

**LISMORE & DISTRICT
FINANCIAL COUNSELLING SERVICE Inc.**

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Attorney-General, The Hon Robert McClelland MP

Bankruptcy Policy Branch

Civil Law Division

Attorney-General's Department

Central Office

3-5 National Circuit

BARTON ACT 2600

Email: bankruptcy@ag.gov.au

Dear Attorney -General

I am writing in response to the proposed amendments to the Bankruptcy Act with regard to the following amendments

Increasing the minimum debt for a creditor's petition to \$10,000

It is unclear from the intended amendment whether this refers to individual debts or to aggregated debts. I believe that it would best serve the intentions of this amendment that the amount be per debt to eliminate the potential for a number of smaller creditors choosing to combine to lodge a creditors petition therefore undermining the intention of this amendment to prevent people being bankrupted for smaller debts.

Where a debt has been acquired by assignment the value of the debt for Bankruptcy should be the purchase price not the face value. This would ensure that the intent of the amendment was not bypassed in the context of debt purchase by collection agencies.

Increasing the stay period that follows the declaration of intent to file a debtor's petition

I applaud the idea of increasing the stay period because as you said "the Government is committed to ensuring our bankruptcy laws are able to deal with personal insolvency issues quickly and efficiently so that people can get back on their feet as soon as possible." However I have a number of concerns and comments as to the intended amendment.

One of my concerns has long been that the Declaration of Intent is also an Act of Bankruptcy which can have consequences later on if the debtor has to go Bankrupt at a later date after the collapse of an alternative payment arrangement. This then has implications for the relation back that may be utilised by the trustee.

You said "increasingly, bankruptcies tend to involve people who have simply fallen on hard times rather than unscrupulous debtors trying to avoid paying their debts." Given this view I am also concerned at the need to lodge a statement of affairs as part of the Declaration of Intent.

In my experience as a financial counsellor practising in NSW for 19 years the advantage of the Declaration of Intent is that it is a quick and simple way to give a debtor a chance to stay enforcement and to consider other options. The need to fill in a Statement of Affairs at this time will be onerous and in our experience with debtors in stress this extra activity may act to prevent them taking advantage of the amendment. It may in fact decrease the likelihood of battlers seeking this option. This is the completely opposite to the intention of this amendment. The client may need advice and assistance to complete the additional paperwork and this will put added pressure on already stretched community based financial counselling services.

I am also concerned that in the rush to secure the stay that debtors may not understand, have access to timely advice or be able to accurately complete the Statement of Affairs and this may have consequences for them should they subsequently lodge a Debtors Petition with a Statement of Affairs which is at variance with that submitted when seeking a stay.

This is a concern that is amplified by the proposed amendment as to Presentation of false section 54A declaration to be an offence. The need to explain to a trustee why there are differences will be for many of our clients both stressful and difficult and will increase the workload of community based legal and financial counselling services who will have to intercede on behalf of clients who are unable to advocate for themselves.

For many of our clients the decision to go Bankrupt is a heartfelt decision driven by the need to protect basic household items, cars or wages from the NSW civil debt recovery process. The Declaration of Intent is often the only option to protect at very short notice vital assets, cars or wages. The need to complete a Statement of Affairs in the circumstances may well result in severe outcomes for the debtor and his/her family if they cannot be completed in time to prevent the garnishee of wages or the seizure of household goods and vehicles.

The intention is to give stressed battlers a chance to seek alternatives to Bankruptcy yet the additional paperwork will mean that many will chose not utilise this amendment due to their mental state or fear of paperwork.

I propose that the debtor can seek a 2 week stay by lodging a Declaration of Interest in Bankruptcy which would be similar to the existing Declaration of Intent but without the lodgement being regarded as an Act of Bankruptcy.

After this the debtor can still lodge a Declaration Of Intent for a 4 week stay but without the need to lodge a Statement of Affairs.

I also propose that the Declaration of Interest only be open to debtors once every 3 years and the Declaration of Intent only once every 12 months.

Increasing the debt income and assets thresholds for eligibility for debt agreements

As a financial counsellor I am concerned at the decision to increase the debt income and assets threshold for debt agreements. In my work practice I continue to encounter clients who have entered into Part IX arrangements, which they do not understand and which they cannot afford.

The level and standard of explanation given to these clients is such that they do not always realise that a debt agreement is a part of the Bankruptcy Act, that it is entered on the NPII, constitutes an Act of Bankruptcy and is not a consolidation. They have not prepared a realistic budget, which allows them enough to meet actual living costs. These clients have been disadvantaged by Part IXs and the only real beneficiaries are the debt administrators. These

clients also have no understanding of what happens if a Part IX falls over and how to terminate the debt agreement.

Clients have told us that the whole thing has been arranged over the phone or by email etc. In our experience dealing with Bankruptcy a face to face interview is essential to establish whether our clients understand the gravity and consequences of their decisions.

To increase this option to people with theoretically higher incomes and higher asset levels seems to be a recipe to exacerbate the existing issues with Part IXs.

Early Discharge

It is of great disappointment that these amendments have made no comment on early discharge provisions for low income, low debt clients without divisible assets and I urge that this be considered and addressed in the amendments proposed.

Yours Sincerely

Steve Snelgrove
Manager
Lismore and District Financial Counselling Service Inc.

