



**By Email: david.bergman@ag.gov.au**

Mr David Bergman  
Assistant Secretary  
Bankruptcy Policy Branch  
Attorney Generals Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Dear Mr Bergman,

***Bankruptcy Legislation Amendment Bill 2009***

I refer to the Exposure Draft of the *Bankruptcy Legislation Amendment Bill 2009* ('the **Bill**') which has been released for comment.

Subject to the particular qualifications referred to herein the Insolvency and Reconstruction Law Committee of the Business Law Section of the Law Council of Australia ('the Committee') endorses the proposed amendments to the *Bankruptcy Act 1966 (Act)* as contained in the Bill.

Please note that this submission has been endorsed by the Business Law Section of the Law Council of Australia. Owing to time constraints, it has not been considered by the Directors of the Law Council of Australia Limited.

Reform of the trustee remuneration procedures is long overdue and is welcomed by the Committee. However the Committee notes that much of the mechanics of the amendments will be contained within regulations which are yet to be made available for comment. In the circumstances, while the Committee supports a wide ranging review of the mechanisms for the fixing and reviewing of trustee remuneration it is difficult to comment with respect to the substantive detail as it is not yet available.

With respect to the proposed amendments to the offence provisions the Committee has long advocated the reform of this part of the Act. While it is acknowledged that the offence provisions are long overdue for review and revision of the penalties attached thereto there does not appear to be any basis to create specific strict liability offences in relation to a series of what are largely administrative functions of trustees. Where such matters go to fundamental issues of the administration of bankruptcy law then the creation of strict liability offences may well be warranted. However for what are largely procedural matters there does not appear to have been a case made out in many instances for the creation of such offences.

The Committee does not take issue with the administrative reform of the Insolvency Trustee Service Australia and in this regard makes no comment in relation to the elimination of bankruptcy districts.

In relation to the introduction of a 28 day moratorium prior to bankruptcy, as previously noted in the Committee's submission in response to the discussion paper released by the Attorney General this proposal is supported. However it remains the position of the Committee that there is no case that has been made out to support the increase of the minimum debt upon which a petition for bankruptcy can be made from \$2,000 to \$10,000. The Committee does not support this amendment.

The Committee welcomes the opportunity to provide this feedback in relation to the Exposure Draft to the Bill. Should you have any queries in relation to this submission, please contact either the Committee Chair, Philip Crutchfield, on [03] 9225 7242 or Michael Lhuede on [03] 8665 5506.

Yours sincerely,



Rosemary Budavari  
**Co-Director, Human Rights and Criminal Law**

30 September 2009