

7 December 2022

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

via email: corporations.joint@aph.gov.au

ARA SUBMISSION TO PARLIAMENTARY JOINT COMMITTEE INQUIRY INTO CORPORATE INSOLVENCY

The Australian Retailers Association (ARA) welcomes the opportunity to provide comment on the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) inquiry into corporate insolvency.

The ARA is the oldest, largest and most diverse national retail body, representing a \$400 billion sector that employs 1.3 million Australians and is the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

While many small retailers are sole traders or partnerships, some are also corporate entities. The retail sector, particularly small business retail, is facing an increasing risk of insolvency as we approach 2023.

Ongoing recovery following the pandemic and natural disasters has taken its toll on the viability of some small businesses in our sector. These pressures are exacerbated by ongoing labour and skills shortages which can impact trading ability, as well as supply chain disruptions and economic headwinds that are increasing costs and prices.

We also note that our sector is holding much higher inventory levels than before the pandemic, largely in responses to supply chain challenges. This is impacting cashflow and liquidity, leading to higher levels of debt.

We are concerned that businesses that were performing well before the pandemic will become insolvent in the next few years due to these factors – many of which are outside their control.

This submission is informed by consultation with several ARA advisory committees and engagement with Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**).

We note our support for the ASBFEO submission to the Committee and make the following supplementary recommendations to the Committee for consideration.

A PRINCIPLED APPROACH

The ARA suggests the following principles should guide policy and the regulation of insolvency:

- The regulatory framework should support insolvency processes that are timely, affordable and effective.
- The framework needs to meet the needs of small businesses as well as large corporations.
- The obligations and liabilities on companies declaring insolvency should be allocated using fair and transparent priorities so that creditors, owners, investors and employees can rely on the process to optimise their interests in a fair and transparent manner.

ARA RECOMMENDATIONS

- 1. Continue to provide easily accessible advice to small business owners, including advice on how to plan for an efficient, least cost, exit strategy if a business becomes inviable.**

The ARA recognises the invaluable resources that are provided to small retail business owners by the ASBFEO and similar agencies across the country. We recommend that ASBFEO and Small Business Commissioners in each jurisdiction are adequately funded so that they can continue to provide information and advice to retailers and other small businesses about insolvency.

- 2. Consider further improvements to small business restructuring provisions and raise awareness of these provisions.**

The ARA notes that uptake of the recently reformed small business restructuring provisions has been slow to date, with 70 debt restructuring processes reported in 2021-22 and 83 in the September quarter of 2022.¹ This slow uptake could either be due to lack of awareness or because the provisions are perceived as being overly complex or costly. We recommend further improvements to these provisions to reduce complexity or a communications and engagement campaign to build awareness.

- 3. Include national emergency response protocols or plans in any broader reform of the insolvency system so that the nation is prepared for future disruptive events, such as pandemics or the impacts of climate change.**

The COVID-19 pandemic has demonstrated that well run and properly structured businesses can fail due to unforeseeable, external events. We strongly recommend that changing economic and market conditions are considered when reforming insolvency laws so that the regulatory framework and processes are fit-for-purpose and reflective of changing circumstances.

Thank you again for the opportunity to provide a submission to the Committee and our apologies that we have submitted these comments late in the inquiry process.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

Yours sincerely,



Paul Zahra
Chief Executive Officer

¹ ASIC, Insolvency Statistics, Series 1 Companies entering external administration (as at Nov 2022).