



**Australian Government**  
**Attorney-General's Department**

**Civil Law Division**



09/2900

29 January 2010

Ms Julie Dennett  
Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Ms Dennett

**Inquiry into Bankruptcy Legislation Amendment Bill 2009**

At yesterday's hearing of the Committee, the Department took three questions on notice:

*What would the minimum amount for a creditor's petition be now if it had been indexed?*

The minimum amount for a creditor's petition was increased from \$1,500 to \$2,000 in 1996. \$2,000 in 1996 dollars is approximately \$2,770 in 2009 dollars.

*What is the minimum amount for a creditor's petition in other comparable jurisdictions?*

Direct comparisons between individual aspects of different jurisdictions' personal insolvency systems are problematic. The consequences for bankrupts are different in the jurisdictions mentioned below, particularly in relation to the standard period of bankruptcy (which is much shorter in most of them) and the public record of bankruptcy (which is not permanent in most of them).

In Canada, under section 43(1) of the *Bankruptcy and Insolvency Act* (RS 1985, c. B-3) one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that the debt or debts owing to the applicant creditor or creditors amount to CAD 1,000 (approximately AUD 1,500).

In the USA, a debtor can be made involuntarily bankrupt by his or her creditors. Under section 303 of USC 11, if a debtor has twelve or more creditors, an involuntary petition requires at least three creditors who are owed a minimum of USD 10,000 (approximately AUD 11,230) in total. If there are fewer than twelve creditors, only one creditor owed at least USD 10,000 is required.

In New Zealand, under section 13 of the *Insolvency Act 2006*, a creditor may apply for a debtor to be adjudicated bankrupt if the debtor owes the creditor NZD 1,000 or more (approximately

AUD 790) or, if two or more creditors join in the application, the debtor owes a total of NZD 10,000 or more to those creditors between them.

In England and Wales, the minimum amount for a creditor's petition is GBP 750 (approximately AUD 1,360) in unsecured debt. In Scotland a creditor can ask a sheriff to award bankruptcy against a debtor if they are owed at least GBP 3,000 (approximately AUD 5,430). Also in Scotland creditors can file a joint petition asking the sheriff to award bankruptcy against a debtor if collectively they are owed at least GBP 3,000.

*Do any other jurisdictions have a procedure that is analogous to the declaration of intent to file procedure and if so how long is the stay period?*

We are not aware of any jurisdictions that have a procedure that is analogous to the declaration of intent to file procedure.

The action officer for this matter is David Bergman who can be contacted on 6141 4125.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'James Popple', with a long horizontal flourish extending to the right.

James Popple  
First Assistant Secretary  
Civil Law Division