

14 October 2020

Manager  
Market Conduct Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Via Email [MCDInsolvency@treasury.gov.au](mailto:MCDInsolvency@treasury.gov.au)

Dear Treasury Officer,

### **RE Corporations Amendment (Corporate Insolvency Reforms) Bill 2020**

The Council of Small Business Organisations Australia (COSBOA) is the national peak body representing the interests of small business. Collectively, COSBOA's members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia.

Given this we believe experts in accounting associations and ASBFEO should be involved in assessing the regulations.

Comments on particular issues of the draft legislation are below.

#### **Small Business Viability Review**

We are concerned that the restructuring process, with its focus on debt, lacks a small business viability review, with a focus on revenue. For most small business, debt restructuring is only part of the solution. Every business owner knows, the better pathway is maximising revenue opportunities, and this is currently missing for both the small businesses owner, employees, and the benefits this would reap for the whole Australian economy.

COSBOA called for this initiative in its policy "[Road to Recovery](#)" and remains committed to this outcome. Often a distressed business owner is not thinking clearly and therefore may not see there are many opportunities for a return to viability. COSBOA see the restructuring pathway as an ideal time to conduct a business viability review.

#### **Restructuring timeframes**

We believe the indicated time for restructuring, 20 days for assessment and 15 days for review by creditors, will not be achievable in many situations and should be reviewed.

#### **Liability test**

The indicative liability test of one million dollars is problematic in a practical sense. There is no agreement, even amongst Australian Government Departments on what defines a small business, let alone what constitutes a small business liability. A more pragmatic approach, which allows a range of factors that combined create a small business liability, must be considered.

### **Employee entitlements**

There needs to be further clarification on the way in which business eligibility for access to the restructuring assistance is determined when employee entitlements/liabilities are an issue. Our experience is that most employers are concerned for their employees. Being able to restructure to look after their staff remains a high priority for most small businesses who are often close to their staff.

### **SBRP eligibility**

There is a need to have an adequate number of SBRPs to meet the inevitable demand expected. An overly restrictive or prescribed approach to SBRP eligibility will limit the number of SBRPs available to small business and will impact the legislation's objectives. We acknowledge the need to ensure independence and skilled professionals in the role. This must be balanced with the need of small businesses to access SBRP when required.

### **Extended Insolvency Protection**

There needs to be flexibility in determining the end date for protection given there may be a shortfall in the number of SBRPs needed to meet demand.

### **Delayed Notification of Insolvency**

There needs to be an optional period of grace in which the notification of the restructuring/insolvency to creditors is delayed. A notification will likely alarm some creditors and a delay in notification as a further assessment is made may save many businesses from an unnecessary and uninformed creditor backlash .

### **Redirect to opportunities**

It's in the period prior to notification of creditors the SBRP may identify clear restructuring opportunities and this is then the opportunity to divert the business into the small business review stream where the focus is on recovery.

### **Continued consultation**

COSBOA is concerned that there may be many small business people that will face difficult and distressing decisions over the next 12 – 24 months. There will be an impact on families, communities, economies. We look forward to continuing to work on reforms around simplified and constructive insolvency for small business.

For more information, contact Castaly Haddon Policy at COSBOA on 0419 267 599.

Yours sincerely,



Peter Strong, CEO