



Submission
Increasing the statutory demand threshold

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Financial Counselling Australia (FCA) is the peak body
for financial counsellors in Australia.

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About Financial Counselling Australia

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. We support financial counsellors and provide a voice on national issues. We also advocate on behalf of the clients of financial counsellors for a fairer marketplace.

What Financial Counsellors Do

Financial counsellors provide information and advice to people experiencing financial difficulty. Working in community organisations, their services are free, independent and confidential. Financial counsellors are required to hold, or to obtain, a Diploma in Financial Counselling. They need knowledge of a wide range of areas of law and policy, including consumer credit law, debt enforcement practices, bankruptcy, industry hardship policies and government concession frameworks.

Financial counsellors also document their experiences and highlight issues that have a negative impact on their clients. Either individually, or through FCA, they consult with industry, government and other stakeholders and to encourage practices that prevent financial and consumer problems in the first place.

About the Small Business Bushfire Financial Counselling Support Line

On 20th January 2020, in response to the bushfires that caused widespread devastation to communities all along the eastern seaboard and into South Australia, the Federal Government announced a suite of measures to support small businesses.

These measures included \$3.5 million to establish the Small Business Bushfire Financial Counselling Support Line (Small Business Support Line). On 18th March, the Support Line and accompanying [website](#) was [launched](#). The Support Line is operated by FCA.

Increasingly the Small Business Support Line is assisting small businesses affected adversely by COVID-19 and the resulting economic downturn.

FCA has long advocated for dedicated financial counselling support for small business owners, modelled along the lines of the United Kingdom's [Business Debtline](#), which has offered a similar service for many years.

About this submission

Financial counsellors are increasingly supporting small business clients. During June 2020 FCA and the Small Business Support Line ran a series of small business webinars for the broader financial counselling community around Australia. A poll from over 200 financial counsellors in attendance highlighted that business and personal debt is commonly entwined, with 42% reporting this was a common issue. 85% of financial counsellors reported having a client (individual) present with a small business issue in the last three months (72% within the last two months).

Since inception to end of December 2020, the Small Business Support Line has provided 500 cases of assistance to 443 unique small business clients. The most common form of assistance has been assistance with debt management and access to grants, together with the emotional support provided by our team of financial counsellors.

Most small businesses seeking assistance from the Support Line are micro small businesses. For the six months to December 2020:

- 93% have five or less employees
- 54% have no employees

The most common type of small businesses contacting the Support Line during the six months to December 2020 were companies and sole traders, consistent with the period ended 30 June 2020.

The primary reason people contacted the Support Line in the six months to December 2020 was seeking help with managing debts, representing 42% of callers. 11% required assistance with insolvency matters.

Question 1: Should the threshold at which a statutory demand can be issued on a company be increased?

Answer: Yes.

The Small Business Debt Helpline has first-hand experience in assisting small businesses who have fallen into financial hardship. Given the COVID-19 pandemic, the number of businesses suffering financial hardship within Australia is at unprecedented levels.

We welcomed the introduction of recent corporate insolvency reforms with the express aim of allowing more owners to retain control of their business whilst tackling financial difficulties.¹ We consider a \$2,000 threshold may prevent businesses with the capacity to become viable be afforded the opportunity to benefit from the restructuring process.

An increase to the statutory demand threshold would further that same aim by reducing the number of businesses that were forced into external administration by creditors.

Such a reduction would result in social and economic benefits to Australia, namely:

- a) a greater pool of funds would be available to return to creditors because company assets would not be eaten away by legal fees and the costs of insolvency administration;
- b) retention of control of the business by the owner should confer economic benefits derived from the owner's intimate knowledge of operations and the relevant market, with such expertise and information enabling economically rational decisions to be made during informal negotiations with creditors or the new debt restructuring process;
- c) granting a business owner agency throughout such a process may alleviate some of the emotional burden of financial difficulty (admittedly the experience will always be personally taxing) and reduce the associated costs (from the direct costs of psychological and counselling services to the less tangible costs of an owner's reduced productivity and personal capability) that would otherwise be borne by society and government.

¹ Financial Counselling Australia, *Submission – Insolvency reforms to support small business* (12 October 2020)

Question 2: If the threshold is increased, to what amount should it be increased and why?

Answer: \$10,000, because this is the threshold for issuing a bankruptcy notice.

From 1 January 2021 the threshold for issuing a personal bankruptcy notice will be permanently set at \$10,000.

As the Attorney-General said upon announcing this change, such a threshold will ensure that Australians in financial difficulty will not be made bankrupt over relatively small amounts of debt.²

In addition, the change in the bankruptcy threshold was also made in consideration of the changing value of money and changing debt levels.³

In our view, the same reasoning should apply to incorporated businesses. Our experience has shown that the structure of a small business (being a business with less than 100 employees⁴) is no indicator of the size of that business, with reference to either turnover or number of employees.

Further, most small businesses do not have substantial assets. Therefore, when incurring substantial debt (whether from financiers or trade creditors) incorporated small businesses will in almost all cases have been required to provide security by way of a guarantee offered by a director or owner of that business.

Such personal guarantees inextricably bind the debts of a company to the assets of a company director or other personal guarantor. In that situation, the practical effect of serving a statutory demand upon a company which is unable to satisfy that demand is to set in motion a process to recover that debt against the personal guarantor.

To allow corporate insolvency processes to be imposed upon such small businesses for debts lower than the \$10,000 bankruptcy threshold will allow for the initiation of a process that has no prospect of recovering funds for creditors, but will instead merely generate fees for debt collectors, lawyers and insolvency practitioners to perform unproductive work.

² <https://www.attorneygeneral.gov.au/media/media-releases/change-personal-bankruptcy-threshold-18-december-2020>

³ <https://www.attorneygeneral.gov.au/media/media-releases/change-personal-bankruptcy-threshold-18-december-2020>

⁴ <https://www.afca.org.au/what-to-expect/small-business#How%20we%20define%20small%20business>

More deleteriously, the gap between corporate and personal insolvency thresholds may act as an incentive for creditors and businesses retained in the debt recovery process, to incur fees in order to inflate the amount of the debt to in excess of \$10,000.

Question 3: If the threshold is increased, when should this change come into effect?

Answer: As soon as practicable.

In our view there is no reason why such a change should not be introduced as soon as practicable.

Question 4: What will be the impacts of increasing the threshold?

Answer: More business owners retain control of their business, fewer business failures, fewer economic and social costs of failed businesses born by Australian society and government.

We refer to our comments in sub-paragraphs (a), (b) and (c) of our answer to Question One above.