

Improving Bankruptcy and Insolvency Laws – Proposals Paper April 2016

Submission by Credit Corp Group Limited (Credit Corp)

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Executive Summary

Credit Corp does not support a reduction in the default bankruptcy period from three years to one year.

The proposal fails to take account of the substantial re-balancing of legal rights between debtors and creditors over the past two decades in Australia. In the context of these changes it is incongruous that debtors should have the ability to ignore mandated offers of forbearance and flexibility in favour of completely extinguishing all debts after a brief period of bankruptcy.

Credit Corp proposes that no individual should be able to voluntarily enter bankruptcy until all efforts to agree a forbearance plan, including escalation to the relevant External Dispute Resolution (EDR) body, have been exhausted. Personal solvency should only be assessed after taking into account the most recent forbearance plan either offered by a creditor or agreed as reasonable by an EDR body.

Company Profile

Credit Corp is Australia's largest provider of sustainable financial services to the credit impaired consumer segment. The company has been listed on the Australian Securities Exchange since 2000 and forms part of the S&P ASX 200. Credit Corp employs 1,000 Australians and the face value of its total receivables is \$5.5 billion across 800,000 consumers.

Credit Corp has a proven track record of promoting financial inclusion.

In our core business of debt purchasing we work with consumers who have, for various reasons, found themselves in default of their credit obligations. We agree affordable repayment plans with our customers and improve their credit standing over several years as a pathway to financial inclusion. We maintain the most successful hardship program in the industry with a current portfolio of \$1.1 billion of defaulted consumer credit obligations, restructured into sustainable repayment arrangements across 140,000 individual customer accounts.

In our consumer lending business we provide the cheapest and most sustainable loan products to consumers with limited borrowing alternatives. All of Credit Corp's products feature interest and fee rates well below applicable caps and affordable repayments. To date, Credit Corp has helped 100,000 Australians avoid higher cost and unsustainable 'payday loans' through its market leading alternatives.

Credit Corp has an impeccable compliance record. Despite being the largest and longest-established debt purchaser in Australia, we have never been the subject of a regulatory order or undertaking. We have one of the lowest rates of EDR complaints in the industry and have never incurred a

reportable systemic issue. We work cooperatively with consumer advocacy groups on matters of industry concern and have a long term partnership with Kildonan Uniting Care.

Overall Position

Credit Corp does not support a reduction in the default bankruptcy period from three years to one year.

The ability to enforce contracts is a critical element of the infrastructure which supports the market economy and entrepreneurship. The certainty of contract facilitates the investment of capital, labour and other inputs into an enterprise. The ability to discharge debts after a limited period of bankruptcy is a compromise designed to maintain sufficient contractual certainty, while recognising the economic and social importance of providing individuals with a pathway to redeem themselves.

The existing three year default bankruptcy period strikes an appropriate balance by motivating individuals to take every reasonable step to minimise the prospect of bankruptcy. The proposed reduction in the default bankruptcy period undermines this motivation and, therefore, reduces the certainty of contract. The proposal will limit the ability of entrepreneurs to obtain capital, labour and other inputs and has every chance of inhibiting the very entrepreneurship it seeks to encourage.

The proposal fails to take account of the substantial re-balancing of legal rights between debtors and creditors over the past two decades in Australia. Various enhancements to laws relating to the provision of utilities, telecommunication services and financial services, together with enhancements in areas including unfair contracts and unconscionable conduct, have substantially shifted the responsibility for individual financial difficulty to creditors. In these circumstances it is incongruous that debtors should have the ability to ignore mandated offers of forbearance and flexibility in favour of completely extinguishing all debts after a brief period of bankruptcy.

By way of example utility, telecommunication and financial services providers are obliged to assess financial hardship and agree to any reasonable forbearance plan. If an individual is unable to reach agreement with a provider the matter can be escalated to a free EDR scheme, which will independently assess the financial situation of the individual and impose a legally binding forbearance plan on the provider. The costs of EDR are entirely met by the provider and the provider will be precluded from taking any legal action, including bankruptcy enforcement proceedings, while the individual adheres to the forbearance plan. The existence of these sorts of alternatives should obviate any justification for reducing the bankruptcy period.

Other international jurisdictions with default bankruptcy periods of less than three years can be distinguished from Australia by the absence of laws such as those described above. For example, in the United States of America there are no laws which mandate forbearance by providers and there is no equivalent system of EDR for such matters.

Credit Corp proposes that no individual should be able to voluntarily enter bankruptcy until all efforts to agree a forbearance plan, including escalation to the relevant External Dispute Resolution (EDR) body, have been exhausted. Personal solvency should only be assessed after taking into account the most recent forbearance plan either offered by a creditor or agreed as reasonable by an EDR body.

Response to Specific Matters

Proposal 1.2.2

This proposal should allow for the extension of income contributions beyond three years for that component of the contributions relating to debts which were subject to forbearance plans agreed as reasonable by an EDR body.

Proposal 1.3.1b

It is critical that the permanent record of bankruptcy in the National Personal Insolvency record is retained.

Query 1.3.1

The retention period for personal insolvency information in credit reports should not be reduced. All ordinary credit default information is retained for five years. A reduction in the retention period for bankruptcy information would create the perverse situation where a more serious default (bankruptcy) was retained for a shorter period than a less serious default.

Proposal 1.3.3

Licensing restrictions should not be aligned to any reduced period of bankruptcy. Licensing restrictions arise from the requirement for setting high standards for individuals in special positions of trust. Relaxing licensing restrictions will not stimulate entrepreneurship and may undermine confidence in these important offices to the detriment of commerce generally.