



## Australian Government

**Insolvency and Trustee Service Australia**  
Chief Executive & Inspector-General  
in Bankruptcy

09/109

20 November 2009

Mr Peter Hallahan  
Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600



Dear Mr Hallahan

### **Inquiry into the Bankruptcy Legislation Amendment Bill 2009**

Thank you for the invitation to make a submission to this Inquiry on behalf of the Insolvency and Trustee Service Australia (ITSA).

#### **Background**

ITSA is the executive agency responsible for the administration and regulation of the personal insolvency system in Australia. ITSA operates the bankruptcy registry, where debtors petitions are lodged, debt agreement proposals are processed and public records on insolvency are maintained, and acts as a trustee in bankruptcy. The Official Receiver exercises powers to assist trustees to obtain information and recover property.

ITSA also has responsibility for the regulation of insolvency practitioners and for the investigation of bankruptcy offences. ITSA's purpose is to provide a personal insolvency system that minimises the impact of financial failure on the community, produces equitable outcomes for debtors and creditors and enjoys public confidence through application of bankruptcy laws, regulation and trustee services.

The rising level of personal insolvency activity during the last 20 years has meant an increased demand for ITSA's services. Personal insolvency activity has increased by an average of 6.24% per annum since 1988. In 1989 personal insolvency numbers were 8,230. In the last financial year they were 36,479. This is the highest ever level of personal insolvency activity, and represents an increase of 11 per cent on the 2007-08 financial year level of personal insolvency activity. The vast majority of these are non-business related consumer bankruptcies. ITSA has responded to these demands with business improvement measures focusing on electronic solutions to assist clients.

## Submission

ITSA is supportive of the measures contained in the Bankruptcy Legislation Amendment Bill 2009 (the Bill). The Bill aims to modernize the national personal insolvency system and to enhance its efficiency. The amendments strike the appropriate balance between the rights of creditors and the needs of debtors, consumer debtors in particular.

ITSA supports the enhanced investigative and information-gathering powers relevant to offences contained in the Bill. The Bill's amendments will enable the Inspector-General to compel a person to provide information relevant to an inquiry or investigation. These amendments will bring the Inspector-General's powers in line with the current information-gathering powers of the Official Receiver. Pursuant to section 77C of the *Bankruptcy Act 1966* (the Act), the Official Receiver is empowered to assist trustees to obtain information for the purposes of administering bankrupt estates.

As there is no analogous power bestowed upon the Inspector-General for the purpose of investigating offences, this means that, currently, trustees are better placed under the Act to gain information from relevant parties. These amendments would address this incongruity by ensuring that the Inspector-General is able to gather sufficient information for the purpose of investigating offences.

The infringement notices regime contained in the Bill is also of particular significance for ITSA's operations and is supported by ITSA. Those amendments will introduce an infringement notice regime for those offences of strict liability contained in the Act which place obligations on (primarily) bankruptcy trustees and creditors. A common justification for a number of these offences is that they penalise (in particular) the trustee's failure to provide the Official Receiver with notification of particular events. A number of those events affect an individuals' bankruptcy record which is displayed on the public register- the National Personal Insolvency Index (NPPI).

Inaccurate information on the NPPI can have a serious effect on a debtor and creditors. These measures would therefore provide an efficient means of penalising behaviour which, while relatively minor in criminality, can significantly affect the integrity of the personal insolvency system.

The increase in thresholds for debt agreements under the amendments recognises the increases in levels of personal debt since the thresholds were last revised in 2002. The increased thresholds will mean that more debtors with unmanageable debt will be afforded access to debt agreements.

The increase in the minimum debt for a creditor's petition, from \$2000 to \$10,000, is also a measure which acknowledges the increased level of personal indebtedness during the past few years. This amendment also reflects that the majority of bankruptcies are founded on debts exceeding \$10,000- 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 \$5,000.

ITSA is also supportive of the other key amendments in the Bill. These include the streamlining of the process for fixing trustee remuneration and enhancement of the transparency of the remuneration review process; the strengthening of penalties for bankruptcy offences; the removal of the concept of Bankruptcy Districts; and the increase in the stay period for a declaration of intent to file a debtor's petition.



ITSA's business improvement measures are able to support the amendments contained in the Bill. ITSA continues to develop its electronic solutions to assist key clients and to improve internal efficiencies. Our Online Services project is expanding the services that are available to professional clients (including trustees) to streamline the delivery of their reporting obligations to ITSA and to enable clients to monitor the status of their current administrations. These initiatives will ensure that ITSA can meet the operational demands of the measures contained in the Bill.

### **Contact**

Thank you for the opportunity to comment. The contact person for this submission in ITSA is Amanda Pearce.

Yours sincerely

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Chief Executive & Inspector-General in Bankruptcy