

Alert

DISPUTE RESOLUTION & INSOLVENCY

Federal Government Announces Temporary Changes to Insolvency Laws

Relief for Financially Distressed Businesses

By Joseph De Ruvo

After acknowledging that measures to slow the spread of coronavirus could cause many otherwise profitable businesses to face financial distress, the federal government has taken unprecedented steps to provide businesses with short-term relief in the face of the crisis. These were critical, but essential, decisions to attempt to avoid the unprecedented number of insolvencies that are expected to happen in Australia over the next few months. At the very least, these changes will provide owners and directors of businesses with some breathing space to work through the impact of this crisis. In the short-term, it will prevent companies from being wound up by their creditors and will protect company directors from potential personal liability. With further measures, the federal government may provide the much-needed safety net businesses need to resume regular business activity once this crisis passes.

Key measures that have been taken to provide businesses with short-term relief that owners and directors of businesses need to know are:

- 1. Directors will be temporarily relieved from any personal liability for insolvent trading for six months.** Currently, directors are held personally liable if a company trades while insolvent (that is, while unable to pay its debts as and when they fall due). These new laws will, therefore, allow directors to keep their businesses open for longer (up to six months).
- 2. The threshold for creditors to issue a statutory demand on a company will be temporarily increased from \$2,000 to \$20,000.** When a company is owed money, it can issue a statutory demand to force the owing company into liquidation. This increase will provide temporary protection for debtor (owing) companies.
- 3. The timeframe for companies to respond to statutory demands will increase from 21 days to six months.** Not responding to a statutory demand within

the timeframe creates the presumption that a company is insolvent. The extended deadline (six months) should provide temporary relief.

- 4. The threshold for a creditor to initiate bankruptcy proceedings against an individual will increase from \$5,000 to \$20,000 for six months.** Currently, the minimum debt required for a creditor to initiate bankruptcy proceedings against an individual is \$5,000. An increase in this amount will provide temporary relief to individuals. Debtors (i.e. owing individuals) also have an increased timeframe to respond to a bankruptcy notice, increased from 21 days to 6 months. This extension allows more time to consider repayment arrangements before being forced into bankruptcy.
- 5. All of these changes will apply for six months.**

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When do the changes take effect?

These temporary reforms are now in place.

While these measures are critical to keeping strong, financially viable businesses running, they should not be used by companies that were already facing financial hardship as a means to keep the doors open.

If you are the owner or director of a business that is currently struggling due to the current crisis, the government fact sheet can be found [here](https://treasury.gov.au/sites/default/files/2020-03/Fact-sheet-Providing-temporary-relief-for-financially-distressed-businesses.pdf)¹.

Please do not hesitate to contact us if you have any questions or wish to discuss your circumstances.

¹ <https://treasury.gov.au/sites/default/files/2020-03/Fact-sheet-Providing-temporary-relief-for-financially-distressed-businesses.pdf>



MORE INFO

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