Prior to beginning my formal submission with regard to proposed changes:
It is worth stating my current circumstances as they uniquely apply to this review.

I own a company – which is a small business. Integrity Consulting Pty Ltd (ACN 096 101 254).
That business has been in operation since 2001 (making me one of less than 25% of small businesses that have survived more than 5 years).
In late 2014 my industry (oil and gas) suffered a serious downturn putting many service contracting companies (like mine) out of work.
In early 2015, in response to the industry downturn the business ceased operations. As a result, the business remains solvent...just.
In 2015 I began retraining in an alternative industry (Studying Computer Science and History at Uni of New England). The intention is to reactivate the business at a future time – possibly in a new industry (innovation and flexibility?). I am working as a contract labourer to survive.

In January 2016, my business had not traded in a year and I did not have regular employment, my family and I began applying for government assistance (Newstart / Austudy / Low Income Health Care Card / School Card / 'Job Active' assistance / Parenting payment / Carers' allowance / retraining assistance).
All applications have been refused.
My family and I have been left with an income which is 25%-50% less than a family on Newstart.
We get Family Tax Benefit but no other assistance from Centrelink what-so-ever. I currently earn less than $400 per week (nett) as a contract labourer - when work is available. I am also studying full time. Everything, and all support, is now contingent on receipt of Newstart, which we don't get.
I am now facing personal bankruptcy and my family is facing homelessness.
With our income we cannot even afford rent.

The government (Centrelink) position is that because I own a business we should borrow money from that business for income - endlessly. This is not only illegal under the Companies Act, but the company has no money. They are counting assets that do not exist. I currently owe the company a large Div 7 loan (which Centrelink is counting as an asset!). Some of that was taken in order to survive the past 18 months – I cannot pay it back on my current income.
I have already waited far longer than the required 'stand down' time for any employee.
Despite the fact the company is not trading, Centrelink somehow believe my family is deriving an income in excess of $2000 per month from it. They have been provided with proof this is not the case.
In addition, Centrelink have told an advocate (Welfare Rights) that we will not receive any assistance until they (Centrelink) are satisfied we have taken steps to wind up the business.
In other words – they want the business to be shut down completely. Exactly why this is required I'm not sure (it is not part of the law as far as I can see). Because we owe the business money this would bankrupt us immediately. It would also remove my ability to take work if it was offered.
Under the hardship provisions you are expected to liquidate assets and take loans before you receive assistance [Form SA233.1403]. This makes the situation worse.

So, while one part of the government says it is attempting to encourage 'innovation' and small business, another actively punishes those in business.

My mistake, it seems, was that I managed my business correctly and didn't go bankrupt. My family and I are now being punished for that. It seems that almost no one (including government departments) can comprehend the fact that a small business has ceased trading, has no income and yet has **not** gone bankrupt. Because my business is not bankrupt there seems to be a belief I still have access to endless amounts of income.

If, in connection with this review, the Government would like to use my case as a case study - I am happy to provide all information and supporting documents required including personal and business financial details.

In response to: National Innovation and Science Agenda – Improving bankruptcy and insolvency laws Proposals Paper - 29 April 2016

Ref Num: {56BF0AA3-0AD0-4F4F-A623-C37D55844888}
http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Consultations/2016/Improving%20bankruptcy%20and%20insolvency%20laws/Key%20Documents/PDF/pp_NIS_insolvency_measures.ashx

The proposal begins with this paragraph on the first page:

> More often than not, entrepreneurs will fail several times before they achieve success. To create an ecosystem that enables these entrepreneurs to succeed will require a cultural shift. Our current insolvency laws put too much focus on penalising and stigmatising the failures.
>
> With these measures in place, bankruptcy and insolvency laws will strike a better balance between encouraging entrepreneurship and protecting creditors. Over time, these changes will help reduce the stigma associated with business failure.

I think many of the problems with these proposals lie in this opening paragraph. While it is recognised that "*More often than not, entrepreneurs will fail several times before they achieve success.*" the proposals here are not trying to address that issue. Rather, the goal seems to be to make failing easier?

Wouldn't it be far more productive to prevent the failures in the first place?

In my own case I have found that certain departments of the Australian Government are openly hostile to business. It seems that to exit a small business (which is not currently profitable) in Australia the only options are;

-To sell the business (where this is possible – remembering it is not profitable).
-To completely wind up the business (where this is possible – extracting yourself from debt).
-Bankruptcy.

It seems that shutting down and placing the business operations on hold, in order to prevent bankruptcy, or to look for new opportunities, is not acceptable to the Australian Government.

In all cases the 'entrepreneur' loses the business and is penalised for having had the business in the first place. Even once a business is gone (without bankruptcy) - additional penalties and obligations are imposed by government agencies.

Not only do they want you to lose the business, but they also want to make sure you lose everything before you qualify for assistance. Then, as if that is not enough, they then want to sit in judgement.

> The default bankruptcy period of three years may discourage innovation and business start-ups. During the bankruptcy period restrictions are placed on a bankrupt in respect of overseas travel and incurring further debts. A bankrupt may also be subject to licencing and employment restrictions (including prohibition from being a company director).
>
> Reducing the default period and related restrictions to one year will encourage entrepreneurial endeavour and reduce associated stigma. The measure acknowledges that bankruptcy can be a result of necessary risk-taking or misfortune rather than misdeed, and encourages former bankrupts to continue entrepreneurial activity.

I don't think there are too many people who start a business thinking "The default bankruptcy period is three years... I'm discouraged." When entering a business you aren't thinking about how you are going to fail...and how long you have to wait to fail again.

The discouraging part is that when you realise you are failing, that there is no help available until you *have* failed. Even this proposal would only provide help to failed businesses.

In my case, for example, I thought I had done the right things to avoid bankruptcy and to give myself the maximum chance to recover.
It never occurred to me that the government would still be trying to bankrupt me and force my company to close over a year later. Or, that the government would not accept that my business was shut down and make my family homeless just because I own a company which is not bankrupt.

During the time my business was operating there were several periods where I had no work. During those periods I continued to draw a salary (and pay tax), supporting myself, rather than request government support. Yet when I require some support – it is not available to me.

> Proposal 1.1
>
> The Government proposes to retain the trustee's ability to object to discharge and to extend the period of bankruptcy to up to eight years.

So the proposal is: "No change."?

https://www.afsa.gov.au/debtors/bankruptcy/bankruptcy-overview/when-does-it-end

> Query 1.1
>
> The Government seeks views from the public on whether the criteria for lodging an objection and the standard of evidence to support an objection should be changed to facilitate a trustee's ability to object to discharge.

Do you want to make it easier, or harder, to object to a discharge?

> Proposal 1.2.1
>
> The Government proposes to change the Bankruptcy Act to ensure the obligations on a bankrupt to assist in the administration of their bankruptcy remain even after they have been discharged to allow for the proper administration of bankruptcy.

In other words – exactly like the current conditions?

https://www.afsa.gov.au/debtors/bankruptcy/bankruptcy-overview/things-i-have-to-do-and-be-aware-of-when-bankrupt

https://www.afsa.gov.au/debtors/bankruptcy/bankruptcy-overview/when-does-it-end

See the section: "What happens after discharge?"

> Query 1.2.1a
>
> The Government seeks views from the public on which particular obligations on a bankrupt should continue even after a bankrupt is discharged.

Exactly as above. (Answer to Proposal 1.2.1)

What is the point of bankruptcy?

The Bankruptcy Act does not state objectives, although it has been suggested that it should.[1]

The existing obligations are to assist the trustee in the administration of the bankruptcy as required.

By declaring bankruptcy (or being declared bankrupt) an individual, entity and / or their creditors is declaring that they are unable to meet their financial obligations (whether fair or unfair). The point of bankruptcy is to call a halt to any further damage to all parties and allow a settlement to be made which gives the best possible outcome without making things worse.

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1 https://lr.law.qut.edu.au/article/viewFile/553/550

From the point of view of the bankrupt – it provides relief. Not a free pass – but a means of bringing a halt to a situation which is no longer under their control and which they have no reasonable prospect of recovering from. That's the whole point.
On the human side – this prevents suicides.
The whole point of being discharged is that all involved accept that the the best possible outcome was reached and that further punitive / financial penalties serve no practical purpose. It provides the discharged bankrupt with a clean slate / fresh start, financially at least, although currently not legally.

If financial obligations are to continue after being discharged then what purpose does bankruptcy serve?
If financial obligations continue after discharge there are numerous problems including the fact that a debt could remain unserviceable and lead to lifetime servitude with no prospect of release. *This, quite literally, opens up the possibility of slavery.* In addition, it could lead to a person being punished twice (or more) for the same offence (or debt, in this case) . This could probably be challenged in the international court.

> Query 1.2.1b
>
> The Government seeks views from the public on what incentives and mechanisms should be in place to ensure compliance with obligations after discharge.

None. Otherwise it's not discharge is it? If you want to maintain obligations and compliance (other than those already enforced - regarding disclosure related to the current bankruptcy) then you DON'T discharge.

> Proposal 1.2.2
>
> The Government proposes to separate the obligation to pay income contributions from the default bankruptcy period. Instead, individuals will continue to pay income contributions for three years even with the reduction in the default bankruptcy period. Further to proposal 1.1 above, where the period of bankruptcy is extended to five or eight years, income contributions will also be payable for that extended period.

So that is up to eight years of income contributions?
People get lesser sentences for manslaughter in this country.[2]
Part of this proposal is to reduce the "default period and related restrictions to one year" and yet here the proposal is to financially cripple a person for up to eight years?
Again, if creditors are not satisfied that the bankruptcy has been discharged... DON'T discharge.

> Proposal 1.3.1a
>
> The Government proposes to reduce credit restrictions under the Bankruptcy Act to one year, subject to any extension for misconduct.

So is the Government proposing that an undischarged bankrupt should have access to credit?
Does this in any way relate to the earlier proposal that "individuals will continue to pay income contributions"?

> Proposal 1.3.1b
>
> The Government proposes to retain the permanent record of bankruptcy in the National Personal Insolvency Index.

This is already done but needs to be reassessed. Also See reply to query 1.3.1c

2 https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Homicide%20in%20Victoria%20Offenders%20Victims%20and%20Sentencing.pdf, pg ix

Perhaps the most worthwhile query in this whole proposal is this one. If the aim is to reduce the "stigma associated with business failure" then this is perhaps one area that should be reviewed.

Why is there a lifelong register for discharged bankrupts when there is no similar publicly available register for sex offenders such as rapists and paedophiles? Are discharged bankrupts more of a threat than sex offenders?

Under normal conditions – financial records are only kept for seven years. So why are bankruptcy records maintained for longer than this?
I would propose that public records of bankruptcy are only maintained for 7 years after a bankrupt has been discharged, subject to any extension for misconduct. Any further retention (permanent record) should only be available via a court under exceptional circumstances or conditions.

Furthermore, I would suggest that asking persons if they have ever been bankrupt as part of employment applications should be illegal unless a special exemption is obtained.

It should be permissible to ask if a person is an undischarged bankrupt, but once the person is discharged it should be illegal to ask about past bankruptcies without an exemption. For example: banks might be able to obtain an exemption to ask on loan and credit applications if a person has been "discharged from bankruptcy within the last seven years" (as this may be required for risk assessments) however beyond 7 years this should be illegal too.

Being discharged from bankruptcy is supposed to provide a fresh start. If a publicly available life long register is maintained - it isn't a fresh start. Legally, this is a register that can continue to 'harm' a discharged bankrupt for life.

Query 1.3.1c

The Government seeks views from the public on whether it is appropriate to reduce the retention period for personal insolvency information in credit reports.

It should be permissible to ask if a person is an undischarged bankrupt, but once the person is discharged it should be illegal to ask about past bankruptcies without a court approved exemption. For example banks might be able to obtain an exemption to ask on loan and credit applications if a person has been "discharged from bankruptcy within the last seven years".

Credit reporting agencies should only be able to report information on undischarged bankrupts. Retention beyond discharge should only be allowed for seven years (as for all financial records) however they should not be able to pass on specific information relating to a discharged bankruptcy.

They should be permitted to simply say that the person is a discharged bankrupt and that public records are available via the National Personal Insolvency Index. They should be permitted to obtain these records for clients but should be required by law to pass on those records complete and unaltered. This prevents credit agencies mis-reporting information. It should also be made clear that anyone who retains those records commits an offence if they (in turn) redistribute or make available those records more than seven years after discharge. This prevents malicious use of discharged bankruptcy records (such as redistribution on social media or use in contract negotiations) many years after discharge.

This would mean that a bankrupt would serve 3-8 years until discharge and public / credit records of the bankruptcy would be available for a further 7 years. Making a total of 10 – 15 years assuming no extensions due to misconduct.

Considering serious criminal / sex offenders are released to the community and details are suppressed due to 'privacy' - I would suggest that the current retention and duration of publicly available bankruptcy records is grossly unfair.

Proposal 1.3.2

The Government proposes to reduce the overseas travel restriction to one year, subject to any extension for misconduct.

An undischarged bankrupt can currently travel overseas simply by asking for permission.
https://www.afsa.gov.au/debtors/bankruptcy/bankruptcy-overview/overseas-travel

Safe Harbour and Ipso Facto Clauses

The Productivity Commission, in its 2015 report on Business Set-up, Transfer and Closure(PC Report) recommended that a safe harbour, framed around the appointment by the directors of a professional restructuring adviser will allow directors to make decisions relating to the possible restructuring of the company, free from fear of liability.

A safe harbour will provide directors with a restructuring option that allows them to retain control of the company while receiving formal advice rather than necessarily surrendering control to an external administrator. The Government acknowledges that it is important that this occurs in a framework which still provides for the interests of creditors.

The Corporations Act places emphasis on the importance of companies keeping and maintaining adequate financial records.

It is thus an important precondition of the appointment of an adviser that the company maintain adequate, up-to-date financial records which explain the company's transactions and financial position.

Significantly, to be valid, a restructuring adviser's opinion that the company can avoid insolvent liquidation and be returned to solvency must be properly informed.

Proposal 2.2

It would be a defence to s588G if, at the time when the debt was incurred, a reasonable director would have an expectation, based on advice provided by an appropriately experienced, qualified and informed restructuring adviser, that the company can be returned to solvency within a reasonable period of time, and the director is taking reasonable steps to ensure it does so.

The defence would apply where the company appoints a restructuring adviser who:

(a) is provided with appropriate books and records within a reasonable period of their appointment to enable them to form a view as to the viability of the business;

and

(b) is and remains of the opinion that the company can avoid insolvent liquidation and is likely to be able to be returned to solvency within a reasonable period of time.

The restructuring adviser would be required to exercise their powers and discharge their duties in good faith in the best interests of the company and to inform ASIC of any misconduct they identify.

Query 2.2

Subject to the further information on the proposal set out in the sections below, the Government seeks views from the public on whether this proposal provides an appropriate safe harbour for directors.

Of all the proposals given – this is possibly the most stupid.

There are very good reasons why a business is not permitted to trade insolvent.

The most important is to limit the risk to potential creditors.

Relaxing this – in any way – exposes the whole system to the potential for massive fraud and exploitation.

Contrary to what this proposal seems to imply – not all people are good people and not everyone is honest.

If businesses are permitted to trade while insolvent – they will. They will continue to take money from unsuspecting clients on the grounds that they had "the opinion that the company can avoid insolvent liquidation and is likely to be able to be returned to solvency".

'Restructuring Advisers' will appear who will support the view that "the director is taking reasonable steps to ensure it does so."

When the whole thing falls over... what action can be taken?

None.

'Restructuring Advisers' could not be held liable because the business was already failing when they were called in! They (and the directors), held the view, the 'opinion', the business could be returned to solvency. Meanwhile the proposal "will allow directors to make decisions relating to the possible restructuring of the company, free from fear of liability". So they will borrow money, and continue to take deposits and advance payments from customers with no liability.

Turns out they were wrong? Oh well...

...the 'Restructuring Advisers' will still get their fees and salaries. The directors mean while have continued to draw a salary too. They may now go bankrupt – which they would have anyway – so they are no worse off. In as little as a year (under proposals here) they can do it all again! If they get a network going with their friends and family they could all take turns! Sure, they would have to go bankrupt every few years... but they could all live the high life on other people's money in the mean time.

So no-one loses... *except the unsuspecting clients who are now unsecured creditors*. The people who (in good faith) continued to trade with a business which was insolvent – but they didn't know that.

Even if the 'restructuring advisor' is subsequently found to have acted improperly – how does that help the unsecured creditors?
They can take legal action? Throw thousands more after an already bad debt with no hope of recovery?

As it becomes common place that Australian businesses trade while insolvent – many of which subsequently fail[3] – confidence in small businesses will collapse. Who will trade with a small business knowing they could well be insolvent (but 'restructuring')? Any business that asks for any kind of down payment or deposit will be viewed with suspicion. Anybody who pays one will run the very real risk of losing their money. Bigger companies entering into a contract with a small business will start requesting proof of financial integrity / solvency simply to protect themselves. This will involve still more expense and complication for small business.

This environment will harm any small business that must order in materials or stock and ask for some payment in advance. They will have to hold large cash reserves simply to allow them to do business because no-one will trust them.

Any suggestion that businesses should knowingly be allowed to trade while insolvent without making it very clear they are doing so - is just plain stupid. So you would have to make it clear... which is what placing a business under administration is for.

Query 2.2.1a

The Government seeks views from the public on what qualifications and experience directors should take into

3 http://www.smartcompany.com.au/people-human-resources/managing/38429-voluntary-administration-a-kiss-of-death/

account when appointing a restructuring adviser and whether those factors should be set out in regulatory guidance by the Australian Securities and Investments Commission, or in the regulations.

Like administrators and liquidators (trustees) you mean?

https://www.afsa.gov.au/practitioner/trustees/trustee-registration

Query 2.2.1b

The Government seeks views from the public on which organisations, if any, should be approved to provide accreditation to restructuring advisers if such approval is incorporated in the measure.

See response to Query 2.2.1a.

Query 2.2.1c

Is this an appropriate method of determining viability?

If a 'Restructuring Advisor' is not equivalent to an Administrator in the current rules then it is not appropriate.

Query 2.2.1d

What factors should the restructuring adviser take into account in determining viability? Should these be set out in regulation, or left to the discretion of the adviser?

Whether the business is solvent. Anything left to 'discretion' of an 'advisor' is open to exploitation.

Query 2.2

The Government seeks views from the public on whether these are appropriate protections and obligations for the restructuring adviser, and what other protections and obligations the law should provide for.

If the government thinks it's such a good idea to allow businesses to trade insolvent then my suggestion is that the government provide 100% guarantee to all unsecured creditors.
Is the government prepared to make that guarantee?
If not, why not?
Yet the government proposes allowing thousands of other people to lose their money?

Proposal 2.3

Section 588 does not apply:

(a) if the debt was incurred as part of reasonable steps to maintain or return the company to solvency within a reasonable period of time; and

(b) the person held the honest and reasonable belief that incurring the debt was in the best interests of the company and its creditors as a whole; and

“honest and reasonable belief”. Please define this. Is it like belief in God? Belief in magic?

(c) incurring the debt does not materially increase the risk of serious loss to creditors.

“serious loss”. Please define this. Right now a “serious loss” to my family is $100.

Query 2.3

The Government seeks your feedback on the merits and drawbacks

of this model of safe harbour.

The 'merits' are that some of the less honest members of our community would be able to derive an income at the expense of others. That merit becomes a drawback if you are one of the victims of their dishonest behaviour.

Proposal 3.2

The Government proposes that any term of a contract or agreement which terminates or amends any contract or agreement (or any term of any contract or agreement), by reason only that an 'insolvency event' has occurred would be void.

Any provision in an agreement that has the effect of providing for, or permitting, anything that in substance is contrary to the above provision would be of no force or effect.

Query 3.2.a

Are there other specific instances where the operation of ipso facto clauses should be void. For example by prohibiting the acceleration of payments or the imposition of new arrangements for payment, or a requirement to provide additional security for credit.

No. This suggests that people and businesses should be locked in to supporting an entity which is, or has, already failed. So rather than one bankruptcy... you can have several.

Query 3.2b

Should any legislation introduced which makes ipso facto clauses void have retrospective operation?

"Retrospective legislation". Universally bad.

==

While I think I can see what the intent might be ... this whole proposal is extremely poorly thought through.
On one hand it suggests that it wishes to 'soften the blow' of bankruptcy for small business – but on the other it basically says that not much will change from many existing practices besides the name.

The biggest part of the proposal is to allow business to trade while insolvent – without going into administration – which is just plain stupid.

More than that, the proposal to lock others into contracts with insolvent business is a recipe for disaster.

Overall, these proposals read as if they are a 'thought bubble' of a newly graduated, idealistic accounting / economics student with no practical knowledge of actual business or the current law. Many of the 'proposals' already exist. Some of the modifications proposed here are not really any improvement and some may open loop-holes allowing the whole system to be exploited.

Existing bankruptcy laws have been evolving since the first Australian bankruptcy act in 1924 and from UK law before that. The provisions in them exist because of actual lessons learnt due to real experience in dealing with bankruptcies.

https://www.afsa.gov.au/debtors/bankruptcy/bankruptcy-overview

These proposals offer what is in effect a 're-badged' version of voluntary administration which is itself still relatively new. They propose placing this in the hands of people who may not be as competent as current administrators.

http://www.smartcompany.com.au/people-human-resources/managing/38429-voluntary-administration-a-kiss-of-death/

Any changes to existing laws should only be made only after full consultation with people who have real experience in this area.

If the government wants to 'experiment' then the government should provide a financial guarantee for the duration of that experiment. Some of the proposals here have the potential to hurt a lot of people.

This is the idealistic scenario presented on this web page:

http://www.innovation.gov.au/page/insolvency-laws-reform

How will this work in practice?

Minivit Pty Ltd produces multivitamins. In light of the growing demand for its products, the company buys new machinery to upgrade its factory and expand its production capacity. Unfortunately, the ship due to carry the new machinery has technical difficulties and is delayed by nine months. The company develops an acute but temporary cash flow problem. The directors are concerned that they may breach the insolvent trading rules.

Scenario under existing law

The directors are so concerned about personal liability and reputational damage from breaching the law they place the company in voluntary administration. A key supplier terminates a contract exercising an ipso facto clause, effectively destroying the company's business and resulting in liquidation.

Scenario after new measures introduced

The company appoints a professional restructuring adviser who arranges new credit facilities to address the temporary cash flow problem, and restructures the company to focus on online sales. There is protection for directors because of the safe harbour and because ipso facto clauses are unenforceable. Minivit is able to continue its business successfully.

The problem is this is a made up and hypothetical scenario with a made up and hypothetical solution.
How about this?:

Scenario B after new measures introduced

The company appoints a professional restructuring adviser who arranges new credit facilities to address the temporary cash flow problem.

The new credit facilities are arranged with a bank that demands these facilities are secured with company assets.

The professional restructuring adviser restructures the company to focus on online sales.

So the company continues to take online orders for a product it doesn't actually have the capacity to supply yet. In addition the company is not equipped for, or experienced in, servicing online sales and is overwhelmed. Having a website is a lot different from actually picking, packing and posting.

The key supplier realises that Minivit cannot meet demand and may be insolvent...and is also furious their business has been undercut by Minivit's new online wholesales. Their reputation and business is damaged due to the inability to supply due to a contract they cannot escape.

When the equipment does arrive – there are serious technical issues due to miscommunication of specifications. It requires extensive modification (taking months) and it fails to perform as expected.

The company fails, as most do (statistically). This leaves thousands of customers with no hope of recovering their money as unsecured creditors. Including international customers - thanks to the online sales – harming Australia's reputation – which is becoming the 'online scam' country.
The key supplier has also suffered serious damage and may not recover either. The bank steps in - leaving the business with insufficient cash or assets to pay worker's entitlements.

There is protection for directors because of the safe harbour. The professional restructuring adviser buys a new car out of his fees.

Estimates are less than one in four (5% - 25%) businesses recover from this sort of situation. http://www.smartcompany.com.au/people-human-resources/managing/38429-voluntary-administration-a-kiss-of-death/ ; http://www.delisted.com.au/failed-companies/in-administration

The odds are about 4:1 in favour of my scenario against your made up scenario. ASIC apparently does not track these figures. So the figure could be more like 10:1.

Made up 'role play' on your website does not equal reality - or make a bad idea a good one.

Rather than changing the bankruptcy laws – try looking at the factors that force businesses into bankruptcy in the first place.

I have found through personal experience that the government's view toward business in Australia is completely inconsistent from department to department.

The ATO wants to treat companies like mine as “personal service income” entities... but only when it suits them. They still want to collect GST through those businesses too (which is not done through personal income) and they want company accounts and tax returns. Businesses are still treated as separate entities when it comes to paying superannuation too. The ATO also does not seem to like 'income smoothing' and funds being retained in a company – yet they ignore the fact that without a steady income many types of insurance (including work cover) are effectively worthless. When a “PSI” stops trading – are the principles entitled to immediate income support? No. So now it's not a PSI again. Now it's considered an asset.

Work Cover authorities (which is managed on the State Government level) cannot even decide from state to state whether 'working directors' are workers or not.

Centrelink mean while, treat businesses as assets, and business owners as 'rich' – yet completely ignore all liabilities. In my case, as an example, they see the business as an asset yet completely ignore how that 'asset' is made up.

These are some of the many issues which could be reviewed.

Maybe the government should look at serious concessions for businesses in trouble?
Consider exempting a business from some tax payments if it goes into administration?

Or, how about offering the services of a 'restructuring advisor' prior to insolvency but when a businesses nett profit is not sufficient to provide the directors / principles a 'living wage'?

That is – the business is not insolvent but does not allow the owners / directors to make a living equivalent to a person with an income based on social security?
In this case the restructuring advisor would also be able to act as an advocate with regard to dealing with government departments such as the ATO and Centrelink (to name two).

For example: supposing the nett profit for a small business for a year was $18,000 prior to the owner deducting his / her income. In this case the owner is supporting a family of four. Obviously this is LESS than a family of four receives on Newstart.
So, the 'restructuring advisor' would be able to look at the business and determine if the business is a serious venture, viable and likely to improve? If so, the restructuring advisor could assist – if not the advisor could help to fold or suspend business without bankruptcy and before it is necessary to call in administrators.

In addition the advisor could act as an advocate to the ATO, Centrelink, ASIC, Worksafe etc. In this case the advisor could see the owner's annual income is supplemented to at least the same level as a family on Newstart (effectively ensuring small business owners earn the minimum wage and don't end up ruined for trying to support and run a business).

The problem is, who would pay for this service? Obviously, it could not be the small business – additional costs would only make things worse. Experience suggests that any service paid for by the government will be exploited. So this would need to be resolved.

After all, if the government is serious about supporting small business, then making sure small business owners are not penalised for having a small business would be a good start.

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