

12 October 2021

Market Conduct Division
Treasury
Langton Crescent
Parkes ACT 2600

Via email: SafeHarbourReview@treasury.gov.au

To whom it may concern

RE: SAFE HARBOUR PROVISIONS FOR SMALL BUSINESS

The Australian Retailers Association (ARA) welcomes the opportunity to comment on the Treasury review of the insolvent trading safe harbour provisions.

The ARA is Australia's oldest, largest and most diverse retail body, representing a \$360bn sector that employs one in ten Australians. As Australia's leading retail representative group, the ARA informs, advocates, educates, protects and unifies around 7,500 independent, national and international retail members with more than 100,000 retail shop fronts. More than 95% of the ARAs' members are small to medium size enterprise (SMEs) and many are single shopfront, family-owned businesses.

Safe harbour provisions

These provisions aim to provide some relief for directors against personal liability issues that arise in relation to s588g of the Corporations Act 2001, helping businesses to restructure or trade their way out of financial stress.

However, small businesses face particular challenges when it comes to safe harbour provisions. The ARA believes that consideration is required in relation the application of these provisions to small business, given the significant burden that personal liability places on directors and shareholders of SMEs.

Small business challenges

- **Lack of expertise.** Some small business owners lack the expertise to interpret government legislation. With limited cash flow, there could also be an unwillingness to pay an external advisor to help business owners understand these provisions. This could lead to unnecessary insolvencies, as directors and shareholders may not be aware of their protections under law, adversely impacting their ability to restructure in a timely manner and turn their business around.
- **Fewer restructuring options.** Small business owners take on significant risk when it comes to restructuring their company, often restricting their options. They also have fewer financial restructuring options that can deter them from using safe harbour provisions.
- **Fewer options to raise capital.** Generally, small businesses have limited options when it comes to raising capital, with most small business owners having already taken on personal liabilities in establishing their business – in particular, leases and bank debt. They are also likely to have already invested a significant amount of personal funding into their business. This makes their ability to raise more capital for the purposes of financing a restructure very challenging, if not impossible.

For the reasons outlined above, we do not believe that safe harbour provisions are effective for SMEs. The ARA therefore recommends that insolvent trading liabilities (as they relate to SMEs) are repealed or removed from the Corporations Act 2001. However, the ARA also recommends that poor conduct mitigation be strengthened to ensure that the removal of safe harbour provisions for SMEs does not create unintended consequences.

We are grateful for the opportunity to provide a submission to the Treasury review of the insolvent trading safe harbour provisions. As well as the immediate financial, emotional and mental impact that insolvency has on small business owners, the winding up of a company can also lead to wide ranging impacts on the broader community such as standing down staff, increasing unemployment and reducing the opportunity for innovation.

Given the high proportion of our members that are SMEs, this is an important issue for the ARA. So please do not hesitate to contact me on paul.zahra@retail.org.au should you wish to discuss or consult further.

Yours sincerely



Paul Zahra
Chief Executive Officer