

update

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Friday Facts: Proposed changes to bankruptcy laws announced by Federal Government

The Attorney-General's department has announced proposed changes to the Bankruptcy Act which will give greater protection to debtors including more time to negotiate their debts.

The proposed changes arise from the Government's concern over the growing number of consumers who are turning to bankruptcy and unable to pay their debts as and when they fall due.

The Attorney-General's department has released an exposure draft of the Bankruptcy Legislation Amendment Bill 2009. The stated objectives of the proposed Bill are:

- to increase the minimum debt for a petitioning creditor to reflect changes in the economic environment
- to increase the "stay" period that follows a declaration of intent to file a debtor's petition to allow debtors to better assess their options
- to increase the debt, income and asset test thresholds for debt agreements to ensure the thresholds keep pace with the increasing wages and increasing availability of credit
- to provide a more streamlined process for fixing trustee remuneration and a more transparent process for reviewing this remuneration
- to strengthen the penalties for some offences and ensure they are in line with the penalties for similar offences
- to remove the outdated concept of "Bankruptcy Districts" in order to provide more flexibility in personal insolvency administration

The Government proposes to achieve these objectives by implementing the following measures:

- Increasing the minimum debt that creditors can petition for forced bankruptcy from

\$2,000 to \$10,000. The Government hopes that raising the petitioning creditor's debt threshold will reduce the likelihood of a bankruptcy notice being used as a debt collection alternative. It is also argued that the threshold is in line with the availability of credit and the level of debt owed by the typical bankrupt. An argument against raising the threshold is that inability to pay a debt of \$2,000 may be as much or more an indicator of insolvency as not being able to pay a debt of \$10,000. There has been feedback that often the amount of the petitioner's debt is not indicative of the amount of debts in the estate generally. It has also been said that people should not be unfairly protected from compulsory bankruptcy which may be a consequence of increasing the debt threshold. The equivalent amount in corporate insolvency remains at \$2,000.

- Extending the stay period before creditors may move on assets from 7 days to 28 days. It is argued that a longer stay period will increase the likelihood of the debtor obtaining proper information and advice about all options available. The Official Receiver would notify the creditors of the declaration which would allow them to be proactive in contacting the debtor to negotiate alternate arrangements. The debtor would be required to file a statement of affairs with a declaration which would mitigate the risk of the debtor dissipating assets during the period and provide an opportunity to explain to the debtor the seriousness of the action being taken.
- A maximum bankruptcy period of 12 months, as opposed to the current 3 years, for first time bankrupts with the

possibility of earlier discharge. It is argued that a 3 year bankruptcy period serves little purpose given the vast majority of bankrupt estates have few assets and provide no return to creditors. Where the trustee's investigations into the bankrupt estate could be concluded sooner than 12 months, the argument is that the bankrupt should be entitled to be discharged.

- Bankrupts with income would be required to make contributions beyond discharge. Currently, a bankrupt whose income exceeds the statutory threshold is required to make contributions from the excess during the period of bankruptcy. It is argued that this should be retained but would not be related to the period of bankruptcy solely. A bankrupt would be required to make contributions for a period of three years.
- A 20% increase in the debt, income and asset threshold for eligibility for debt agreements. A debt agreement is a voluntary agreement between a debtor and a creditor proposed by the debtor. It is principally aimed at consumer debtors with lower levels of income, assets and debts. As such, there are statutory thresholds which determine eligibility. These were last amended in 2002 to encourage more people to consider a debt agreement as a viable alternative to bankruptcy. It is the view of the Government that with the increase in wages and the availability of credit in recent years as well as taking into account the current financial downturn, it is appropriate to consider a modest increase to the thresholds to make debt agreements more widely available.

The Insolvency and Trustee Services Australia figures demonstrate that there were 7164 administrations under bankruptcy laws in the 2009 March quarter, of which 6340 were non business and only 824 were business related. In Victoria, there were seven times as many non business bankruptcies for the quarter than business related bankruptcies.

Figures also show that the average return to creditors under negotiated agreements was 72 cents in the dollar as compared to only 1.6 cents for finalised bankruptcies.

The Attorney-General's office has requested written submission on the proposed legislation to be received by 14 September 2009, after which time it will present the bill to parliament for its consideration.

If you would like any further information or have any questions about how the proposed reforms may affect you or your business please contact us.

For more information

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