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To Whom It May Concern

Submission on the Exposure Draft of the Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020.

Many small businesses have faced significant challenges during the COVID-19 pandemic. Forced closures for weeks and in some instances months, combined with restricted domestic and international travel and declining consumer confidence have imposed considerable hardship.

The significant government support provided to businesses in response to COVID-19 including JobKeeper, fiscal stimulus, grants and assistance and taxation relief has assisted many small businesses avoiding potential insolvency. However, as these measures taper there are concerns there will be a substantial increase in small business insolvencies.

The proposed insolvency reforms, designed to provide small businesses with a greater an opportunity to restructure and trade their way out of difficulty, are welcomed.

It is noted that the stated aim of these changes is to provide a 'simpler, faster, more cost-effective insolvency processes for small business'. The Government has also commented that,

The new process would streamline the role for, and powers of, the practitioner compared with the role played by an administrator in a voluntary administration. This reflects the reduced complexity of the new process and the businesses eligible to use it.

Documentation to support the new scheme appears not to provide details on the amended role of the restructuring practitioner, their qualifications and the likely cost of this service. It is indicated that a flat fee will be charged for their role in working with a small business to develop a restructuring plan and then a percentage of the amount of any disbursements made.

Lack of control over costs is an issue for small businesses in regard to the current insolvency model. Therefore, it is important that clear guidance be provided in respect to indicative fees and costs.

We request that consideration be given to publishing a register of restructuring practitioners on the Australian Securities and Investment Commission (ASIC) website as well as indicative cost(s) for the streamlined service. Small businesses taking this option will be financially vulnerable and providing clear information on approved restructuring practitioners and indicative costs will greatly assist small business looking to access the new process.

It is also likely that small businesses facing insolvency will seek advice from their regular accountant or bookkeeper in the first instance. A comprehensive communications campaign and availability of supporting material on the operation of proposed reforms for accountants and bookkeepers may assist and protect small businesses from unregistered and unregulated individuals marketing themselves as 'pre-insolvency advisors'.

In addition, the potential of a breakdown in the relationship between a business and a restructuring practitioner does not appear to be addressed in the Draft Regulations. To provide greater certainty it would be advantageous to address the following:

- Can a new restructuring practitioner be appointed by a business?
- On what grounds can a new restructuring practitioner be appointed?
- If a new restructuring practitioner is appointed do the designated timeframes restart?

A key feature of the proposed new debt restructuring process is that a business owner remains in control of the business, to this end there is value in defining arrangements in respect to the above.

The Commission appreciates the opportunity to review and provide comments. Should further information be required, please contact Ms Megan Bennett at megan.bennett@smallbusiness.nsw.gov.au or on Tel (02) 9372 8767.

Yours faithfully

Chris Lamont
Commissioner
NSW Small Business Commission
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