

22 March 2023

Mr Sean Turner
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Via email: corporations.joint@aph.gov.au

Re: Inquiry into corporate insolvency in Australia, Question on Notice

Dear Mr Turner

We have reviewed the draft transcript from the hearing on Tuesday, 28 February 2023 and identified two questions on notice.

Question one:

Comment on the evidence of Australian Credit Forum in relation to a \$30,000 limit on unfair preference claims

The Small Business Debt Helpline submission contained a recommendation to extend the existing limit on unfair preference claims of \$30,000 against unrelated creditors from simplified liquidation to all creditor voluntary liquidations and court liquidations.

Our recommendation is consistent with the evidence provided by Ms Taylor, Australian Credit Forum, on Tuesday, 28 February 2023 and her comments regarding 'putting some kind of cap with respect to the a dollar amount in which a preference can be brought.....I think \$30,000 is a good starting point.' The case example provided by Ms Taylor of a \$28,000 preference claim, reduced to a \$5,000 preference and subsequently a walk away offer between parties, highlights the costs incurred by all parties in bringing and defending such a claim. In that example, the creditor incurred costs of \$10,000 to defend the claim.

The Small Business Debt Helpline typically sees clients that do not have the financial reserves to afford professional assistance in such situations. It is also extremely unlikely that they would be able to access any pro bono legal advice to assist with preparing a defence to the claim. In addition to any financial impact on their business and funding of continued operations, such situations create considerable distress and detract from a small business operator's ability to focus on the operations of their business.

The extension of the \$30,000 limit for unrelated creditors to all liquidations would:

- reduce the costs of liquidation given time spent seeking to establish and pursue relatively low value claims,

- improve clarity regarding what might constitute an unfair preference claim, and
- reduce the costs, financial and emotional, on unrelated creditors required to defend relatively uneconomic claims.

Question two:

An invitation to put forward further policy suggestions

The Small Business Debt Helpline considers one of the key priority areas for the Committee's consideration is reform that provides all small business owners with the ability to access formal processes to close a company through a liquidation. This needs to be available in a cost-effective way.

Currently, sole traders are afforded free access to the bankruptcy services provided by the Official Trustee in Bankruptcy (through the Australian Financial Security Authority). However, for many small businesses operated through a company, there are significant cost barriers preventing the formal closure of the company through a voluntary liquidation. This leaves these companies as "zombie businesses" and the directors in limbo.

We note several submissions and witnesses to the Inquiry have also raised the issue of barriers, particularly cost, preventing incorporated small businesses from accessing liquidation.

We consider it is a key area for policy reform and warrants focused debate and consultation with stakeholders. Accordingly we suggest there is merit to the Committee recommending the establishment of a specific taskforce to consider this issue in more detail, define the options, weigh up their relative merits and make recommendations. The scope of such a taskforce could include:

- models for delivery: private liquidators, an official liquidator or a hybrid model
- funding models: government funded, levy funded, a combination of funding
- eligibility criteria: the characteristics of eligible companies and other criteria for access

Regards

Helen Davis
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Small Business Debt Helpline