

INSOLVENCY PRACTICES INQUIRY

Terms of Reference

Purpose

The Australian Small Business and Family Enterprise Ombudsman will undertake an inquiry into the insolvency system to establish if it encourages practitioners, in the first instance, to restructure the small or family business to turn it around when facing financial difficulties. Where a restructure is not possible, we will investigate if current insolvency practices achieve the best outcome for all parties.

The inquiry will examine:

- the existing insolvency system through the experience of small businesses, in particular, where they may be able to contribute to the process
- the degree of transparency of the governance, processes and costs of practitioners including legal experts, valuers, investigating accountants, administrators, receivers and liquidators
- how the insolvency of a small or family business may lead to bankruptcy for the owners
- how the established framework impacts the practices and fees of insolvency practitioners.

Our *Small Business Loans Inquiry* identified a lack of transparency for the small business owner when a creditor commenced debt recovery action. The small business owners felt they had lost control of their business as they were unable to contribute to, or obtain copies of, reports by insolvency practitioners. As the cases reviewed frequently ended in the business being wound up, the process appeared poorly managed to the small business owners and resulted in less than ideal outcomes for the owner, the lender and creditors of the business.

We will identify areas where practices can be improved and recommend changes to the system to achieve fairer outcomes for all parties involved.

Scope

The inquiry will examine:

- the legislation, compliance and industry standards that govern insolvency practices and practitioners
- the different outcomes depending on who initiates the action including the small business owner, a creditor by application through the courts or a secured creditor through receivership
- the transparency, timeframes and costs across the different insolvency actions
- how conflicts of interest, arising from the same practitioner undertaking several stages of an insolvency, are managed
- how practitioners decide the optimal process to maximise the return for creditors
 - where winding up is delayed - ensuring the necessary expertise is engaged to manage the business to maximise the value of the assets at a future point in time
 - where the value of assets is to be realised immediately – what factors are taken into consideration to determine the target market and marketing campaign.



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Reviews and consultations

- Small and family businesses – seek case studies of experience of insolvency
- Australian Securities & Investments Commission, Australian Financial Security Authority and the Treasury – legislative framework and fees
- Courts – their role in the insolvency process
- Consultants to, and funders of, actions in insolvency
- Industry associations – monitoring and compliance to codes of practice
- Practitioners – roles, responsibilities, compliance costs, fees charged
- Practitioners in regional and remote locations – impact of geographical location.

Reference Group

The Reference Group will act as a forum for input and discussion on the themes and challenges faced by small or family businesses facing insolvency.

Former Senator John Williams, who was a driving force behind the Senate Economics References Committee inquiry in 2010 into the regulation, registration and remuneration of liquidators, will Chair the group.

Outcome

We will propose initiatives to help small businesses facing financial difficulties, better inform small businesses on how to navigate insolvency and increase the transparency of the actions taken by insolvency practitioners. We will also identify specific activities or areas within the insolvency process that warrant further investigation.

Timeframe

Commencement:	10 October 2019
Interim report:	11 December 2019
Final report:	18 February 2020