

25 November 2009

Ref: SDP:SDP:DG:ADMIN

Committee Secretary  
Senate legal and Constitutional Committee  
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Parliament House  
Canberra ACT 2600

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Dear Sir

**SUBMISSION TO THE SENATE COMMITTEE INQUIRY DEALING WITH  
THE BANKRUPTCY LEGISLATION AMENDMENT BILL 2009**

PPB is an advisory firm practising in insolvency. We specialise in recovery work for unsecured creditors including bankruptcy and liquidation. Many of our partners are registered trustees in bankruptcy.

PPB does not support raising the minimum amount upon which a bankruptcy notice can be issued from \$2,000 to \$10,000. In our opinion the raising of the threshold beyond a cpi adjustment will not address the underlying problem (failing to deal with debt) and result in unintended consequences which will inhibit business from collecting debts.

In our experience there are two types of debtor who fail to pay a small debt upon receipt of a bankruptcy notice:

1. Unwilling Debtors – The debtor does not pay the debt because he or she does not intend to do so or is unable because their financial position is such that their limited assets or the sum of all of their liabilities is such that they are insolvent. These debtors should rightly be compelled to deal with their debt via the bankruptcy system.
2. Incapable debtors – Through lack of understanding, education, capacity, advice or embarrassment have a means to pay the debt

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but fail to deal with the creditor in a timely manner. These debtors should be offered an alternative to bankruptcy before they can be made bankrupt.

Ms Jan Pentland, the former Financial Counsellor of Eastern Access Community Health wrote a paper dated November 2007 under the title "Homes at Risk: using bankruptcy to collect small debts." The "Pentland Report" is located at <http://www.afccra.org/otherpublication%20documents/Homes%20at%20risk%208%20dec.pdf>

The paper identified cases where the family home is threatened by the collection of small debts "because creditors and their agents chose bankruptcy to collect small debts." <sup>(i)</sup> Ms Pentland also states that, in a number of cases small debts of between \$4,000 and \$7,000, bankruptcies occurred where registered trustees were appointed and charged fees from \$58,000 to \$100,000. <sup>(ii)</sup> The recommendations that are made by Ms Pentland in the paper include the following:-

- (i) That the minimum debt on which a creditor's petition can be issued be increased from \$2,000 to \$10,000;
- (ii) That financial counsellors and community lawyers identify cases such as the ones that she highlighted in her paper and bring them to the attention of stakeholders; and
- (iii) Convene a roundtable of stakeholders including Courts which would be facilitated by the Insolvency and Trustee Service Australia (ITSA). <sup>(iii)</sup>

In our opinion in the types of cases identified in the report bankruptcy has occurred to the second type of person identified above (Incapable Debtors). That is, the debtor has failed to deal with an unpaid debt/s. Inevitably before a debtor is made bankrupt the petitioning creditor must go through an extensive process which includes, initial recovery procedures, judgement,

Bankruptcy Notice and Creditors Petition. The creditor must satisfy a Court that the debtor has been personally served with bankruptcy process. It is extremely rare that the petition does not come to the notice of the debtor. Notwithstanding this in the cases in the Pentland Report the debtors have failed to deal with their debt before bankruptcy.

Where the debtor continues to fail to deal with the debt after bankruptcy, including by failing to cooperate with the bankruptcy trustee, high costs of administration inevitably follow. In my experience such debtors often do not answer correspondence, fail to provide details of their financial position to the trustee, fail to file a Statement of Affairs and fail to cooperate in the realisation of their assets resulting in eviction and other costs which would not be necessary if timely action was taken by the debtor. Case studies of numerous matters undertaken by PPB where the debtor failed to cooperate before and after bankruptcy can be made available if requested.

Denying creditors access to the bankruptcy process does not encourage Incapable Debtors to deal with their debts. Instead it allows them to further defer dealing with their problems. The consequence is that debts will be allowed to increase to a less manageable level before the debtor is obliged to deal with the problem. The result will be that debtor may be worse off than if they dealt with their debt sooner.

### **Alternatives to Raising the Threshold**

A genuine reform opportunity exists to help debtors dealing with debt problems by obliging them to seek help at the earliest possible time. For example, where a creditor wishes to commence bankruptcy proceedings for a debt of less than \$10,000 they could be prevented from doing so where the debtor is dealing with the debt. Possible examples of dealing with the debt might include entering into a repayment arrangement, mediation, independent financial advice from a debt counsellor or accountant, a certified statement of financial position or evidence of solvency.

Many possible alternative measures for encouraging debtors to deal with debt as early as possible could be considered. The measure must be simple and low cost such that it discourages debtors from concealing or avoiding their debt problems.

### **Other Consequences of Raising the Threshold**

The number of bankruptcies based on debts under \$10,000 is low. Paragraph 134 of the Explanatory Memorandum states,

*During 2008-09, of 1953 sequestration orders made across Australia and matched by amounts in Bankruptcy Notices, 1551 were for an amount greater than \$10,000; 217 were for an amount between \$5,001 and \$10,000; and 174 were for an amount between \$2,000 and \$,5000.*

However the explanatory memorandum contains no information on the number of creditors whose debts are paid following the issuing of a Bankruptcy Notice for a small debt or earlier in the process where the threat of a Bankruptcy Notice is made. In our view it is likely the number of such cases is high and the effect on business and commerce, particularly small business could be severe.

Further, increasing the threshold to \$10,000 has great potential to cause abuse where debtors who have no intention or ability to pay their debts are able to obtain credit from multiple creditors of amounts just under the threshold and easily incur \$30,000 to \$60,000 worth of debt where no single creditor has the ability to force the bankruptcy of the debtor.

More debtors identified in category 1 above (Unwilling Debtors) will be able to avoid their creditors. Case studies can be made available where a petitioning creditors debt of less than \$10,000 has revealed (in bankruptcy) debtors' total indebtedness of many hundred thousand dollars.

Page 5

Please contact me if I am able to further assist or if you would like to discuss this matter further.

Yours faithfully,  
**PPB Pty Limited**

**Scott Pascoe**  
Partner

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<sup>(i)</sup> Homes at Risk: Using bankruptcy to collect small debts by Jan Pentland  
Eastern Access Community Health page 3

<sup>(ii)</sup> Ibid page 4

<sup>(iii)</sup> Ibid page 27