

Temporary relief for financially distressed businesses extended

What's the impact on you and your business?

On 7 September 2020, [the government announced its plan](#) to extend its temporary relief for financially distressed businesses and individuals impacted by the COVID-19 crisis.

This means the regulatory relief is **extended until 31 December 2020** in terms of the measures below.

Companies

- Statutory demands against companies: \$20,000 and six months to respond.
- Insolvent trading relief—director's personal liability paused.

Individuals

- Bankruptcy notice against individuals: \$20,000 and six months to respond.
- Moratorium period for a 'declaration of intention' to present a debtor's petition is six months.

The table below summarises the position.

Area	Pre-COVID-19 position	COVID-19 relief measures
Statutory demands against companies:	\$2,000 and 21 days to respond.	\$20,000 and six months to respond.
Insolvent trading	Director personal liability.	Director's personal liability paused.
Bankruptcy notice against individuals	\$5,000 and 21 days to respond.	\$20,000 and six months to respond.
Moratorium period for a 'declaration of intention' to present a debtor's petition is	21 days.	Six months.

This Guide explains the technical operations of these new insolvency rules and gives an overview on how it could impact on your business—from both perspectives: the director's, debtor's, and creditor's. It concludes with our view on the insolvency protection measures and how we can help.

Statutory demand against companies

Issuing a statutory demand is a typical way for a creditor to take action to wind up (liquidate) a company. Once a statutory demand expires, the creditor can commence court proceedings to wind up a company.

Under the temporary measures, the minimum debt to issue a statutory demand increased from \$2,000 to \$20,000 and the company's time to pay or respond increased from 21 days to six months.



Personal liability for insolvent trading paused

Insolvent trading rules are 'paused' to give directors time and space to make business decisions without the pressure of personal liability during this troubled economic time. Directors will be relieved of the personal liability that would be otherwise associated with insolvent trading until 31 December incurred in the ordinary course of the company's business. Egregious cases of dishonesty and fraud is still subject to criminal penalties.

The Australian Taxation Office (ATO) continues to abstain on rigorous debt collection measures including director penalty notices (under the DPN regime) and ATO winding up applications in court.

Bankruptcy notice against individuals

Issuing a bankruptcy notice allows a creditor to take steps to bankrupt an individual. Once a bankruptcy notice expires, the creditor can commence court proceedings to seek a sequestration order to bankrupt an individual.

Under the temporary measures, the minimum debt to issue a bankruptcy notice increased from \$5,000 to \$20,000 and the individual's time to pay or respond increased from 21 days to six months.

Moratorium extension on intending to go bankrupt

Under the *Bankruptcy Act 1966*, individuals can lodge a 'declaration of intention' to present a debtor's petition with the Australian Financial Security Authority (AFSA) to temporarily restrain creditors taking further action. This allows an individual to make arrangements with creditors and if not successful, proceed to declare themselves bankrupt.

The period for this temporary restraint increased from 21 days to six months. Be aware, if those individuals do not make themselves bankrupt at the end of the period, a creditor can use the declaration as a basis to apply to court to make the person bankrupt.

What do the temporary debt recovery relief measures mean for you and your business?

Ultimately, it appears the intention of these changes are to allow businesses the opportunity to take a breather.

For a director (until 31 December 2020) if you have outstanding debts owing to suppliers, the suppliers' scope and powers to quickly move to wind up the company have been greatly reduced.

Firstly, the debt must be above \$20,000 (increased from \$2,000). Secondly, directors have six months instead of 21 days to look at paying the amount under the statutory demand or attempt a settlement with that supplier.

Practically, this means that directors now have greater power to negotiate and potentially defer some existing debt—to be paid over time without the risk of the company being wound up. To avoid the unknown of how your suppliers will react to these changes, it is important to get on the front foot and have an **open** and **transparent** discussion about the difficulties you are facing and communicating your **business plan** over the coming months. This allows suppliers to appreciate your circumstances and gives them confidence that you're proactively dealing with these unprecedented impacts on your business. And give you greater prospects in negotiating better supply terms to your business.

Before speaking to your suppliers, work through a **crisis management framework** ([click here](#)) and specifically identify which supply lines are essential to your business. This clarity will frame what discussions you'll have with each supplier. The suppliers themselves may also be having some difficulty, so assessing if they can deliver and give favourable supply terms that fits within your business plan is critical.

The opportunities to seek new benefits are not limited to suppliers. Give the same considerations to financiers/banks, landlords and statutory bodies (e.g. rates, leases, ATO, payroll tax, etc.) Many **relief packages** are being offered by several of these stakeholders, which can critically advance your cash-flow forecasts.

Remember this chance for some **breathing space** goes both ways and will be equally applicable to customers. Again, assess your customer base and gauge how they are faring during this difficult time. Continuing to maintain relationships with loyal customers during this period is critical (80/20 rule may apply here i.e. 80% of revenue comes from 20% of customers). Once this crisis ends, you can maintain and service your customer base and hopefully pick up revenue as quickly as it may have dropped off.

We hope that businesses consider restructuring, whether formally or informally. This will ensure that businesses can work together and come out the other side of this crisis together as financially healthy as possible.

What do the insolvent trading relief measures mean for you and your business?

The relief being granted allows directors to explore opportunities in terms of dealing with their financially distressed business without being concerned about trading while insolvent. Concerned directors, particularly in a heightened state of stress, could prematurely place a company into voluntary administration or liquidation to protect themselves personally from an insolvent trading claim by a liquidator.

Readers may be aware of the ['safe harbour' provisions](#) introduced in September 2017. For directors to seek this protection, material eligibility criteria must be met. This temporary change means that the government has effectively provided a 'blanket safe harbour protection' for all directors without needing to meet the eligibility criteria. And if a company is wound up in the future, a director will not be personally liable for any debt that is incurred during 24 March – 31 December 2020.

The government's secondary aim here is to stimulate spending and investment. Directors should use this time **wisely**, and **responsibly**. Now is the time for directors to prepare detailed cash-flow forecasts on various 'what-if' scenarios to see how they impact on the business and its long-term viability. These scenarios may include:

- **Restructuring its debts**, which may include refinancing with banks.
- **Exploring new ways to bring in business to adapt to the sudden change**. This crisis not only changes how many businesses operate now, but into the future. Considering how your business can find new opportunities to market and bring in new customers.
- **Reassessing current and exploring new supply chains** to see whether more favourable supply terms could potentially be reached.

Finding the right balance between fundamental and adaptive changes in your business is critical. Making too many hasty and drastic changes can be risky and ultimately lead to the business's demise. Any changes should be carefully considered and leveraging cash-flow forecasts on various 'what-if' scenarios.

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scenarios is ideal in this climate. The key message is that **now** is the time to be playing out and potentially testing these scenarios while the protection is provided.

However, directors must remain vigilant as to how they use these temporary changes. The safe harbour provisions mandate that directors engage an appropriately qualified advisor to facilitate a turnaround of a business—to protect vulnerable directors and underpin the goal of the regime: *“reasonably likely to lead to a better outcome”*. Like safe harbour, we strongly recommend that directors seek advice first before triggering material changes to the business.

Critically, this temporary change does not provide protection to other personal exposures including:

- personal guarantees (some with charging clauses)
- director penalty notices
- director loan accounts
- unreasonable director related transactions.

Just to name a few. Therefore, considering the quantum of future debt incurred must be done so responsibly. With these temporary changes in place, suppliers may be hesitant to extend credit without personal guarantees. And directors must ensure realistic cash-flow forecasts demonstrate that revenue can pay off those debts. Should directors overextend on credit and push boundaries in respect of how debt is incurred, they run the risk of the companies failing in 6-12 months' time.

Big picture summary

These government and legislative measures give people (businesses and individuals alike) time and space to consider their financial positions and the exposure to bad/unmanageable debt.

All parties in business—on both sides of the ledger—must consider their needs to ensure that they get the best protection available to ensure revenue/income flows. The temporary insolvency relief above cannot be viewed in isolation, as insolvency practitioners we understand the implications from a 360-degree perspective. The following approach should be considered as part of a robust crisis management strategy.

Worrells' view on the government's new insolvency rules have created an environment where we can help distil the plethora of information and advice in a framework that breaks the challenge down into three facets:

1. **Relaxed regulation:** Explained throughout this Guide.
2. **Professional advice:** We are qualified, regulated insolvency practitioners with over 47 years' experience helping all types of businesses, in all industries—regardless of size and location.
3. **Proactive communication:** Open and transparent discussions with all stakeholders, externally and internally builds a solid foundation for people to appreciate your circumstances, creates buy-in to being part of the solution, gives them confidence in your approach, and fosters goodwill. It also helps people on an emotional level where they feel a sense of pressure being relieved in being able to be honest about their position. While also getting some respite in knowing that their conduct within their business is not contributing to other people's stress i.e. creating more uncertainty and fear for those connected to your business operating.

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The Worrells' approach combines the three facets of relaxed regulation, professional advice, and proactive communication during this crisis.

It uses the intersections of **support**, **strategy**, and **strength** to create a dynamic for directors and their advisors that works towards **Increased Business Resilience**.

Speak to a restructuring adviser

The current environment can be very daunting and Worrells partners and staff are available to assist business owners that find themselves in a distressed position. We are experts in providing restructuring advice and can provide the guidance that may be needed in these difficult times. Worrells has 27 insolvency experts across Australia ready to assist. Our advice is qualified, regulated and experienced to help all types of businesses, in all industries. If you have a contact within Worrells please call them direct or through your accountant or lawyer.

Worrells has been providing formal and informal insolvency solutions (including voluntary administration, liquidation, and bankruptcy) services for over 47 years. We pride ourselves on approaching sensitive financial challenges through "Plain Talk, Straight Answers, and Fast Results" when people need it the most.

We are available in NSW and the ACT, Vic, South and Western Australia as part of our national network. [Contact us here.](#)

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