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## One-size does not fit all when SMEs face insolvency

It is time that there is a move away from the one-size-fits-all approach, when dealing with small to medium enterprises (SMEs) facing insolvency under the *Corporations Act 2001* (Cth) (Corporations Act), according to the Law Council of Australia.

That is why the Law Council, in consultation with its Business Law Section's Insolvency & Restructuring Committee, the Corporations Committee and the SME Business Law Committee, is in broad agreement with Treasury's draft exposure bill, acknowledging that the initiatives provide an alternative regime that allow SMEs to restructure, or transition to liquidation in a more cost-effective way.

In a recent submission to Treasury on the Corporations Amendment (Corporate Insolvency Reforms) Bill 2020 and its explanatory memorandum, Law Council President, Pauline Wright, believes the current economic circumstances facing SMEs, are just cause for these reforms to be fast-tracked.

"The COVID-19 pandemic has made it difficult for some enterprises to remain solvent," Ms Wright said.

"Therefore, timely changes to the Corporations Act will assist businesses that need to either restructure to remain viable or transition to liquidation, in a way that will cause the least financial damage."

"The Law Council is pleased to work with government and believes the independent counsel of expert lawyers in this field will assist Treasury in finalising the detail of the reforms within the very limited timeframe available," Ms Wright said.

Suggested changes to the Bill include, but are not limited to, the criteria for qualifying companies to be laid out in the primary legislation, and clarifying whether a company that fails to have a restructuring plan approved should fast track direct to liquidation or voluntary administration.

"The Law Council believes the current economic circumstances and the likely consequences that will be experienced in the coming year make it imperative that further insolvency reform is needed," Ms Wright said.

"While Treasury is to be commended for tackling the issue of SME insolvencies, with the overall objective of providing greater flexibility, it should not be assumed that the existing forms of external administrations are always suitable for all larger companies.

"There are a number of aspects of the draft amendments which may also have some relevance for larger businesses. Consultation should ensue in respect of broadening the categories of companies that may be better suited to more flexible solutions," Ms Wright said.

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