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Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

via email: economics.sen@aph.gov.au

Dear Secretary

Inquiry into the Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill 2017

Thank you for the opportunity to provide a submission on the Treasury Laws Amendment (2017 Enterprise Inventive No. 2) Bill 2017 (**Bill**).

The Australian Institute of Company Directors (**AICD**) is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 40,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The AICD welcomes the progress of this important reform. Australia's existing insolvency laws are amongst the harshest in the world. The perverse and unintended consequence of the current framework is that directors are forced down the path of formal insolvency too early in circumstances where reasonable prospects of recovery exist, destroying value and jobs.

The AICD welcomes the Bill's introduction of a safe harbour, balanced with safeguards on important issues such as employee entitlements, as a critical step in building a culture of restructure and recovery in corporate Australia.

The AICD supports the passage of the Bill.

The AICD has suggestions for improvements to the Bill that we consider would assist in achieving the policy objectives of the reform, set out below for the Committee's consideration.

1. SUMMARY

The AICD strongly supports the Bill's aims of facilitating more successful company restructures outside of formal insolvency processes and preserving enterprise value during formal restructures. The potential of the Bill cannot be underestimated. These reforms will promote innovation and entrepreneurship by encouraging responsible and measured risk-taking by companies and directors. They will also enable companies facing financial difficulties but with reasonable prospects of turnaround to be restructured, saving jobs and value. Directors of ailing companies should be encouraged to take reasonable steps to turn around distressed businesses for the benefit of all stakeholders, and the economy overall.

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The AICD supports the safe harbour model proposed in the Bill, in particular its:

- potential to drive business growth and innovation, while mitigating against the risk of premature insolvency (see Section 2 below);
- flexible approach to providing indicia for when a course of action will be considered reasonably likely to lead to a better outcome for the company, to support the application of the safe harbour across businesses of varying size and complexity (see Section 4.2 below); and
- robust safeguards for employee entitlements and tax reporting obligations, which are pivotal for our support (see Section 4.3, below).

Importantly, the proposed safe harbour will not facilitate or increase illegal phoenix activity (see Section 4.1, below).

Notwithstanding the AICD's endorsement of the Bill, we believe it would be improved by incorporation of the concept of 'rational belief' in the manner suggested below in Section 3. The most substantial of these is bringing the concept of 'rational belief' into s 588GA (discussed in section 3.1, below), to reduce the risk of complexity, uncertainty and hindsight bias and give responsible directors greater confidence in relying on the safe harbour.

Also, the AICD supports the Bill's *ipso facto* stay, although we recommend a 'bright line' date for it to take effect (see Section 5).

2. A VITAL REFORM

Australia's insolvency laws are considered to be among the 'strictest' in the world,[1] focusing too much 'on penalising and stigmatising the failures'.[2] This regime has negative implications for start-ups and corporate restructures.

Concerns over inadvertent breaches of insolvent trading laws are often cited as a reason early-stage investors and professional directors are reluctant to become involved in start-ups. Also, these laws not only discourage directors from taking sensible risks to restructure distressed companies, but mandate that they move straight to external administration 'when there are reasonable grounds for suspecting' the company 'may become' insolvent in order to avoid personal liability. Unnecessary or premature invocation of insolvency processes leads to job losses, contract terminations, goodwill destruction and overall value diminution.

This impact was noted in a 2016 Reserve Bank of Australia Research Discussion Paper, *'Why Do Companies fail?'*[3]*:*

> 'For directors, the threat of personal liability can outweigh any potential benefits from attempting to continue the business. As a result, directors may claim insolvency even when the company is only experiencing temporary financial distress and, in fact, has good long-term growth prospects.'

[1] The Hon. Wayne Martin, 'Official Opening Address', Insolvency Practitioners' Association of Australia 16th National Conference, Perth, 28 May 2009.
[2] Australian Government, *Improving bankruptcy and insolvency – Proposals Paper*, April 2016.
[3] 'Why do Companies Fail?' Reserve Bank of Australia Research Discussion Paper 2016-9, Rose Kenney, Gianni La Cava, David Rodgers https://www.rba.gov.au/publications/rdp/2016/pdf/rdp2016-09.pdf

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In addition, enforcement of an *ipso facto* clause can devalue a financially troubled business and seriously hinder, if not destroy, prospects of a successful restructure or going concern sale. For this reason, many countries have restricted the use of such clauses.[4]

The introduction of an effective safe harbour is also an important step in supporting innovation and entrepreneurialism in Australia. As the OECD has observed, 'innovation provides the foundation for new businesses, new jobs and productivity growth and is thus an important driver of economic growth and development'.[5] Key among the determinants of a nation's innovation and entrepreneurship are its laws and regulations regarding business distress and failures. This fact has been recognised by governments and policymakers around the world,[6] with various countries undertaking legislative reviews and reforms to encourage businesses to restructure rather than prematurely trigger a value destroying formal insolvency mechanism.[7]

It is in the public interest that our insolvency laws be reformed to support genuine and reasonable efforts to rehabilitate distressed businesses, while protecting corporate stakeholders such as employees, suppliers, customers, creditors and shareholders from reckless and unscrupulous actions.

The AICD considers the following features essential to delivering an effective safe harbour:

- certainty, to provide directors with sufficient comfort that reasonable restructuring efforts taken in good faith will be protected;
- flexibility, so that the laws apply irrespective of a company's size, industry and legal structure and allow its specific circumstances to drive the detail of restructuring plans, rather than forcing a prescriptive process or model of advisers;
- safeguards, to protect stakeholders – including employees and their entitlements - from reckless action or misconduct; and
- functionality, so that the laws work in practice, noting the complexity and time constraints under which directors must make decisions when a company is financially distressed.

In assessing whether the Bill is sufficiently certain, flexible, protective and functional, we have consulted broadly with our members, other stakeholders and counsel. The AICD considers the Bill to be a significant improvement on the status quo and supports its passage on this basis.

3. AICD RECOMMENDATIONS FOR IMPROVEMENT

3.1 Determining the 'better outcome'

As currently drafted, the Bill would only provide protection to directors taking one or more courses of action that are 'reasonably likely to lead to a better outcome for the company'. '[B]etter outcome' is defined to mean an 'outcome that is better for the company than the immediate appointment of an administrator, or liquidator, of the company' (s 588GA(7)).

[4] Productivity Commission, *Business Set-up, Transfer and Closure,* Inquiry Report No 75 (30 September 2015) 25.
[5] *OECD Innovation Strategy 2015: An Agenda for Policy Action*.
[6] See, for example: Industry Canada's *Statutory Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act 2014; OECD Innovation Strategy 2015: An Agenda for Policy Action*; and the European Commission's announcement of a series of common principles for national insolvency procedures for businesses in financial difficulties (press release dated 12 March 2014.
[7] For example, Singapore (*Insolvency Law Review Committee Report* issued on 4 October 2013 and the Ministry of Law's response dated 6 May 2014) and the United States (ABI Commission's *Final Report and Recommendations on the Reform of Chapter 11 of the Bankruptcy Code 2012-2014*). See also the European Commission's *Recommendation on a new approach to business failure and insolvency* for EU member states, issued 12 March 2014.

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The Bill therefore requires directors to undertake a counterfactual evaluation of the various outcomes which may flow from one or more courses of action, and compare them with the immediate appointment of an administrator or liquidator.

The AICD is concerned that this feature of the Bill is unduly onerous, and likely to discourage reasonable restructuring efforts by responsible directors.

The causes of our concern – uncertainty and complexity, and hindsight review on a purely objective basis – are discussed in turn. Our recommendation for addressing this issue then follows.

- Uncertainty and complexity

  The counterfactual analysis required under the Bill is inherently uncertain as it involves predictions about possible future events. These predications may need to be made under time pressure and with imperfect information. Further, it may be necessary to make predictions in relation to several potential alternative courses of action (which may be modified over time), each with a number of possible outcomes.

- Hindsight review on a purely objective basis

  In conducting the counterfactual analysis required by the Bill, directors will be making decisions in real time, under pressure and often with imperfect information. Yet, whether directors have met the requirements of the Bill and so enlivened its protection will be judged by a court retrospectively. As acknowledged by Justice Palmer in *Lewis v Doran*, the court's vantage point brings with it the 'inestimable benefit of the wisdom of hindsight.'[8] Unlike directors, the Court will be able to see 'the whole picture, both before, as at and after'[9] a failed restructure.

  Hindsight review of directors' decisions is particularly problematic under the Bill as they are to be judged on a purely objective basis. Consequently, rational restructuring decisions by directors may be found wanting on an objective basis due to issues, events or information which, with the benefit of hindsight, emerge as more significant than they appeared to the directors who were acting with due care and diligence at the time.

  There is empirical evidence which shows that persons who know the outcome of a decision or a series of events 'tend to exaggerate the extent to which that outcome could have been correctly predicted beforehand.'[10] This tendency is known as 'hindsight bias'.

The AICD is concerned that the complexity and uncertainty inherent in the required counterfactual analysis, together with the risk of having their rational decisions reviewed objectively with the benefit of hindsight, will prevent directors from being able to rely on the safe harbour with confidence. This would frustrate the policy objective of promoting a culture of restructure and the saving of jobs and value that this will entail.

To address our concern, we recommend the addition of the concept of 'rational belief' into s 588GA. This term is already employed in the context of directors' duties as an aspect of the

[8] *Lewis v Doran* (2004) 50 ACSR 175, Palmer J at 198-199.
[9] *Ibid*,198-199.
[10] See Jacobs, Allen & Strine, 'Realigning the Standard of Review of Director Due Care with Delaware Public Policy: A Critique of Van Gorkom and its Progeny as a Standard of Review Problem' (2000) 96 Nw. U.L.Rev. 449, 451– 52 (2002) cited in Hal R. Arkes & Cindy A. Schipani, 'Medical Malpractice v The Business Judgment Rule: Differences in Hindsight Bias' (1994) 73 Or. L. Rev. 587, 588.

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statutory business judgment rule in s 180(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

In regards to s 180(2), 'rational belief' has been interpreted to mean 'based on reason or reasoning'.[11] Definitions of 'rational' used in other contexts have included 'not foolish, absurd or extreme',[12] and 'not egregious, patently frivolous, or capricious'.[13]

The use of an orthodox and well-established legal concept such as 'rationality' would give greater certainty to a responsible director acting with due care and diligence seeking to rely on the safe harbour when developing a course of action.

Recasting the purely objective test in terms of a 'rational belief' could be easily achieved through the amendment set out in Recommendation 1 (below).

If, contrary to our strong view of its merits, Recommendation 1 is not adopted, we recommend explicitly framing the safe harbour objective test through the lens of a 'reasonable person in a like position' to the relevant director (see Recommendation 2).

Bringing the concept of 'a reasonable person in a like position' into the Bill would require the court to give greater consideration to the specific circumstances of the individual director and the relevant company. This approach directly mirrors the test in s 588G(2)(b) of the Corporations Act, and is analogous to the approach to be taken under s 180(1).

Recommendation 1: Amend s 588GA(1) as follows:

'(a) … the person starts developing one or more courses of action that the person rationally believes are reasonably likely to lead to a better outcome …; and

(b) …

(iii) when any such course of action ceases to be one that the person rationally believes is reasonably likely to lead to a better outcome …'

Alternatively

Recommendation 2: Amend s 588GA(1) as follows:

'(a) … the person starts developing one or more courses of action that a reasonable person in a like position in a company in the company's circumstances would believe are reasonably likely to lead to a better outcome …; and

(b) …

(iii) when any such course of action ceases to be one that a reasonable person in a like position in the company's circumstances would believe is reasonably likely to lead to a better outcome …'

[11] *ASIC v Rich* (2009) 75 ACSR 1 at [7289] – [7290].
[12] The Concise Oxford Dictionary.
[13] *Stanziale v Nachtomi* 330 BR 56 D. Del, 2004.

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3.2 Indicia of a course of action reasonably likely to lead to a better outcome

Proposed s 588GA(2) provides an indicative and non-exhaustive list of factors to be considered in determining whether a course of action is reasonably likely to lead to a better outcome for the company. These factors concern the steps taken by a director to:

- remain informed of the company's financial position;
- prevent misconduct by officers or employees that could affect the payment of corporate debts; ensure proper keeping of financial records; and
- obtain appropriate advice; and effect a restructuring plan.

In our view, these indicia work effectively to provide guidance for directors, thereby shaping their conduct, while at the same time recognising that what may be appropriate in one context may not be suitable in another.

While strongly endorsing the flexible approach taken in s 588GA(2), the AICD considers that it could be improved. We have had the benefit of reading Jones Day's submission to the Committee dated 27 June 2017. We endorse that submission's recommendation for the factors listed in s 588GA(2) to constitute *prima facie* evidence that a course of action was reasonably likely to lead to a better outcome for the company than the immediate liquidation or voluntary administration. Like Jones Day, we believe this amendment would enhance the certainty of the safe harbour and the cultural shift that the reforms seek to encourage.

4. SAFE HARBOUR – A FLEXIBLE DESIGN WITH ROBUST SAFEGUARDS

Noting the improvements suggested above, we consider that the Bill is appropriately flexible and contains robust safeguards that will prevent misuse. In this context the AICD wishes to take the opportunity to address questions which have been raised during our consultations with stakeholders on the model proposed in the Bill.

4.1 The safe harbour will not contribute to illegal phoenixing activity

The AICD is strongly opposed to illegal phoenixing activity and supports efforts to improve regulatory and enforcement mechanisms to prevent and punish phoenixing.

The reforms proposed in the Bill will not encourage, increase or support illegal phoenixing activity.

The following features of the Bill prevent it from facilitating illegal phoenix activity:

- The s 588GA(1) safe harbour will not apply to criminal insolvent trading – i.e., where the director's failure to prevent the company from incurring the relevant debt was dishonest (s 588G(3)).
- Directors bear the evidential burden of proving that they took 'a course of action which was reasonably likely to lead to a better outcome for the company than the immediate appointment of an administrator, or liquidator, of the company'.
- In determining whether the evidential burden has been discharged, a court would consider the factors set out in s 588GA(2) (see Section 3.2).

- Should an administrator or liquidator be ultimately appointed, directors who fail to provide them with access to the company's books or secondary evidence following an appropriate requires will be prevented from using those materials as evidence of having taken a course of action for the purposes of the safe harbour.

- The Bill contains provisions to secure compliance with obligations to pay employee entitlements, satisfy tax reporting requirements and provide assistance in subsequent formal insolvency processes (see Section 4.2).

The AICD strongly encourages more effective efforts to counter phoenixing activity and looks forward to engaging on proposed initiatives to address phoenixing. We are confident the reforms proposed in this Bill will not contribute to illegal phoenixing.

4.2 Safe harbour design is flexible and appropriate for large and small business

Businesses face financial distress due to a wide variety of circumstances, and addressing their difficulties often requires a nuanced or bespoke approach. It is important that the safe harbour is flexible, practical, and scalable for both large and small companies, and accommodates the specific circumstances of companies.

The AICD is aware that the Australian Insolvency and Turnaround Association is of the view that directors should be required put in place a 'qualified and regulated professional to be formally engaged for a safe harbour protection to be effective', with a preference for registered liquidators.[14]

The AICD does not support this suggestion. In our view it would significantly harm the flexibility, practicality and scalability of the proposed safe harbour, and likely render it ineffective.

An accreditation requirement imposed on advisers would unnecessarily restrict the class of persons from whom advice may be sought. Companies should be free take advice from those with the appropriate skills and experience for the company's specific circumstances and turnaround requirements, irrespective of whether or not they belong to an accredited profession (e.g. registered liquidator, lawyer, accountant etc.). Also, it may be possible and appropriate for a company to appoint multiple advisers, all tasked with assisting in specific areas, and whose advices collectively inform the decisions of the board.

The AICD believes that the Bill takes the right approach. Section 588GA(2) of the Bill provides a list of indicative factors to be considered by a director in determining whether one or more courses of action are reasonably likely to lead to a better outcome for a company. One of these factors includes whether the director is 'properly informing himself or herself of the company's financial position', and 'is obtaining advice from an appropriately qualified entity who was given sufficient information to give appropriate advice'.

In addition, it is important to emphasise that a director's decision-making and actions will be subject to scrutiny by the Court, should a later claim of insolvent trading be made by a liquidator or ASIC. It will fall to the Court to determine, on an objective basis, whether the director has pursued a course of action which was reasonably likely to lead to a better outcome for the company. The Court will undoubtedly consider whether the director had obtained adequate and appropriate advice when making this assessment.

This is a non-prescriptive and common-sense approach, which allows sufficient flexibility for directors and the courts to determine the best method of developing a course of action. The

[14] ARITA, 'Safe Harbour/Ipso Facto model: final consultation', (21 June 2017), ARITA website <www.arita.com.au>

safe harbour reforms need to be workable for small and medium-sized businesses as well as large corporates.

4.3 The Bill contains robust safeguards to protect employee entitlements

The Bill contains significant safeguards to protect employee entitlements, ensure tax reporting obligations are met, and secure compliance with obligations to provide assistance in subsequent formal insolvency processes (ss 588GA(4)-(5)). The AICD welcomes these safeguards as important foundations for any safe harbour, and believes they will incentivise compliance and ensure misconduct is not afforded safe harbour protection.

We note that the Bill requires 'substantial', and not full, compliance with these obligations. In our view, the approach taken in the Bill is appropriate. Our reasons follow.

Safeguards

The Bill provides that s 588GA(1) does not apply if, when the debt is incurred, the company is failing to pay the entitlements of its employees by the time they fall due and that failure:

- amounts to less than substantial compliance; or
- is one of two or more failures by the company (whether insubstantial or not) within the 12 month period preceding the debt (s 588GA(4)).

The definition of employee 'entitlements' is broad and will cover most entitlements in practice (see ss 596AA(2) and 9 of the Corporations Act).

The safeguard against failures to give returns, notices, statements, applications or other documents as required by taxation laws operates in the same way as the safeguard for payment of employee entitlements (s 588GA(4)).

The Bill further provides that the s 588GA(1) safe harbour will be taken to have never applied if a director fails to substantially comply with their obligations under ss 429(2)(b), 475(1), 497(4) or 530A(1) of the Corporations Act to assist an administrator, liquidator or controller in a subsequent formal insolvency (s 588GA(5)).

Degree of compliance required

The safeguards are qualified in that they operate to remove the safe harbour protection in circumstances where compliance with the relevant obligations has been 'less than substantial'.[15] The qualification of 'substantial compliance', rather than full compliance, is important, as it guards against directors losing a safe harbour due to a compliance failure which is technical or trivial in nature.

For instance, a technology failure may cause a payment to be delayed by 24 hours. In this circumstance, it would be unjust to deny the director the protection of s 588GA(1). The qualification is therefore a necessary common sense addition to render the Bill effective in practice, and not susceptible to failure on the basis of legal technicalities.

[15] In the context of the construction of section 46 of the Competition and Consumer Act 2010 (Cth), 'substantial' has been defined as 'meaningful' or 'relevant' (*Stirling Harbour Services Pty Ltd v Bunbury Port Authority* [2000] ATPR 41-752 at [114], or of 'substance' or 'significance' (*Hecar Invetments No 6 Pty Ltd v Outboard Marine Australia Pty Ltd* (1982) 62 FLR 159 at 167 per Franki J, citing *Cool & Sons Pty Ltd v O'Brien Glass Industries Ltd* (1981) 35 ALR 445).

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In any event, if a company fails to discharge its obligations to pay employee entitlements or fulfil tax reporting obligations on more than one occasion in the 12 months ending when the relevant debt is incurred, the safe harbour will not apply to that debt. This 'two strikes' rule sets a high bar and will apply irrespective of whether or not the compliance failures are substantial or insubstantial.

It will also be subject to scrutiny by the Court, which in our view sufficiently guards against any abuses.

4.4 The safe harbour protection must be accessible for directors in practice

The AICD supports the Bill's approach of requiring the director to meet an evidentiary burden to be entitled to the safe harbour, while placing the legal burden of proof with the party alleging a breach of duty. The alternative approach of placing the legal burden of proof on the director would make it practically impossible for directors to rely on the safe harbour, rendering it 'dead on arrival'.

The question of whether or not a director is entitled to the protection of s 588GA(1) would be tested in the Court, after a formal insolvency process has been initiated. Of course, this presupposes that the course of action undertaken has not produced the desired restructuring outcome.

Accordingly, imposing the legal burden on directors in these circumstances would require they prove, contrary to the outcome that eventuated, that the course of action developed was reasonably likely to lead to a better outcome for the company than immediate administration or liquidation.

In the context of a safe harbour designed to facilitate genuine business turnarounds and restructures, this approach is neither appropriate, constructive, nor in accordance with common-sense lawmaking. Placing the legal burden on directors would perpetuate the overly strict legislative approach for which our insolvency regime is currently criticised, and simply replicate the structure of existing insolvent trading defences in section 588H of the Corporations Act.[16] Coupled with the inherently uncertain analysis required of directors and the risk of hindsight review, this approach would render the safe harbour unusable.

In short, placing the legal burden on directors would defeat the Bill's objective of facilitating more successful restructures outside of formal insolvency processes, saving jobs and value.

<u>Defence v exception</u>

An issue has been raised in the context of whether or not the model proposed in the Bill is consistent with the recommendations of the Productivity Commission in its final report into *Business Set-up, Transfer and Closure*, published on 30 September 2015[17].

[16] See, for example, Singapore's *Final Report of the Insolvency Law Review Committee* (2013), 204 at [18]:
'The Australian provisions are considered to be some of the strictest provisions amongst the major jurisdictions, in the sense that they effectively prohibit trading once there are 'reasonable grounds for suspecting' that a company is insolvent. … A wide notional cessation of trading even prior to the commencement of insolvency proceedings may further endanger a financially-troubled company's ability to trade through a period of crisis, and thus worsen the company's financial difficulties. It does not strike the best balance between the interest in protecting creditors against the reckless or unreasonable incurring of debts by an insolvent company, and the interest in allowing the directors of a distressed company a fair opportunity to take reasonable steps to avoid the company's financial ruin. **There should be more latitude afforded to a director to continue to trade in the reasonable expectation that, although the company is insolvent, it is most likely to be able to trade out of its present difficulties.**' [Emphasis added.]

[17] Productivity Commission, *Business Set-up, Transfer and Closure,* Inquiry Report No 75 (30 September 2015).

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While the introduction of a safe harbour 'defence' was a key recommendation of the Commission, the final report did not appear to consider where the burden of proof should be placed. Instead, the Commission drew a distinction between a 'defence' model and a 'process' model (similar to voluntary administration). The Commission favoured a defence model, noting that 'the main reason for favouring a defence was its private nature, and the effect that would have on the prospects of a successful restructure'.[18]

We believe that the Bill's construction of the safe harbour is consistent with the defence approach, in this broad context. The details of the model have been considered in greater detail through Treasury consultations subsequent to the Commission's report, culminating in the model adopted in the Bill.

5. IPSO FACTO STAY

To preserve enterprise value and jobs, the AICD supports a stay on the operation of *ipso facto* clauses that permit unilateral variation or termination solely due to a formal insolvency restructure. Provided all other contractual terms are being met, a counterparty should not be able to terminate the contract, accelerate payment, impose new terms of payment, require additional security for existing obligations, or claim forfeiture of the contract term.

While imposing a stay on the operation of *ipso facto* clauses would, to some extent, restrict the contractual rights of individual creditors of distressed companies, creditors as a whole would benefit from the increased prospect of a meaningful turnaround of the business or of a higher return should a restructure ultimately be unsuccessful. Accordingly, we endorse the stay.

While we support the general approach taken in the Bill to the stay, we have not undertaken a forensic examination of the draft provisions. We leave that to those with specialist knowledge.

We do, however, recommend that the effective start date be reconsidered.

The stay would only apply to rights arising under contracts, agreements or arrangements entered into at or after the commencement of Schedule 1, Part 2 of the proposed legislation. Paragraph 2.99 of the explanatory memorandum to the Bill states that, subject to a proclamation, the commencement date will be the later of 1 January 2018 or the day after 6 months after Royal Assent.

In our view, delaying the application of the stay would unnecessarily defer the benefits sought by its introduction because many contracts, such as leases and franchises, operate over long periods. Further, considerable uncertainty and disputes would likely arise as many contracts include options to extend or renew (with or without other rights of variation). Unpredictable application of the stay could undermine confidence in the efficacy of the reforms.

For these reasons, we advocate a 'bright line' commencement date, instead of one based on when contracts were entered into.

> Recommendation 3: Amend Schedule 1, Part 1, Item 6 of the Bill so that the Stay applies to all contracts, agreements or arrangements already in existence on, or formed after, the expiration of a transitional period (say 12 months from the date of commencement of the legislation).

[18] Productivity Commission, *Business Set-up, Transfer and Closure*, Inquiry Report No 75 (30 September 2015), 381.

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6. CONCLUSION

We hope our comments will be of assistance to the Committee. If you would like to discuss any aspect of this submission, please contact Lysarne Pelling, Senior Policy Adviser, on [redacted] or [redacted] or Matt McGirr, Policy Adviser, on [redacted] or at [redacted]

Yours sincerely

[redacted]

LOUISE PETSCHLER
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