

# Fighting chance for small business

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## Fighting chance for small business

**Opportunity to restructure**  
The government's reform of insolvency laws is designed to help more businesses survive the coronavirus crisis.



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Small business has been hit hard by COVID-19.

Health restrictions forced many small businesses to close their doors, while others have managed to stay open, albeit with significantly less foot traffic through their store.

Meanwhile, bills rack up, be it for energy, insurance, rent or interest on a loan – all of which need to eventually be paid.

While JobKeeper and the cash flow boost have undoubtedly helped, we know that in this COVID-induced recession some businesses will not survive in their current form.

For many, through no fault of their own, the insolvency process will be their next and last stop.

Under the present system, the majority of businesses that enter voluntary administration are deregistered within three years.

However, many of these businesses could remain viable concerns if they had more flexibility to restructure their affairs.

It is with this objective of keeping more businesses in business and people in jobs that the Morrison government is embarking on the most significant reforms of insolvency law in almost 30 years.

Adopting key aspects of the US Chapter 11 bankruptcy process, the government will be introducing a single, simpler, faster, more cost-effective insolvency process for small business.

It will see our system move from a rigid, one-size-fits-all "creditor in possession" model to a more flexible "debtor in possession" model.

By enabling owners to remain in control, businesses will be more open to enter into the insolvency process sooner, providing them with an opportunity to restructure and increasing their chances of surviving the COVID-19 crisis.

Under the new process, incorporated businesses with liabilities of less than \$1 million will be able to keep trading while they develop a debt restructuring plan, which is ultimately voted on by creditors.

This \$1 million threshold will cover about 76 per cent of businesses subject to insolvencies today, 98 per cent of which have less than 20 full-time employees.

The new process will involve a small business restructuring practitioner helping the business prepare the plan, certify the plan to creditors, and oversee disbursements once the plan is in place.

A period of 20 business days is allowed for the development of the plan.

*Some will survive and others will not, but the new system will provide the best opportunity for viable businesses to adapt.*

While the practitioner is engaged in the restructuring process, there is a moratorium on unsecured and some secured creditors taking actions against the company.

Creditors will then have 15 business days to vote on the plan, including the remuneration of the practitioner to deliver on the plan.

In order for the binding plan to be approved, it must be supported by more than 50 per cent of the creditors by value.

Employee entitlements that are due and payable must be paid out in full before the plan is voted on by creditors.

There will also be safeguards in place to prevent corporate misconduct, including phoenix activity, with related creditors prohibited from voting on the restructure plan, and the same company or same directors not being able to use the insolvency process more than once

every seven years. In the event the plan is not approved, the business can go into voluntary administration or a new liquidation process with simplified obligations.

The new liquidation process, which will also be available to small businesses with less than \$1 million in liabilities, will save time and money by streamlining meetings and reporting requirements.

This new streamlined restructuring process is in contrast to the current regime where owners effectively lose control of their business, with an administrator being placed in control and determining any restructuring plan to be put to creditors.

The intention is for this new insolvency regime to start from January 1 next year, following on from the lifting of the temporary insolvency measures introduced during COVID-19.

The temporary measures involved lifting the threshold for statutory demands from creditors from \$2000 to \$20,000, and extending the time companies have to respond to statutory demands from 21 days to six months.

These measures have led to the number of insolvencies this year falling by about 50 per cent compared with the same period last year.

At present, about 2000 fewer businesses have gone into an insolvency process than would have otherwise been the case.

This new process has been designed to help the system deal with these built-up cases.

Some of these businesses will survive and others will not, but the new system will provide the best opportunity for viable businesses to adapt – and in doing so to generate the most efficient allocation of capital and labour as the economy strives to recover from this COVID-19 recession.

This approach is consistent with what the Productivity Commission has called for, saying that "the objective of the insolvency regime should be to provide a genuine opportunity for restructure for economically viable companies".

Important and practical reforms such as this will create a more dynamic economy, strengthen our economic recovery, and provide better outcomes for businesses, employees and creditors alike.

Josh Frydenberg is the federal Treasurer.