 4: Public interest aspects of Australia's corporate insolvency laws

Question 4(a): What aspects of the role of corporate insolvency practitioners are largely serving public purposes and are unfunded?

30. Investigating and reporting on potential breaches of the law. Preparing detailed reports (particularly in circumstances where there is little or no prospect of creditors being paid), where these reports are not necessarily shared with creditors but simply given to ASIC.

Question 4(b): To what extent is any unfunded work distorting the market where insolvency practitioners recover costs from unfunded work by charging higher rates on other matters?

31. We have no direct knowledge of this or real-life examples we can provide, however the principle of 'swings and roundabouts' is sufficiently well known that it has been referred to in court decisions.

Question 4(c): Professor Jason Harris and Mr Michael Murray (submission 18) suggested 'a threshold financial and systems analysis of the regime, personal and corporate, be conducted, with a view to determining available funds and resources for necessary tasks. Depending on those findings, to then conduct a legal review to ascertain the private law and public law responsibilities in an insolvency.' Should such analysis be part of a root and branch review?

32. We agree with this assessment, but also note that Professor Harris participated in our submission.

Question 4(d): What options are there to address unfunded public purposes of corporate insolvency work and what are the advantages and disadvantages of those options?

33. The Assetless Administration Fund should serve this purpose, but it is both underfunded itself and access to funds tied up with excessive red tape and conditions that make it inadequate for most unfunded insolvency work. For example, anecdotal evidence from conversations with multiple insolvency practitioners suggests that it can cost up to $6-10,000 work of WIP to complete an application that may itself only provide $10-15,000 in funding.

Additional question 5: International best practice

(a) To what extent do Australia's corporate insolvency laws align with the United Nations Commission on International Trade Law (UNCITRAL) Legislative Guide on Insolvency Law?

(b) Are there aspects of the UNCITRAL legislative guide that Australia should follow?

34. Consideration of the UNCITRAL Legislative Guide should form part of the determination of the goals and aims of insolvency law under a root and branch review.

Additional question 6: Data and research: Submitters to this inquiry and many previous inquiries and reviews have recommended that better data, statistics, and research is needed on corporate insolvency.

Question 6(a): Are those recommendations difficult to progress, and if so, why?

35. Yes, obtaining data from ASIC is difficult because it must be purchased under the *Corporations (Fees) Regulations* which can be prohibitively expensive unless the researcher has a large government grant (which themselves are extremely difficult to obtain with less than a 20% success rate). ASIC produces several useful statistical reports, but these only provide numbers of appointments, numbers of companies that enter external administration and the details of practitioners who accept the appointments. There is no data available on the cost or duration or outcomes involved in corporate insolvencies.

Question 6(b): To assist insolvency reform in a root and branch review, what are the research questions for which better data is needed?

36. At present there is a lack of data concerning what happens once a company enters into an insolvency proceeding. We don't know how long it lasts, what the insolvency practitioner does, what it costs, what the actual returns to creditors are, what the outcome of the proceeding is, whether there is litigation funding etc. Insolvency cases are something of a black hole for statistics because we only have data on how many companies enter the insolvency system and no information about what happens thereafter. In fact, it is only when there is a public inquiry into insolvency that the relevant government agencies such as ASIC, ATO and FWO provide detailed data on their activities. This makes an assessment of the effectiveness of Australia's insolvency regime impossible.

Question 6(c): Are there sources of data that exist, but are not publicly available?

37. The annual administration returns and end of administration returns lodged with ASIC by insolvency practitioners provide detailed data on what has happened during an insolvency matter but these must be purchased from ASIC and so obtaining an appropriate sample size for research purposes can cost thousands or even tens of thousands of dollars. Further documents that would be useful for research purposes would be copies of minutes of meetings (also lodged with ASIC), as well as information on company deregistrations (at present the only information available is the

total number of notices lodged on the Public Notices government website (formerly Insolvency Notices)). Insolvency practitioners typically prevent notices and reports that have been sent to creditors from being accessed by members of the public by putting the information on a website where only creditors are able to access, preventing researchers from accessing the data. Copies of restructuring plans and deeds of company arrangement would provide rich data to ascertain the outcomes of insolvency proceedings.

Question 6(d): Have the COVID-19 emergency measures had a distortionary effect on available data from the past three years and broader trends over the past decade? If yes, are there any steps required to mitigate this other than just waiting?

38. This is a question that is best answered by ASIC's statistician. We assume the answer is yes, but can't confirm this.

Additional question 7: Harmonisation of corporate, personal, trust, & partnership insolvency law

Question 7(a): Why does Australia have separate Acts for personal and corporate insolvency?

39. This is largely a relic of our constitutional history where the federal Constitution provides the federal parliament with power to make laws about bankruptcy and insolvency and the power to make laws with respect to foreign and trading corporations. The formation of companies (and the broader category of corporations) has traditionally come within the power of the states. Corporate insolvency law has traditionally been found in the company law statute in England (until 1986 when a unified Insolvency Act was created) and this was then adopted into the colonies and eventually into the federation in Australia. Personal bankruptcy law had been covered by colonial legislation and was then shifted to the Commonwealth following federation with the *Bankruptcy Act 1924* (Cth) and has remained a federal law ever since.

Question 7(b): What are the differences in insolvency law for trusts?

40. We note the detailed submission of the Hon Reginald Barret and the Law Council of Australia on this issue.

Question 7(c): What are the differences in insolvency law for partnerships?

41. Insolvent partnerships are regulated by the Partnership Acts in each state and territory that provide rules for dealing with debts owed to external creditors and debts owed between partners. Not all partners may be insolvent even if the firm is insolvent on an accounting basis. Individual insolvent partners for non-partnership debts are regulated by the *Bankruptcy Act 1966* (Cth) while corporate insolvent partners for non-partnership debts are regulated by the *Corporations Act 2001* (Cth).

Question 7(d): What might harmonisation of all forms of insolvency law look like?

42. A single unified Insolvency Act, that could still include particular rules for individual or corporate bankruptcy, but which otherwise provides a single set of rules and procedures to manage insolvencies. A single insolvency regulator would also be useful to harmonise and simplify the current dual track insolvency system with ASIC and AFSA.

Question 7(e): What barriers are there to creating a single insolvency act?

43. Different government departments have responsibility for corporate and personal insolvency. ASIC and AFSA are funded in different ways, with ASIC using a user-pays levy system (currently under review) and AFSA relying on a levy on asset realisations and government appropriations. ASIC's insolvency team works closely with enforcement and investigation teams throughout ASIC while

AFSA has dedicated enforcement and investigation teams. A merging of ASIC insolvency staff with AFSA to create a single insolvency regulator may be easier than trying to merge AFSA's insolvency staff within ASIC (which already has a crowded regulatory remit).

Question 7(f): What would the advantages and disadvantages be of a single insolvency act?

44. Simplification and cost savings. Not needing to maintain different forms, different rules for meetings and creditor communication etc would save insolvency practitioners costs. Furthermore, if a single regulator were created this would reduce the complexity of having to deal with two very different regulators at present in ASIC and AFSA.

Additional question 8: COVID-19 emergency reforms

(a) Were there any temporary measures or reforms introduced as a result of COVID-19 that went too far or not far enough?

(b) Are there areas requiring normalization or reform that have been identified from the COVID19 emergency measures?

45. The COVID changes appear to have worked well and the return to the pre-COVID legal position for matters like statutory demands also appears to have been timely.

Additional question 9: Recent reviews: The following reviews are complete, but the recommendations are yet to be implemented by government:

- **Whittaker Statutory review of the *Personal Property Securities Act 2009*;**
- **The ABSFEO Insolvency Practices inquiry; and**
- **The Insolvent Trading Safe Harbour statutory review.**

Question 9(a): Are there any barriers to implementing those recommendations?

46. The Insolvent Trading Safe Harbour used a broad consultation process and has been widely accepted by stakeholders in insolvency and restructuring. Its recommendations should be implemented in full.

47. The Whittaker Review of the PPSA contains a thorough evaluation of the PPSA and makes hundreds of recommendations. It may be that commercial practice has developed since the review was undertaken in 2014 and so implementing some recommendations may not now be necessary. However, the simplification of the PPSR and of the process to remove redundant or inappropriate registrations should be a matter of priority.

48. The ASBFEO insolvency inquiry focussed in particular on how insolvency processes affect small businesspeople. Some of its recommendations are directed to benefitting small business owners rather than creditors and so should be included within a broader root and branch review. One recommendation in particular that should be implemented is the recommendation to create a small business viability review voucher to assist small businesspeople to obtain advice on the solvency and viability of their businesses.

Question 9(b): Are there any of those recommendations that should not be implemented?

49. No comment.

Additional question 10: Small business restructuring and simplified liquidation reforms. In January 2021, the following reforms commenced:

- a new small business restructuring regime to enable simpler restructuring of small businesses; and

- a simplified liquidation process to streamline creditors' voluntary winding up for companies that have liabilities less than $1 million.

Question 10(a): How well are the reforms working and, in particular, the debtor in-possession aspects of the small business restructuring regime?

50. These reforms have not been widely adopted by industry, with relatively small numbers of Part 5.3B appointments (less than 200 in 2 years) and very few simplified liquidations. We note that the submissions and answers to questions on notice by Professor Harris and Mr Murray, ARITA and the Law Council of Australia made detailed recommendations for reforming these procedures. We suggest that any such reforms should come within a broad root and branch review of the insolvency system.

Question 10(b): Are any adjustments required?

51. See answer to Question 10(a) above.

Additional question: Table 2.1 in Treasury's submission (submission 34, page 11) demonstrates an increase in the number of companies entering small business restructuring over the past three quarters, from 9 in first quarter to 83 in the September quarter.

(a) What, if anything, does this trend say about take-up of the regime?

(b) Is there enough data yet to properly evaluate the efficacy of the regime?

(c) What factors may have influenced this increase?

52. We note that ASIC has released a report into Part 5.3B, which gives detailed data as to the use of the small business restructuring procedure. That report shows that the ATO is the primary creditor in the majority of Pt 5.3B appointments and the only creditor in a significant number of cases. We recommend that consideration be given to reviewing the ability of the ATO to enter into a debt compromise with taxpayers so that businesses do not need to put their companies into an insolvency procedure in order to do a deal with the ATO.

Additional question 11: Regulation of pre-insolvency advisors

Question 11(a): What data and research are available on the impacts of the unregulated environment for pre-insolvency advisors?

53. We are not aware of any detailed data on this issue. It would be useful for the federal government's task force on phoenix activity (comprising the ATO, ASIC and FWO) to release reports on their investigations and activities and how that relates to pre-insolvency advisors. We also note the detailed reports completed by Professor Helen Anderson's team at Melbourne Law School on improper phoenix activity.

Question 11(b): What would be the benefits and disadvantages of regulating pre-insolvency advisors?

54. Not all pre-insolvency advisors are giving lawful and appropriate advice to debtors, with some advisors specialising in offering unlawful advice on how to shift and hide assets and how to avoid tax payments. However, there are also many highly qualified and highly ethical advisors who work hard to assist debtors during times of financial distress but before a formal insolvency appointment has been made. Many of these advisors are members of professional bodies such as ARITA, TMA, AIIP, ABRT and professional accounting and legal associations. These bodies have codes of conduct and professional ethics and some of these bodies have robust regulatory functions in disciplining members who breach those codes.

55. One practical problem for many MSME directors is that they don't know who are trustworthy and who are untrustworthy advisors. They often leave seeking professional advice too late and then are drawn into googling for advice and many untrustworthy advisors use Google ads to market their services.

56. The creation of a business viability voucher that is tied to some form of registered advisor list (with requirements such as minimum levels of training and experience and professional indemnity insurance) would be a useful reform to steer small business owners away from untrustworthy pre-insolvency advisors. Giving clarification on who can work as an 'appropriately qualified entity' as recommended by the Treasury Safe Harbour Review would also assist in this regard. It is critical that early intervention be promoted by the legislative and policy framework because the longer a distressed business continues without remedial action the more likely that there will be little left over for creditors in the eventual insolvency. An ounce of prevention is worth a pound of cure.

Question 11(c): What approaches are taken overseas or in the UNCITRAL principles to the regulation of preinsolvency advisors?

57. No comment.

Additional question 12: Recommendations in submissions and timing of reforms:

Question 12(a): The committee has received many recommendations for reforms in written submissions. For example, the Business Law Section of the Law Council of Australia (submission 30) made 33 recommendations. Do you wish to comment on recommendations made thus far by any other inquiry participant, either in a written submission or in a hearing?

58. No comment.

Question 12(b): Noting the suggestions for a root and branch review of Australia's insolvency laws, the committee would welcome your views on whether there are areas of reform that should progress now, and which areas of reform are more appropriately dealt with in a root and branch review.

59. We recommend against short term quick fixes and suggest that reforms be considered holistically as part of a root and branch review. The history of insolvency law (and indeed, much of the history of corporate law) in Australia is replete with small changes designed to address particular concerns of specific stakeholders and unfortunately often without adequate public consultation. This has resulted in a bloated insolvency law that is filled with errors and inconsistencies and a system that fundamentally does not meet its stated goals. We have an insolvency system that we cannot afford and that produces no returns to general creditors in almost every case in circumstances where even the insolvency practitioners are not getting paid for their work in perhaps as much as 30-40% of their appointments. This is a system that no stakeholders are happy with and needs a fundamental rethink to provide a modern insolvency law that is fit for purpose, efficient and effective.