



INSTITUTE OF
**PUBLIC
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Submission to Attorney-General's Dept
on Personal Insolvency
Consultation Paper

September 2023

29 September 2023

The Head
Personal Insolvency consultation
Attorney-General's Department

By Email: bankruptcy@ag.gov.au

Dear Sir/Madam

Personal Insolvency Consultation Paper

The Institute of Public Accountants (IPA) welcomes the opportunity to provide comments on the Personal Insolvency Consultation Paper (the Paper).

The IPA is one of the three professional accounting bodies in Australia, with over 50,000 members and students. Three-quarters of our members either work in or advise small business and small to medium enterprises (SMEs), and accordingly our comments are taken from the perspective of these sectors.

In preparing this submission we have consulted with members who operate in the insolvency, including personal insolvency, sector.

We note that like many other stakeholders, we have provided submissions and been involved in consultation on the various insolvency reforms which have been undertaken over the last few years. This will be our 12th submission relating to the various insolvency reforms since early 2020. We have previously submitted that a review should be undertaken of the reforms that were rushed due to the COVID-19 pandemic as it was almost inevitable that unintended consequences would emerge and that further changes (and tweaking) would be required. Accordingly, we welcome further review by the Attorney-General's Department.

Our responses to the consultation questions appear below.

If you have queries or require further information, please contact Vicki Stylianou at vicki.stylianou@publicaccountants.org.au.

Yours sincerely

[signed Vicki Stylianou]

Vicki Stylianou
Group Executive, Advocacy & Policy
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ANNEXURE

Increasing the bankruptcy threshold from \$10,000 to \$20,000

- 1. Question 1:** Do you believe that any of the current economic circumstances have the capacity to inform the policy setting for increasing the default bankruptcy threshold to \$20,000? Please expand on your response.

IPA agrees that the threshold needs to be increased.

Our view is that a \$20,000 threshold is more appropriate than the \$50,000 threshold that has been proposed by some stakeholders. We are not opposed to an indexation of the threshold amount, and we are generally supportive of indexation in the context of a rapidly changing economic and financial environment.

IPA believes that the interests of small business creditors need to be given due weight as the experience of members has been that some debtors are more likely to pay if the possibility of bankruptcy is looming. For small businesses and SMEs the avoidance or delay of payment can have serious financial consequences, often causing a domino effect.

We note that on page 5 of the Paper it states,

Based on this data, should the bankruptcy threshold be increased to \$20,000, 81.9% of new bankruptcies would still meet the new threshold.

This would seem to indicate that \$20,000 might be an appropriate threshold, balancing the policy objective of bankruptcy being an option of last resort and the need for creditors to have some hope of recovering their debt (or at least more than the average of 2.23 cents for every dollar owed).

We note further on page 6 of the Paper it states,

In 2021-22, 91% of new bankruptcies were initiated by debtors' petition (voluntary bankruptcies).

This may indicate that entering bankruptcy is being used by debtors to avoid (or manage) payment, rather than being forced into bankruptcy by creditors. Of course, it may be a case of some debtors having overwhelming debt owed to more than one creditor and bankruptcy is indeed the option of last resort. More data would be needed to further consider this aspect and its possible significance.

Whether the threshold is increased to \$20,000 or higher, there should be (even) greater encouragement to utilize other options such as debt agreements, restructuring (for those where the personal and business financial situations overlap) and so on. In this regard, the IPA fully supports the proposal on page 6 of the Paper to,

encourage the use of alternative personal insolvency options for lower value debts, noting the significant and potentially lifelong impacts of bankruptcy and the relatively small amount returned to creditors through bankruptcy processes.

2. Question 2: If you do believe that any of the current economic circumstances have the capacity to inform the policy setting for increasing the default bankruptcy threshold to \$20,000, should there be a transition period before any reforms take effect?

IPA is generally supportive of transition periods before any reforms take effect, especially when those impacted need time to make the appropriate adjustments. In this particular case, we believe the transition period does not need to be more than 12-24 months on the basis that many of the relevant systems and processes may not need to be extensively adjusted.

Increasing the period for a debtor to respond to a bankruptcy notice from 21 to 28 days

3. Question 4: Do you believe that the period for a debtor to respond to a bankruptcy notice should be increased from 21 days to 28 days? Please expand on your answer and consider any potential impacts.

IPA believes that the period for a debtor to respond to a bankruptcy notice should be increased from 21 days to 28 days.

We agree with the reasons outlined in the Paper and especially to achieve consistency with other provisions in the Bankruptcy Act.

IPA strongly supports any action by AFSA (and others such as financial counsellors) to update and simplify the information sheet which attaches to a bankruptcy notice. Any opportunity to improve financial literacy and education in these circumstances should be taken.

We note the comment in the Paper that some stakeholders believe that debtors should have had sufficient notice of the issue, however, our view is that this does not necessarily equate to an expectation that a bankruptcy notice will be issued and given the significant consequences of a bankruptcy notice, we are of the view that the debtor should be allowed sufficient (or more) time to respond appropriately.

4. Question 5: If you do believe that the period for a debtor to respond to a bankruptcy notice should be increased from 21 days to 28 days, should there be a transition period before any reform takes effect? Please expand on your answer.

As above, the IPA is generally supportive of transition periods where necessary for appropriate adjustments to be made. In this particular case, we believe that if a transition period is required, then it should align with that applied to other reforms in this group of proposals.

Reducing the permanent record on the National Personal Insolvency Index to seven years

5. **Question 7:** Do you believe that any of the current economic circumstances have the capacity to inform the policy setting for a reduced record period of seven years on the NPII for bankruptcies? Please expand on your response.
6. **Question 8:** Would a reduced record period of seven years on the NPII for bankruptcies benefit debtors? Please expand on your response.

Our comments below apply to both of these questions.

IPA supports a reduced record period of seven years on the NPII for bankruptcies for the reasons outlined in the Paper. In particular, as noted above, the IPA generally supports consistency in legislation and regulations – for this reason we believe the record period should be consistent with other legislative requirements of seven years.

One further point which is not included in the Paper, is that during all of the insolvency reforms over the last few years, the IPA has strongly advocated for the policy objective of destigmatizing bankruptcy as a way of encouraging innovation and entrepreneurial activity and spirit. The IPA Deakin University SME Research Centre has produced a series of white papers focusing on boosting productivity growth, including through innovation policy. Part of this was to make it easier for small business and SMEs to survive business failure financially and emotionally so they could start another business. For this reason, we have strongly supported the development of policies promoting business restructuring. Reducing the record period would be one more reform which may help to destigmatize business failure and encourage start ups and entrepreneurs to try again.

The cumulative impact of the numerous insolvency related reforms to promote these objectives should not be under-estimated. Viewing these proposed reforms from the lens of encouraging innovation, start ups, and entrepreneurship, is a worthy objective.

Even though we welcome the use of data in policy development, we believe that greater accessibility to government data is needed. In this regard we refer to the experience of the IPA Deakin University SME Research Centre and we would welcome the opportunity to discuss this matter further. For instance, we note that over 75% of bankruptcies relate to consumer debt rather than entrepreneurial activities. We are aware that some of this debt may relate to small business people who have been unable to access commercial finance (another issue which has been examined by the Research Centre). More detailed data on this particular aspect would be useful for further analysis of the nature of bankruptcy related debt.

7. **Question 11:** If you support the proposed reform to reduce the NPII permanent record to seven years for bankruptcies, should there be a transition period before any reforms take effect?

We believe that this reform could become effective almost immediately, unless there are any adverse consequences of which we are not aware.

Circumstances involving debt agreements which serve as an ‘act of bankruptcy’

8. **Question 13:** Do you believe that any current economic circumstances may have the capacity to inform the policy setting for repealing paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act? Please expand on your response.
9. **Question 14:** Do you believe that there may be any adverse impacts from repealing paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act? Please expand on your response and consider any mitigating factors.

IPA strongly supports the proposal that entering into a debt agreement or having that debt agreement accepted by creditors should no longer be considered an ‘act of bankruptcy’ under paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act.

In previous consultations, the IPA has advocated for the wider use of debt agreements as a way of avoiding bankruptcy in appropriate circumstances.

Also, as noted above, the IPA has been a long time advocate for boosting productivity growth through innovation policy and encouraging entrepreneurship. Destigmatising business failure through the expanded use of such options as debt agreements is part of this multi-layered policy platform.

In this regard, we refer to our submission made in February 2018 to the Senate Legal and Constitutional Affairs Committee on the Bankruptcy Amendment (Debt Agreement Reform) Bill 2018,

We understand that the Productivity Commission’s enquiry into business set up, transfer and closure (the PC Report) recognises that shortening the period in which an individual remains bankrupt in Australia ought to be considered. The current (standard) period is 3 years and one day. International experience would appear to suggest that a shorter bankruptcy period may be more beneficial for the overall economy. This “ideal” is in keeping with the PC Report’s intention to promote the entrepreneurial spirit and in so doing support business growth in Australia.

10. **Question 16:** If you support a reform to repeal paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act, should there be a transition period before any reforms take effect? Please expand on your response.

We are not aware of any reasons why a transition period would be required. Otherwise, see above.