

Submission – Increasing the Statutory Demand Threshold

TO: Manager
Market Conduct Division
The Treasury
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By Email: **MCDInsolvency@Treasury.gov.au**

My name is Stephen Bokos. I am a commercial lawyer and principal of Sterling Walters Lawyers practising in south eastern Melbourne.

My firm acts for a number of clients who supply goods and services in the building industry.

I have a number of current matters that involve the following similar set of facts:

1. Unscrupulous builders or contractors that engage subcontractors to undertake works.
2. Once the works are completed, the builders or contractors refuse to pay, or pay in full, for the goods and services provided by sub-contractors. Some even deny that the subcontractors have supplied goods and services despite there being written evidence of performance by the sub-contractor.
3. The sub-contractors are often sole traders – ie: individual tradesmen who are not being paid.
4. The invoice amounts (debts) are quite often under \$5,000. Whilst these amounts are relatively small, they often represent two or three weeks income for a sole tradesman with the funds used to pay their mortgages and finance their family's budget. When a builder or contractor refuses to pay, even though the sub-contractor has done everything right, it has a significant impact upon these people and their families.
5. In addition to not being paid for their labour and expertise, these smaller operators have often purchased materials in order to do the work. Not only do they not get paid for their labour, but they make a total loss on the materials they have purchased in order to conduct the work.

Why should a company that does not pay its staff, suppliers, subcontractors be supported by making it more difficult for small creditors to force that company to pay them? How does the economy at large benefit from perpetuating such zombie companies? These "businesses/companies" should not be propped up.

Who should bear the burden?

I submit that it should not be the person or business that does the right thing. Why should a director/ shareholder of a debtor company be granted an advantage that makes it more difficult for small creditors to recover amounts owed to them? By increasing the threshold to, say, \$10,000, unscrupulous or failing businesses will be able to make the following judgement call:

1. Any debt under about \$5,000 they can ignore completely as the costs and time needed to engage a lawyer, take a matter to the magistrates' court over the course of 12 months, get a judgement and then possibly have to bring enforcement proceedings as well means that most debtors will not attempt recovery. **This amounts to theft, plain and simple, from the smallest operators in the industry.**
2. Unscrupulous operators will divert what cashflow they do generate to priority suppliers and sub-contractors in order to keep the business running, but they will continue to **steal** from small operators as they can be replaced by new unsuspecting sub-contractors.

What or who would raising the threshold protect?

It does not protect businesses that would otherwise be profitable. It may perpetuate the business for a limited period of time.

Does it protect employment? Perhaps but only for a short period of time. In my experience, there are very few companies that trade insolvently and then trade out of that position.

I submit that the threshold should **not be** increased or only increased marginally.

The current threshold and time frame provides small creditors with a cost effective way to apply significant pressure on debtor companies to pay them for the goods and services that have been provided **and which those debtor companies have in-turn been paid for by their clients.**

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