

27 May 2016

The Manager, Corporations and Schemes Unit  
Financial Systems Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [insolvency@treasury.gov.au](mailto:insolvency@treasury.gov.au)

Dear Manager

## Submission regarding *Improving bankruptcy and insolvency laws* Proposals Paper

### Summary

The Justice Connect Self Representation Service (**the Service**) welcomes the opportunity to make a submission in response to the *Improving bankruptcy and insolvency laws* Proposals Paper (the **Proposals Paper**). Our submission is informed by our casework in assisting clients in bankruptcy proceedings.

### About Justice Connect and the Self Representation Service

Justice Connect is an independent not-for-profit organisation based in Melbourne and Sydney. It was formed when the Public Interest Law Clearing House NSW (established in 1992) and Public Interest Law Clearing House Victoria (established in 1994) merged on 1 July 2013. Justice Connect provides access to justice to people experiencing disadvantage and the community organisations that support them, by connecting them with lawyers who will assist them for free. We also provide training and support for pro bono lawyers and community organisations and, in some circumstances, our lawyers provide legal advice directly to clients.

The Service provides unrepresented clients who are experiencing disadvantage with legal advice and assistance by facilitating free appointments with pro bono solicitors. Operating in the Federal Court and Federal Circuit Court jurisdictions in NSW, Victoria, the ACT and Tasmania, the Service is funded by the Commonwealth Attorney-General's Department and assists with bankruptcy matters. The Service is in a unique position to observe the effects of bankruptcy and insolvency law on individuals experiencing disadvantage.

We note that the focus of this submission is on the issues outlined in the Proposals Paper which have the greatest potential to impact the Service's client group, these being the issues outlined in section 1, relating to a proposed reduction in the default bankruptcy period.

### Proposed reduction in the default bankruptcy period

The Service commends the recognition in the Proposals Paper of the stigma that can attach to bankruptcy. The Service is supportive of the proposed reduction in the default bankruptcy period to one year from the current three years.

In the Service's experience, continuing stigma associated with bankruptcy can lead our clients to avoid it at all costs. This extends to some clients entering into payment plans or debt proposals that are beyond their capacity in order to seek to avoid bankruptcy. Their inevitable default regarding these arrangements leads them back into bankruptcy proceedings having wasted time

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and money in a futile bid to avoid bankruptcy. This process also leads to clients experiencing considerable unnecessary stress.

The stigma associated with bankruptcy also leads many of our clients to lodge a Notice of Opposition seeking to resist bankruptcy in circumstances where they are insolvent and have no other grounds upon which to rely in opposition to the bankruptcy. Reducing the default period of bankruptcy to one year, by reducing the stigma associated with bankruptcy, would reduce the number of people who oppose bankruptcy proceedings in circumstances where they have little prospect of success. Many Service clients face insurmountable debts, have an income level below the threshold, do not own any significant assets and would be largely unaffected in their day to day lives by the restrictions imposed in bankruptcy, but they nevertheless oppose bankruptcy due in large part to the associated stigma. By reducing this stigma, the number of unmeritorious opposition applications would be reduced, reducing the burden on the courts and petitioning creditors.

## **Specific proposals and queries**

### ***Ongoing obligations for bankrupts***

<b>Proposal 1.2.2</b>
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<i>The Government proposes to separate the obligation to pay income contributions from the default bankruptcy period. Instead, individuals will continue to pay income contributions for three years even with the reduction in the default bankruptcy period. Further to proposal 1.1 above, where the period of bankruptcy is extended to five or eight years, income contributions will also be payable for that extended period.</i>
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The Service believes that the income contribution period should be reduced to one year, in line with the reduced default bankruptcy period. Having to continue to make contributions beyond the period of bankruptcy is likely to maintain a similar stigma attached to the bankruptcy, and to discourage people from re-entering employment and commercial trading after the 1 year period has expired.

### ***Restrictions***

<b>Proposal 1.3.1a</b>
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<i>The Government proposes to reduce the credit restrictions under the Bankruptcy Act to one year, subject to any extension for misconduct.</i>
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The Service supports this proposal and believes that it will greatly benefit those in the situations our clients face by assisting them to move on with their lives post-bankruptcy.

<b>Proposal 1.3.1b</b>
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<i>The Government proposes to retain the permanent record of bankruptcy in the National Personal Insolvency Index.</i>
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<b>Query 1.3.1</b>
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<i>The Government seeks views from the public on whether it is appropriate to reduce the retention period for personal insolvency information in credit reports.</i>
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The Service believes that the period of record should be reduced to be in line with the maintenance of credit reports. The permanent record maintains the stigma associated with bankruptcy, and hinders discharged bankrupts in practical matters such as obtaining a loan or rental property. These hindrances prevent them from moving on with their lives post-bankruptcy.

Similarly, the Service is supportive of a reduction in the retention period for personal insolvency information in credit reports. This information has the potential to have a real impact on our clients, again in hindering actions such as obtaining a loan or securing a rental property.

**Proposal 1.3.2**

*The Government proposes to reduce the overseas travel restriction to one year, subject to any extension for misconduct.*

The Service is supportive of this proposal. Further, we suggest that it may be beneficial to insert some guidance into the *Bankruptcy Act 1966* (Cth) regarding circumstances where permission to travel will not be provided.

**Proposal 1.3.3**

*The Government proposes to consult with relevant industry and licensing associations with a view to aligning restrictions with the reduced period of bankruptcy, where appropriate.*

The Service is supportive of this consultation taking place. We have assisted a number of clients in circumstances where their ongoing ability to work was impacted by their bankruptcy, for example, real estate agents. To have aligned periods would enable them to return to work in their field at the conclusion of their bankruptcy.

**Case study: Seeking to avoid bankruptcy**

George was 72 and had worked for many years as a sole trader doing painting work. He received a pension as he had not done any painting work for a couple of years due to serious illness. Because of these circumstances, he was unable to pay a debt for painting supplies he had previously purchased and the creditor was pursuing bankruptcy proceedings against him by filing a creditor's petition.

George had no assets of value and was not earning an income, accordingly, bankruptcy was likely to have little practical impact upon him. He also had a number of credit card debts that would be provable in bankruptcy. However, he hoped to do painting work in the future and was concerned about the impact of bankruptcy on these plans. George was very concerned about the concept of being made bankrupt, despite advice that it would have little practical consequence for him.

George had no clear grounds on which to oppose the creditor's petition, however he was eager to avoid bankruptcy by proving that he was solvent on the basis of income he might earn in the future. He attempted to enter into a payment plan with the creditor on a number of occasions, the obligations of which he was unlikely to be able to meet. Despite advice about his limited prospects of success in opposing the creditor's petition and the negligible impact of bankruptcy on him, George filed material in opposition to the creditor's petition. After the matter was adjourned on 2 occasions he was made bankrupt at the third hearing of the creditor's petition approximately 2 months after the matter was first listed.

## Conclusion

The Service is grateful for the opportunity to submit our views for consideration as part of the consultation on the Proposals Paper. We would be pleased to discuss these issues in greater depth or provide further detail upon request.

Yours sincerely



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