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Manager
Market Conduct Division
Treasury

Email: MCDInsolvency@Treasury.gov.au

Dear Sir / Madam,

Submission on Insolvency reforms to support small business

My submission relates to proposed insolvency reforms.

I understand that these reforms have been introduced with the best of intentions, to try to assist small businesses which have been adversely affected by COVID restrictions on an ongoing basis.

However, I believe the more appropriate course of action would have been to extend the current temporary measures previously introduced to assist small business until the COVID crisis passes.

The proposed reforms go further, in that they introduce permanent changes to our insolvency laws which would negatively impact small businesses which provide trade credit to other small businesses in good faith.

The proposed reforms will not negatively impact banks and large lenders as the proposed reforms specifically exclude any impact on secured creditors.

Accordingly, the burden of these proposed reforms will fall on small business lenders as they do not have the size, scale and expertise necessary to become secured creditors by registering PPSR charges.

It is common for many small businesses to lend to other small businesses through trade credit. This is a system of trust, whereby one small business may supply goods, fuel or services to another small business trusting the other small business to pay within 30 or 60 days.

This assists newer small businesses who may need this temporary lifeline whilst they wait to get paid by their own customers.

There are a minority of small businesses who abuse this trust and run up trade debts with a range of other small businesses.

These unscrupulous small businesses keep running up debts with new suppliers without paying out their old suppliers and essentially rob innocent small businesses.

One tool the innocent small business owners currently have (particularly where the trade debts owed are owed by a company) is that they can issues a statutory demand.

I have often found that issuing the statutory demand quickly results in payment of the outstanding debt. I suspect this is because the unscrupulous small business operator realises that he could lose control of his company in a liquidation if he does not quickly pay the debt. It also shows the unscrupulous small business actually has funds available to pay the debt but choose not to unless they are forced to do so.

The proposed reforms would take this protection away from innocent small business creditors.

Instead, they would allow the unscrupulous debtor to continue to run their own business and keep their ill-gotten gains without effective oversight or control from anyone. They would be allowed to continue running up debts with other innocent small businesses. By effectively running their own "administration", the unscrupulous debtor could keep receiving income from customers and funnel that money out of the business to themselves and the innocent small business creditors would be powerless to stop this.

I understand that the impact of COVID measures have had a hard impact on many small businesses. However, hard cases make for bad law.

I would urge you to abandon the proposed insolvency reforms and instead extend the current COVID temporary relief to deal with the current emergency.

Innocent small business owners need support from unscrupulous debtors.

Sincerely,

Suryan Robert Chandrasegaran