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Dear Sirs

Feedback on Bankruptcy Amendment (Enterprise Incentives) Bill 2017

In the years since the proposed Bankruptcy Amendment (Enterprise Incentives) Bill 2017 (**Bill**) failed to pass, there has not been a drastic change to circumstance that warrant its revival.

Whilst it would be remiss to ignore the economic impacts of the coronavirus pandemic, we submit that the potential flow-on consequences of the amendments contained in the Bill far outweigh any perceived benefit from them. This submission paper addresses discussion categories 1 and 4.

Incontrovertibly the most radical amendment is the reduction of the default bankruptcy period from three years to one. Presumably, the policy reasoning underpinning the Bill has not changed since 2017 and it remains geared towards fostering entrepreneurship, removing stigma surrounding bankruptcy, and encouraging – rather the discouraging through fear of punishment – responsible business dealings with consumers and creditors.

This submission paper contends that the federal government should not treat the immediate economic impacts of coronavirus as an anchor for such radical amendments, and the Bill should not be reactive to a temporary state of affairs. It is submitted that the Bill cannot be reconsidered simply through the isolated lens of the pandemic, but must be considered according to its potential ramifications in the long term.

The federal government was swift to enact temporary legislative measures and grant concessions to businesses and individuals alike to deal with the fall out from the coronavirus pandemic. The suite of new legislation was needed to ensure that individuals, sole traders, and businesses had breathing room in the height of the pandemic and gave much needed solace that there would be no immediate cessation of their business (in the case of sole traders) or immediate bankruptcy (in all other instances).

However, the coronavirus pandemic and its economic impact is the reason why a re-introduction of the Bill is ill-advised at present. The four major concerns voiced by stakeholders in 2019, when it became apparent the Bill was still being considered, remain in the current

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economic climate. When faced with only a one-year bankruptcy, it is submitted that individuals conversely could be more inclined to make fiscally irresponsible decisions in the short term, particularly to try to recoup some of their losses during the pandemic by, for example, incurring debts (i.e. loans) they cannot service.

The concessions granted by the federal government with the introduction of the 'omnibus' reforms provide ample opportunity for individuals to navigate economic difficulties, when used correctly. However, the combination of the concessions regarding debts already in place for individuals (including sole traders) and the proposed one-year bankruptcy has the potential to open up space for abuse. Practically, there is concern that individuals/sole traders will incur substantial debts to tide them through the current economic climate, and would be more inclined to do so in the knowledge that they can "dump" these debts within one year.

Instead, bankrupts and those faced with bankruptcy would be better incentivised to comply with their statutory obligations regarding disclosure and income contribution, for example, if given a 'parole' opportunity after one year for good behaviour. If a discharged bankrupt then enters into a subsequent bankruptcy, the benefit of a one-year 'parole' would not be available in that subsequent bankruptcy. In this type of framework, the bankrupt will be encouraged to take more responsibility and in the first bankruptcy.

This would not impose a greater administrative task on trustees than already exists at law as regards their investigative or reporting requirements. Under the Bill, salient provisions such as those concerning income contribution, contact details, maintenance of books relating to financial information, are still applicable post the proposed one-year period. We submit that this framework can still achieve the policy objectives, whilst still acting as a deterrent overall. We anticipate that sole traders in particular will take advantage of the 'parole' scheme, allowing a continuance in their business.

Moreover, the 'parole' framework should act as a deterrent against phoenix activity, given that a 'bad' bankrupt would only take advantage of the one-year period once and would be ineligible for it in subsequent bankruptcies.

Yours faithfully

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