

## One Year Bankruptcy - One Step Closer

### Introduction

The Bankruptcy Amendment (Enterprise Incentives) Bill 2017 (“the Bill”) which proposes to amend the provisions of the Bankruptcy Act 1966 (“the Act”) was referred to the Senate Legal and Constitutional Affairs Legislation Committee (“the Committee”) on 30 November 2017 for inquiry.

### Proposed changes

The Bill proposes that the minimum term of bankruptcy be reduced from three years to one year from the date on which an individual who is declared bankrupt lodges their Statement of Affairs.

The primary reason for the proposed reduction in term is to:

*“foster entrepreneurial behaviour and reduce the stigma associated with bankruptcy while maintaining the integrity of the regulatory and enforcement frameworks for the personal insolvency regime.”*

The Bill follows a report by the Productivity Commission issued in September 2015 (Business Set-up, Transfer and Closure) which recommended the reduction in term to reduce penalties imposed on individuals who are declared bankrupt, including restrictions on overseas travel, loss of professional licenses and having to disclose that they are bankrupt.

### Submissions to the inquiry

The Committee received a number of submissions from interested parties, including registered trustees, CPA Australia, the Australian Restructuring Insolvency & Turnaround Association, Government Bodies (including the Attorney-Generals Department

and the Australian Securities and Investments Commission).

The submissions expressed concern about the Bill and in particular whether the Bill:

- ▲ would achieve its intended purposes of “Fostering Entrepreneurship” and “Reducing Stigma”; and
- ▲ had unintended consequences which may result in the abuse of the bankruptcy regime by individuals, resulting in monies not being recovered for creditors.

### Committee’s views

After considering all submissions, the Committee has recommended that:

1. the Government considering amending the provisions of the Corporations Act 2001 to permit ASIC to issue a notice pursuant to Section 206F of the Corporations Act 2001 to an individual that is discharged from bankruptcy after one year in circumstances where ASIC consider that it is not desirable for the individual to be a director of a company; and
2. that the Senate pass the Bill.

### What does this mean for your client?

#### Clients already bankrupt:

##### ▲ Income Assessments

The provisions of the Act presently require a bankrupt individual to pay to their trustee 50% of their after-tax income above a certain threshold. The minimum threshold is currently \$56,674.80 and increases if the individual has any dependents.

In the event that an individual is discharged from bankruptcy after one year, the proposed changes to the Act require the individual to continue to pay their trustee for the next 2-year period.

The Bill does not provide any additional powers than those already contained in the Act, which would enable a trustee to enforce an individual discharged from bankruptcy after one year to comply with their obligations. Any monies owing by the individual for the 2 years after their discharge may result in the trustee applying for the individual to be declared bankrupt once again, thus defeating the purpose of the Bill.

#### ▲ **Transitional Provisions**

The changes to the Bankruptcy Act 1966 apply not only to those individuals declared bankrupt after the passing of the Bill, but also to existing bankrupts who have not yet been discharged from bankruptcy.

Accordingly, the date of the commencement would be delayed by 6 months after the Bill receives Royal Assent to allow trustees to review existing matters and, if necessary, lodge an Objection to Discharge. An Objection may be lodged for a number of reasons and is designed as a means of inducing the bankrupt to cooperate with the bankruptcy trustee in the administration of their estate.

#### **Clients considering bankruptcy**

If your client is considering bankruptcy, there may be cause for them to be less concerned about the impact of bankruptcy on their ability to move on from the circumstances giving rise to their financial difficulty.

BRI Ferrier specialises in personal and corporate insolvency. We encourage you or your clients to contact us to discuss the particular circumstances and determine the most appropriate solution for your client.

#### **Author**

[Stuart Otway](#)

Principal  
BRI Ferrier, Adelaide

**T** +61 8 8233 9900

**E** [sotway@brifsa.com.au](mailto:sotway@brifsa.com.au)

#### **Need advice?**

Our broad experience and industry resources equips us to assist in the most complex situations. [Contact us](#) to find out how we can support you.

BRI Ferrier is a unique affiliation of expert business recovery and turnaround, insolvency, forensic accounting and advisory firms. For more information about our firm, please visit our website at [www.briferrier.com.au](http://www.briferrier.com.au).

This information provides a summary of the subject matter only. It should not be acted on without first seeking professional advice.

Copyright © BRI Ferrier Pty Ltd 2018