

Reducing the default bankruptcy period – Alexander David Clark, Registered Trustee, Aravanis Insolvency

Entrepreneurial endeavour

Initially, I would like to highlight the inconsistency between the apparent objectives of the proposed reforms and the realities of the today's personal insolvency environment.

The Reform Paper identifies that the reforms "will encourage entrepreneurial endeavour and reduce associated stigma" in relation to bankruptcy. Despite this, during the March quarter 2016, only 16.1% of personal insolvencies were identified as being "business related personal insolvencies".

In my experience, the other "non-business related insolvencies" are, by and large, individuals who have experienced unemployment and/or a loss of income or obtained an excessive amount of consumer credit. In many cases, the two causes go hand in hand.

My concern is that in partially rescinding the "focus of penalising debtors", whilst there may be an increased incentive for entrepreneurial debtors to be innovative and (in failure) obtain a "fresh start", it's likely that the more noticeable impact would be an increase in the number of debtors with excessive consumer debt taking the opportunity to "walk away from their debts".

This effect may be even more noticeable if credit reports were to retain personal insolvency information for only one year.

I will also point out that whilst the asset vesting provisions of the Bankruptcy Act remain unchanged, the proposed reforms are more likely only to encourage individuals with no assets to start businesses. I fail to see how the proposed amendments would entice an "asset-rich" individual to form a business any more than the current legislation.

Notwithstanding the above, I believe that a reduction of the restriction periods would have the effect of encouraging Trustees to finalise their investigations within a year of receiving the bankrupt's Statement of Affairs. This would likely have flow-on effect of encouraging efficiency of the Trustee's functions and increasing creditor returns in kind.

Stigma

My experience tells me that the "stigma" of bankruptcy and common reluctance for debtors to seek out their "personal insolvency options" is closely associated to the following:

- the word "bankruptcy";
- reluctance to admit failure;
- experiencing the perceived shame and anguish of "speaking with strangers about my failures";
- fear of "losing my assets".

In my view, the proposed reforms are unlikely to have any material impact on these factors and therefore the "stigma" would likely remain unchanged.

Query 1.1

The Government seeks views from the public on whether the criteria for lodging an objection and the standard of evidence to support an objection should be changed to facilitate a trustee's ability to object to discharge.

- I am generally satisfied with the current criteria and standard of evidence required by the Official Receiver when filing an objection to a bankrupt's discharge;
- The proposed amendments include a misalignment of the discharge/travel/credit periods (one year) and the term during which a bankrupt may be assessed for compulsory income contributions (three years). I foresee an increased incentive for the Trustee to object to a bankrupt's discharge and therefore keeping the bankrupt in Australia, not starting businesses and not incurring credit whilst the three years of contribution payments are collected.

Query 1.2.1a

The Government seeks views from the public on which particular obligations on a bankrupt should continue even after a bankrupt is discharged.

- Discharged bankrupt requires permission to leave Australia, until the following:
 - Trustee's investigations are finalised to the extent that the bankrupt's assistance is required; and
 - Having regard to the bankrupt's compulsory income contribution assessment(s), the Trustee is satisfied the bankrupt does not present a flight risk.

Not aligning the "travel restriction period" with the "income assessment period" exposes the system to discharged bankrupts absconding. Increases in multinational organisations operating in Australia and general employment mobility increases this threat.

- Notwithstanding the above, it must be acknowledged that most bankrupt are not flight risks.

Query 1.2.1b

The Government seeks views from the public on what incentives and mechanisms should be in place to ensure compliance with obligations after discharge.

- Improvements to enforcement of offence provisions, specifically for failure to comply with provisions requiring a discharged bankrupt to assist with the Trustee's functions.
- Take the example where a compliant bankrupt is discharged after a year and immediately relocates permanently leaves Australia for employment reasons. The bankrupt subsequently fails to respond to the Trustee's requests for income documentation. The bankrupt will not have breached any travel restrictions or conditions and will be outside of the Act's jurisdiction.

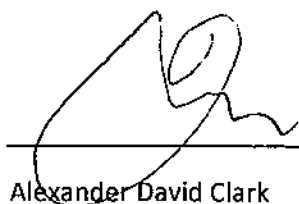
Query 1.3.1

The Government seeks views from the public on whether it is appropriate to reduce the retention period for personal insolvency information in credit reports.

- This query is unclear, as it refers to credit reports such as those managed by Veda Advantage whereas Proposals 1.3.1a and 1.3.1b refer to Bankruptcy Act / NPII changes. I understand that the periods credit reporting agencies maintain bankruptcy information for are outlined in the Privacy Act.
- If credit reports were to report bankruptcy for only one year, I believe this would result in credit providers making further enquiries than they may do currently in relation to all credit applicants' credit history - hence adding to administrative costs for credit providers. Ultimately, reducing the extent of information held on one's credit report and increasing costs of assessing credit applications would make the consumer credit system less efficient.
- Also, if Bankruptcy Act information remains on credit files for only one year, this would presumably require that the period for a standard "credit default" would need to be reduced to less than one year.
- Additionally, more consideration would be required in respect of the Act's credit restrictions for Part IX Debt Agreement debtors. Would the disclosure requirements also be reduced to one year or would they be applied, as they are today, throughout for the term of the Debt Agreement?
- In regard to the appropriate periods for credit file reporting, I believe that the major credit providers of Australia would be able to give the most constructive feedback on the proposed changes.

To summarise,

- I am confident that the proposed amendments generally encourage improvements to the efficiency of the personal insolvency system in Australia by ensuring that a Trustee's investigations are finalised before the default one year discharge occurs.
- However, I am not convinced that the stigma of bankruptcy would be changed at all by the proposed amendments. If anything, the misaligned restriction/assessment periods provided for under the amendments may act to further confuse debtors about the "real impacts of becoming bankrupt".



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