



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

9 September 2021

Manager
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

via email: MCDinsolvency@treasury.gov.au

Dear Sir/Madam

Improving schemes of arrangement to better support businesses consultation paper

We welcome the insolvency reforms which came into effect on 1 January this year and which focused on reducing the complexity, time and costs for small businesses involved in restructuring and insolvency processes. We look forward to contributing to the review of the effectiveness of those measures and opportunities to fine tune the measure in due course, so that this welcome initiative fulfils its purpose and full potential.

The reforms broached in this current consultation process however are clearly, explicitly aimed at improving the lot of very large companies that may be solvent but financially distressed, focusing on changes to creditors' schemes of arrangement (schemes). Measures mentioned in the consultation paper, such as introducing a general automatic moratorium on creditor enforcement actions during the formation of a scheme, introducing a cross-class cram down mechanism, assigning priority treatment to rescue financing and lowering voting thresholds could well benefit those large companies entering a scheme.

However the potential gains for those companies from those measures need to be balanced with the consequent loss of protection for creditors, especially for those creditors that are small businesses. In particular, we question the need for an automatic moratorium where the company forming a scheme is solvent. Where an automatic moratorium is deemed appropriate for a scheme we suggest the scheme should be limited in terms of timing, duration and scope, and be subject to court review.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mike Kearney on 02 6213 7443 or at michael.kearney@asbfeo.gov.au.

Yours sincerely

The Hon Bruce Billson
Australian Small Business and Family Enterprise Ombudsman

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