

Australian Credit Forum

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Please address all correspondence
to:

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Mr Terry Gallagher
Inspector General in Bankruptcy
Insolvency and Trustee Service
GPO Box 821
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Dear Sir

The Australian Credit Forum is an organization which is constituted by a number of leading credit professionals within the industry. The organization meets on a regular basis and makes submissions regarding legislation and practice in the area of Credit Management. It is in this regard that the Forum writes to you.

It is known that there are plans to reform the Bankruptcy Act. It is noted from the Internet Site of ITSA that there were seven proposed changes to the legislation. It is understood that draft legislation may have been released recently however the response of the Forum is addressed to the proposed changes set out in the four page correspondence previously displayed on the Website. Each proposal will be addressed.

1) New Power to Reject Debtor's Petition

The Forum agrees that the Official Receiver should have the right to reject a debtor's petition if the Statement of Affairs is not adequate. However, the Forum suggests that if the Official Receiver rejects a petition he must explain the reasons for that rejection, inform the debtor and identify the person making that decision. It is a thought that this requirement would eliminate the possibility of staff at the Official Receiver's office rejecting a Statement of Affairs for petty reasons. It also imposes a discipline upon a body which would, under the proposed legislation have the authority to make important decisions. It also provides feedback to the errant debtor so that the documentation can be quickly corrected.

The Forum agrees that the Official Receiver should also be entitled to reject a petition if it represents an abuse or misuse of the Bankruptcy system.

The Forum also suggests that the Official Receiver be entitled to reject a debtor's petition if the total amount of liabilities is of such a small amount that the debtor should be forced to meet his or her commitments. It is suggested that the amount be linked to that amount which a creditor must be owed before the creditor is entitled to issue a Bankruptcy Notice (amount of \$2,000 as set under Section 41(1)(b) of the Bankruptcy Act).

The Forum is concerned that there is a cost to the community in the Official Receiver's office dealing with extremely small Bankrupt Estates and at the same time there is some obligation on the debtor to repay their debts. It is suggested that this small threshold set above will set a meaningful limit for debtors to consider.

The Forum also considers that the Official Receiver should reject a debtor's petition if the debtor has already been bankrupt twice beforehand. Under the Corporations Law, if a Director has been involved with two corporate failures then he or she may suffer adverse consequences at the application of the ASIC (see Section 600 of the Corporations Law).

The members of the Forum feel that persons who repeatedly go bankrupt should be forced to deal with their financial difficulties in some other way.

It is suggested that the cooling off period be utilized so that a creditors meeting may be convened. The creditors would therefore be entitled to provide any additional information to the Trustee which would not necessarily be available and then be given the power at that meeting to reject the debtor's petition. If the debtor's petition is rejected, then the debtor may be subjected to on-going actions by creditors e.g. garnishee of wages or action by a particular creditor under a creditor's petition.

In short, the members of the Forum are fed up with repeat Bankrupts and see that the presentation of a debtor's petition is an easy way for a person to avoid further liabilities and obligations. The members of the Forum want to see that creditors are involved before a person is entitled to utilize the voluntary provision of the Bankruptcy Act. Further, that the creditors be allowed to reject the debtor's right to use such provisions. It may be necessary for the debtor to provide funds to a Trustee to enable a meeting of creditors to be convened and if that is the case then that is the price the debtor must bear in deciding to voluntarily present a debtor's petition.

2) A Mandatory Thirty Day Cooling Off Period

The Forum agrees with this proposal and supports a law which encourages a debtor to communicate with his or her creditors and consider alternatives to Bankruptcy.

3) Remove Early Discharge

The Forum supports this proposal and agrees that the criteria is arbitrary and potential discriminatory.

4) Objections To Discharge Easier to Uphold

The Forum supports any changes to the law which makes it easier for a Trustee to object to a Bankrupt's discharge. It is felt that such changes will assist a Trustee in obtaining the co-operation of Bankrupts.

5) Increase the Income Cut-Off For Part IX Debt Agreements

The Forum is of the opinion that the income threshold for debtor agreements is arbitrarily low. In raising the income threshold set in Section 185C(4)(d) of about \$27,000 (half the threshold amount set in section 185C) of the Bankruptcy Act and the liability threshold set in Section 185C(4)(b) of about \$54,000 (the threshold amount set in section 185C) of the Bankruptcy Act the ability of debtors to propose an agreement is enhanced. Whether or not the agreement is accepted again becomes a matter for creditors.

It is the opinion of the Forum that arrangements under Part X of the Bankruptcy Act are too costly to implement compared to the quantum of debts unless the liabilities exceed \$100,000. The cheaper and more efficient alternative is an arrangement under Part IX of the Act which should be available to more people.

6) Reduce the Automatic Duration of Bankruptcy from Three to Two Years

The Forum rejects this proposal and encourages the Government to increase the three year period of Bankruptcy back up to the old five year period. The Bankrupts should be encouraged to use other options under the legislation such as Part IX Arrangements, Part X Arrangements and Section 73 Compositions. Furthermore, in reducing the period of Bankruptcy creditors will be denied one third of the income contributions payable by the Bankrupt.

It is understood that the idea of removing the early discharged is directly linked to the reduction in the period of Bankruptcy. If the Forum was forced to choose it would prefer the abolition of the six month Bankruptcy even if the price to pay is a two year Bankruptcy for all parties rather than maintaining the present system.

7) Streamlining

The details provided in the relevant correspondence are only general and therefore it is difficult to comment on the recommendations. It is the opinion of the members of the Forum that the current proxy form does enable creditors to attend the meeting by post. It is the experience of the members of the Forum that if a creditor wishes to "have their say" then they must attend the meeting.

There is no other way of properly expressing one's opinion. The Forum vigorously opposes any change to the voting system which enabled a resolution to be passed on the number of creditors rather than the value of creditors. The Forum strongly suggests that the voting system under the Bankruptcy Legislation be changed to match the voting system contained within the Corporations Law and Corporation Regulations. This system is understood by the Credit Management profession and has a degree of fairness to it, compared to the current Bankruptcy Rules which give significant weight to the dollar value of creditors.

The Forum continues to be concerned about the ability of related parties to vote in respect of Bankruptcy matters. It is suggested that the legislation contains a requirement for the debtor or bankrupt to disclose any related party debt and for their proof of debt to require special evidence including written documentation of the transaction created at or about the time of the transaction. The Forum accepts that there may be a debt due between relatives, however for voting purposes only it is suggested that there be some special requirements in respect of proving those debts.

These comments have been formulated by our committee appointed on behalf of the Forum. As stated above it is understood that the draft legislation may have recently been introduced may not contain the same provisions which were proposed in the information previously posted to the Website. To the extent that the proposed legislation covers the point noted above then it would be appreciated if you could take the above comment into account.

Yours faithfully

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