

4 March 2021

Manager  
Market Conduct Division  
The Treasury  
**Via email: [Insolvency@Treasury.gov.au](mailto:Insolvency@Treasury.gov.au)**

Dear Sir or Madam,

## Increasing the Statutory Demand Threshold

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback to the Treasury on the consultation paper noted above. We do not consider there is any compelling statistical or commercial basis for a substantial increase in the threshold. We do acknowledge that the value of money has changed and accordingly propose that the threshold be increased to \$5,000.

We thank members of our Insolvency Management Committee for providing feedback from their lived experiences to the questions presented:

### Q1: Should the threshold at which a statutory demand can be issued on a company be increased?

We support an increase in the threshold, recognising the increase in the value of money since the threshold was established in 1992.

While the value of money has increased, the intent of this process, to establish a company's inability to pay its debts, has not changed. It is critical that any change to the threshold does not remove the ability for a debtor to demand that directors meet their key obligation, to only trade while solvent. A debtor who is owed a fair sum must be able to have the importance of their debt recognised and satisfied even where that may place a company into liquidation.

### Q2: If the threshold is increased, to what amount should it be increased and why?

We support raising the threshold to \$5,000. A threshold of \$5,000 recognises the importance of enabling debtors to demand a company meets its debts or take appropriate action such as winding up, whilst at the same time providing an adequate barrier to misuse for coercing payment of a disputed debt.

We do not consider there are compelling arguments to raise the threshold to align with that for bankruptcy notices. The consequences of a liquidation on a director are significantly different to the consequences of bankruptcy on an individual. Further, the number of entities and individuals impacted when a company can no longer meet its debts are exponentially greater than the number impacted when a single person cannot meet their debts.

**Q3: If the threshold is increased, when should this change come into effect?**

Any increase should not come into effect until the beginning of 2022, at the earliest.

A reasonable time frame is required to manage debts existing before the temporary stimulus measures of 2020, possibly compounded throughout 2020, under the current regime. If an increase is to be out into effect, Treasury should harness the reach of professional associations, such as CA ANZ, that represent practitioners supporting businesses to restructure or enter external administration to raise awareness of the change. Such associations can inform, educate and prepare their members who, in turn, will inform their clients of such a change. Refer Appendix A for an overview of CA ANZ.

**Q4: What will be the impacts of increasing the threshold?**

It will not be possible to assess the impact of an increase in the threshold unless a baseline of key factors on current use is established and data collection mechanisms put in place to monitor changes to that baseline. For example, while the paper raises a concern that it has been held by the courts that statutory demands are being misused, there does not appear to be any data to quantify or verify such a claim.

By comparison, our members experience is the importance of small businesses having a range of tools available to assist them to be paid for the goods and services provided. Small businesses will explore all avenues to be paid outside of formal channels to retain a good working relationship. Once these avenues are exhausted, a statutory demand is the key tool to establish if their client is solvent and able to pay its debts. If the threshold is set too high, many small businesses will have debts they cannot even try and recover.

Further, if the threshold is set too high, an unintended consequence may be a rise in anti-competitive behaviour. For example, raising the threshold to, say, \$10,000 may see some businesses actively keeping debt to any one supplier around \$9,000 knowing it cannot be called in. Commonly, suppliers to small businesses are other small businesses and such a strategy will negatively impact a supplier's cashflow and could trigger insolvency across other players along the supply chain.

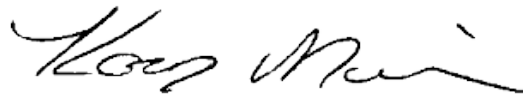
Finally, if the threshold is raised too high, providers of trade credit may demand cash up front for supplies up to that threshold. As trade credit is most often relied upon for inputs to a business, small businesses may have to close if they are required to pay for all their inputs before revenue is received from the goods subsequently produced or services delivered using those inputs.

Should you have any questions about the matters discussed above or wish to discuss them further, please contact Karen McWilliams via email at [karen.mcwilliams@charteredaccountantsanz.com](mailto:karen.mcwilliams@charteredaccountantsanz.com) or phone (612) 8078 5451.

Yours sincerely



**Simon Grant FCA**  
**Group Executive**  
**Advocacy & Professional Standing**



**Karen McWilliams FCA**  
**Business Reform Leader**  
**Advocacy & Professional Standing**

# Appendix A

## About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 128,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.