



31 January 2018

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: legcon.sen@aph.gov.au

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Dear Sir/ Madam

Bankruptcy Amendment (Enterprise Incentives) Bill 2017

CPA Australia represents the diverse interests of more than 160,000 members in 118 countries. We make this submission on behalf of our members and in the broader public interest.

This Bill stems from an earlier Australian Government initiative *Improving Bankruptcy and Insolvency Laws* (Proposals Paper April 2016) and has as its background the National Innovation & Science Agenda. The current Bill referred to your committee has at its heart an amendment to the Bankruptcy Act 1966 reducing the default period of bankruptcy from three years to one year. A series of consequential amendments are included to safeguard unsecured creditor interests through extending the income contribution obligation two years beyond the reduced default period of bankruptcy along with measures against abuse and recalcitrant debtor behaviour. The policy rationale of the reforms is briefly stated in paragraph 4 of the General Outline of the Explanatory Memorandum to the Bill and centres on promoting entrepreneurial behaviour and reducing the stigma associated with bankruptcy.

When these changes were first formally foreshadowed in the Proposals Paper, CPA Australia expressed its concerns to Treasury in June 2017 in the following terms:

A - - - central plank of the reforms is, of course, the reducing of the bankruptcy period to one year. CPA Australia is concerned that without more, the Proposal Paper's assertion of promoting an entrepreneurial culture is illusory. Nor, does the reality of those individuals who find themselves in this often tragic circumstance support the asserted economic benefits. The Australian Financial and Security Authority (AFSA) maintain a comprehensive set of bankruptcy statistics. These show in 2013-14 that only 19 per cent of personal bankruptcies were because of business related reasons. Prominent in non-business reasons are factors such as excessive use of credit, with the most significant cause being unemployment. Among causes of business-related personal bankruptcies, economic conditions dominate. AFSA's statistics also identify the occupation of individuals who have succumbed to bankruptcy. Overwhelmingly these occur amongst clerical and administrative workers, sales assistants, road drivers and labourers. The statistics on the age of insolvent debtors is also insightful, the most common in 2008 being 37 years, though by 2014, 43 years. With respect, these are not what we would think as typical of innovators and entrepreneurs.

More recently we have canvassed the views of our members working in public practice and the overwhelming response is that the default period should not be reduced. The strong view is that the current three-year period achieves balanced outcomes for the various interests at stake. It is emphasised that our public practitioner members are by and large not registered trustees but, rather, are frequently in the position of having to advise clients experiencing financial hardship and, moreover, often unsecured creditors of persons entering bankruptcy.

CPA Australia does not support passage of the Bill. Given the uncertainties and concerns identified by our members, in the event the Bill were to pass in its current form, CPA Australia believes it would be incumbent on government to initiate a review of its economic effectiveness along with exploration of abuse and unintended consequences. As with similar economic-based reforms, such as those around crowd-sourced equity funding, designed to encourage entrepreneurial and legitimate risk-taking behaviours, stresses may only become evident at the time of broad domestic economic downturn.

The Bill necessarily contains measures to address events such as second bankruptcy, and the role and powers of subsequent trustees, and the redress contribution non-compliance. These are additional complexities associated with achieving the Bill's primary purpose. Again, CPA Australia believes it would be incumbent on government to monitor (most likely through ITSA) the impact on overall administration of the bankruptcy system, particularly as it is asserted in the Explanatory Memorandum that the Bill will result in savings of approximately \$4 million per annum.

If you require further information on our views expressed in this submission, please contact _____ on _____ or at _____.

Yours faithfully

Stuart Digham

General Manager, Policy & Corporate Affairs