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Jill Lawrence  
Assistant Director – Advocacy  
Level 2, 15 Moore Street  
Canberra

By email: [inquiries@asbfeo.gov.au](mailto:inquiries@asbfeo.gov.au)

Dear Jill

### Insolvency Inquiry discussion paper

Thank you for providing the NSW Small Business Commission (NSWSBC) the opportunity to comment on ASBFEO's *Insolvency Practices Inquiry (Discussion Paper December 2019)*. The NSWSBC supports ASBFEO's initiative to explore what a best practice framework could look like for both small businesses moving towards insolvency and the professionals that support them during this process.

Based on the themes and issues in the discussion paper, there are at least four key areas that highlight a need for strong advocacy and an opportunity for reform that could result in a benefit to small businesses.

- 1. Formal overseer/Obudsman that monitors registered administrators' activities and practices, and manages complaints about the profession.**  
Based on the discussion paper, external administrators are currently required to have a base level of qualifications and knowledge. To become registered, they also need to submit an application to ASIC (which maintains the list of registered liquidators) followed by an interview with an expert committee.

The paper also notes that administrators that are members of the Australian Restructuring Insolvency and Turnaround Association (ARITA) must abide by a Code of Professional Practice. The Association of Independent Insolvency Practitioners (AIIP) also provides support and professional development for its members.

Both administrators and small businesses would benefit from advocacy for a standard code, practices and oversight for all external administrators. This would improve process transparency for small businesses and provide a clear standard and development support for all registered administrators as well as more transparent regulatory framework.

- 2. Cap on external administration costs for small businesses.**  
Small businesses find the costs for external administration drains the limited resources of the company for the benefit of the registered liquidator. The discussion paper highlights that voluntary administration can cost between

\$40,000-60,000. Statistics from ASIC show that since 2004, more than half of insolvencies had assets of less than \$50,000.

Advocating for an industry standard hourly rate for external administrators, with a cap set for small businesses representing reasonable external disbursements, could avoid many of the cost issues of the current process. In addition, a cap for small businesses could potentially minimise costs being blown out and potentially improve small businesses' affordability of these costs. This could then increase the chance of saving the business, especially for voluntary administration.

**3. Thorough valuation process when liquidating assets.**

As noted in the discussion paper, while a lack of transparency may be experienced throughout the entire insolvency process, the activity most consistently raised by small businesses is the valuation and marketing of the business and its assets. The use of the valuer and sales agent are currently categorised under external disbursements, which do not require approval. Even creditors are unaware of the valuation and sale process.

Advocating for a framework that supports a thorough valuation process when liquidating assets would minimise the practice of assets being sold off at substantially below value. For example, introducing a policy of obtaining a minimum of three quotes: one on behalf of the administrator, one of behalf of creditors and one on behalf of the asset holder.

**4. Introducing a free basic education unit on running a business and understanding the potential risks of personal exposure (to be completed by individuals before registering an ACN or ABN).**

The discussion paper highlights that 20 per cent of businesses employing less than 20 employees fail to survive more than one year (ABS). To ensure that innovation is not stifled, consideration should be given to advocating for a simple free online educational unit with questions that must be passed at time of registration of a CAN or ABN. This would help small business operators better understand risks, procedures and basics of running a business. An automatic invitation to also sign up to either a federal- or state-subsidised business advisory service for ongoing support would also benefit small businesses starting up and help minimise failures in the first year of operation.

If you require additional information or wish to discuss the matter further, please contact Sylvia Georgiou, Principal Advisor on 0417 463 707.

Yours sincerely



Steve Brady  
Acting NSW Small Business Commissioner  
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