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Insolvency must accept overlap of small business, personal finance

BUSINESS

Reform essential in the wake of the current review, says Bruce Billson of ASBFEO.

By Philip King•14 February 2023•5 minute read

Australia needs "to get rid of the fiction" that personal and business finances can be segregated says Australian Small Business and Family Enterprise Ombudsman Bruce Billson, as a crucial reform following the current insolvency review.

"We've argued for a number of things," Mr Billson said, speaking on the latest Accountants Daily podcast. "Clearly one of them is get rid of this fiction."

"The law sees a business and a person as separate things – the business is oil, the person is water. Well, I'm sorry in the world we work in everything is salad dressing, it's a blend of both.

"You see this by personal assets being used to secure finance, the way in which even directors liabilities have played out. If you don't meet some of your tax obligations as a business, there's scope to get a director penalty notice that spikes the individual.

"This convenient legal distinction doesn't work in the small and family business community where personal interest and assets are interwoven with that of the business. We need an insolvency mechanism that can support that."

Mr Billson said the review – the first one of substance in nearly 30 years – should also examine better methods for restructuring distressed small businesses with the potential to survive.

"We've got to get past this culture that if a business gets a sniffle – might even be hayfever – people go and harvest the organs," he said.

"Now I'm not that bold to say insolvency practitioners are a bit like if all I've got is a hammer, every problem looks like a nail.

"But the business acumen that is about growing a business, about navigating a positive path out for growth and success, may well have skills beyond that of the legal attention that needs to be given appropriately by an insolvency practitioner.

“I see some firms bring both of those skills together and they're the ones that are making that work.”

The conversation and culture around businesses in trouble also needed to change, he said.

“In Australia if you become bankrupt or an insolvent business, that's a bit of a stain on you. In the United States if you've not been insolvent, you haven't been trying hard enough.

“So there's a whole cultural piece there, which I think is why so many businesses leave it very late in the piece to have the conversations … What is it we can do to steer away to make sure we don't run into a catastrophic event in the business and it's gone?

“Those conversations need to be had earlier.”

He said insolvency practitioners did a lot of unpaid work and that had negative impacts on the whole sector, pushing up prices and submerging many of the problems.

“So when they get to a business that's still got cash and assets in it, it's amazing how the fees are quite steep because they're actually cross-subsidising the work that they're required to do under law that no one pays them for. So there's even an argument of a public trustee equivalent for small businesses.

“There's about 80,000-odd businesses that don't continue each year. I use the words ‘don't continue’, because we don't know exactly what happens to them – they might be deregistered, they might lose their ABN.

“There's only about 7,000 that are formally wound up. So what happens with the others? Are there dangling liabilities? Do people as private citizens carry around the concern that someone might come after them about something that was business related? We don't know.”