



Law Council
OF AUSTRALIA

Business Law Section

5 March 2021

Manager
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: MCDInsolvency@Treasury.gov.au

Dear Sir/Madam

Increasing the Statutory Demand Threshold

This submission concerning the discussion paper on increasing the statutory demand threshold published by the Treasury on 15 February 2021 is made by the Insolvency and Restructuring Committee of the Business Law Section of the Law Council of Australia (the **Committee**).

Submission

1. The Committee's responses to the discussion questions contained in the discussion paper are set out in the attached table.

Conclusion and further contact

2. The Committee would be pleased to discuss any aspect of this submission. Please contact the chair of the Committee, Scott Butler, on 07 3231 7722, if you would like to.

Yours faithfully

Greg Rodgers
Chair, Business Law Section

Increasing the Statutory Demand Threshold

No	Question	Response
1	Should the threshold at which a statutory demand can be issued on a company be increased?	<p>The members of the Committee hold a range of views as to whether the threshold should be increased. Some consider that no increase is appropriate, however the large majority believe that an increase is appropriate.</p> <p>In support of not increasing the threshold, a view was expressed that to be solvent a company must be able to pay <u>all</u> its debts as and when they are due and payable and so there is no reason to increase the threshold - if a company is not able to pay a debt of \$2,000 it is not solvent and a company that cannot pay a \$2,000 debt is not going to be able to pay a debt of \$5,000 or \$10,000.</p>
2	If the threshold is increased, to what amount should it be increased and why?	<p>The views of the majority of members of the Committee are fairly evenly split between an increase to \$5,000 or \$10,000.</p> <p>The reasons that members were in favour of \$5,000 included:</p> <ul style="list-style-type: none"> (a) An increase to \$10,000 was too high because it would mean that it prevented a lot of creditors from being able to use statutory demands as a way of recovering their debts. The cost of the alternative methods of seeking to recover a debt of up to \$10,000 (suing in the courts or taking proceedings in certain Tribunals) would generally make recovery uncommercial. Knowing that you could not serve a statutory demand for a small claims type judgment under \$10,000 would likely mean many claimants with small disputed claims would not bother to seek to pursue the claims because even if they obtained a judgment they could not be able to serve a statutory demand to seek to recover it. It would therefore encourage rogue debtors to incur debts from multiple suppliers up to just under the \$10,000 threshold and then potentially avoid payment. Many creditors are small businesses themselves. If a debt of a small business creditor of up to \$10,000 is not paid, that could be very serious for that small business creditor. (b) An increase to \$5,000 acknowledges that the \$2,000 threshold was set many years ago and does need an increase to allow for inflation, but also mitigates against the risks referred to in paragraph (a) above.

		<p>(c) The cost of having a lawyer issue a statutory demand is generally less than \$500. A creditor with a debt of up to \$5000 would be likely to pay that to have a statutory demand issued.</p> <p>(d) Statutory demands and bankruptcy notices are not analogous and the threshold should not be increased to \$10,000 simply because the bankruptcy notice threshold was increased to this level. The bankruptcy of a person was viewed as a more serious eventuality than the winding up of a company and so it was considered a higher bar should be set to bankrupt someone.</p> <p>The reasons that members were in favour of \$10,000 included:</p> <p>(a) A feeling that an increase to \$5,000 was not large enough given the passage of time since the \$2000 threshold was introduced.</p> <p>(b) They favoured having symmetry between the bankruptcy notice and statutory demand threshold.</p> <p>There was some support for any new threshold to be linked to an annual CPI increase. Lastly, there was support also for the threshold being lower for judgment debts as opposed to non-judgment debts. This would assist to avoid the perception that companies can ignore judgment debts if they were below the statutory threshold.</p>
3	If the threshold is increased, when should this change come into effect?	Any increase should occur as at 1 July 2021 or if not then on 1 January 2022. It should be at the start of a calendar or financial year.
4	What will be the impacts of increasing the threshold?	<p>As discussed above, the impacts of increasing the threshold will be:</p> <p>(a) It will reduce the number of creditors who will be able to use a statutory demand to obtain payment of their debts. The higher the threshold, the more creditors will be prevented from using statutory demands from recovering their debts from being able to use statutory demands as a way of recovering their debts.</p> <p>(b) Knowing that you could not serve a statutory demand for a small claims type judgment (if the judgment would be under the increased threshold) would likely mean many claimants with small disputed claims would not bother to seek to pursue small claims in the small claims jurisdiction of the courts or tribunals because even if they obtain a judgment they could not be able to serve a</p>

		<p>statutory demand to seek to recover it and other avenues available to enforce judgments are more expensive.</p> <p>(c) It may encourage rogue debtors to incur debts from multiple suppliers up to just under the increased threshold and then avoid payment. This will be more prevalent the higher the threshold. Many creditors are small businesses themselves. If a debt of a small business creditor of up to \$10,000 is not paid, that could be very serious for that small business creditor.</p>
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