

# OFFICE OF THE CEO



AUSTRALIAN  
**CRIMINAL  
INTELLIGENCE  
COMMISSION**

ACIC TRIM Ref#: 18/43841

Mr Timothy Watling  
Committee Secretary  
Senate Legal and Constitutional Affairs Legislative Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600



Dear Mr Watling

## ***Bankruptcy Amendment (Enterprise Incentives) Bill 2017***

The Australian Criminal Intelligence Commission (ACIC) welcomes the opportunity to contribute to the inquiry into the *Bankruptcy Amendment (Enterprise Incentives) Bill 2017* (the Bill). The contents of this letter are unclassified and suitable for public release

The ACIC is Australia's national criminal intelligence agency, uniquely equipped with intelligence, investigative and information delivery functions. The ACIC is responsible for assessing the national financial crime threat picture and contributes, as a member agency, of both the Serious Financial Crime Taskforce and the Phoenix Taskforce which provides a whole-of-government approach to combating illegal phoenix activity.

The advice offered by the ACIC is provided to better enable the identification of criminal risks applicable to bankruptcy provisions, rather than to provide direct commentary on the Bill or the overall objectives of the Australian Government's 'National Innovation and Science Agenda'.

The ACIC considers it difficult to determine the extent to which exploitation might occur as a result of the proposed amendments and if this risk would outweigh the societal benefits of reducing the social stigma associated with bankruptcy for individuals and entrepreneurs. Nonetheless, ACIC intelligence suggests that reducing the default bankruptcy period from three years to one year may increase the potential for serious and organised crime groups to exploit bankruptcy provisions for their own advantage

Through the use of illegal phoenix activity as a business strategy by serious and organised crime groups, ACIC intelligence indicates that there are individuals who exploit bankruptcy provisions to facilitate illegal activities. These individuals and groups are often aided by professional facilitators, who are intrinsic enablers of serious and organised financial crime. A current concern to the ACIC are liquidators and unregistered pre-insolvency advisors who are developing a niche in the criminal environment by facilitating and promoting the exploitation of bankruptcy provisions and illegal phoenix type activities. For example, by encouraging directors and accountants to transfer assets to new entities for less than market value, or to destroy or alter company records.

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The ACIC is available to respond in-camera to questions you may have in relation to its operational activity with regard to the threats presented by sophisticated groups and individuals who seek to exploit systemic vulnerabilities in taxation and revenue systems.

Should your office require further information please have them contact Mr Jeremy Johnson on or via email to

Yours sincerely

Michael Phelan APM  
Chief Executive Officer

5 February 2018