



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

12 January 2023

Legislation Policy and Delivery Branch

Law Division

Treasury

Langton Cres

Parkes ACT 2600

via email: [LawImprovement@treasury.gov.au](mailto:LawImprovement@treasury.gov.au)

Dear Sir/Madam,

### **Further improvements to Corporations and Financial Services Law**

Thank you for the opportunity to comment on the exposure draft legislation to further reduce complexity of Australia's corporations and financial services laws. We continue to support legislation that is as simple as possible to encourage understanding and compliance. While simplification of the legislation to clarify its operation is welcome, we recommend that Treasury continues to consider improvements to the application of this legislation in practice.

The *Corporations Act 2001* (Cth) (the Act) and accompanying regulation are complex and not always suited to a small business context. Chapter 5 ('External administration'), which relates to Australia's corporate insolvency practices, is particularly complex. This disproportionately affects small and family businesses that lack the in-house legal advice needed to navigate the legislation. Improvements to the way the legislation operates in practice would ensure it is better suited to a small business context.

Complexity in Chapter 5 should be reduced, noting that any changes would likely require comparable changes to be made to the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* (the Amendment), which establishes the framework for the small business restructuring and simplified liquidation. Like the Act, the Amendment is complex and requires significant technical expertise to navigate. Comparative changes would also likely be required in the personal insolvency provisions of the *Bankruptcy Act 1966*, as both commonly apply in a small business context. Small business and personal finances and guarantees are uniquely intertwined, and Australia's corporations and financial services laws would benefit from a better recognition of this situation.

Any reforms to the Act should strive for consistency and avoid unintended adverse consequences for other chapters of the Corporations Act or other related legislation.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Ekaterina Grazhdannikova on 5114 6141 or at [ekaterina.grazhdannikova@asbfeo.gov.au](mailto:ekaterina.grazhdannikova@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman