



March 2023

Ministerial Roundtable on Personal Insolvency: summary

On 02 March 2023 the Attorney-General, the Hon Mark Dreyfus KC MP, convened a national roundtable with key stakeholders across all sectors of the personal insolvency system.

The roundtable provided an opportunity for practitioners and groups representing both creditor and debtor interests to engage directly with Government to discuss the pressure points in the current system, critical reform areas and longer-term strategic challenges.

The Roundtable brought together 24 organisations from a wide range of sectors with an interest in personal insolvency, including trustees, banking associations and consumer legal centres (participants are listed below in the **Appendix**.)

The purpose of the Roundtable was to provide an opportunity for dialogue between key stakeholders on personal insolvency priorities and emerging issues, and to increase effective collaboration between government and key stakeholders in the development of personal insolvency law reform.

Consideration of personal insolvency issues

The following issues were identified by attendees as being priority issues for further exploration and policy analysis by the department.

Increasing the bankruptcy threshold value from \$10,000

Participants discussed what an appropriate value for the bankruptcy threshold would be, with a range of views expressed including proposals to increase the threshold up to \$20,000, \$50,000 or to annually index the threshold. There was general consensus that the threshold ought to be lifted, however there were contested views on what the threshold should be.

Participants discussed the need for the bankruptcy threshold to balance the competing needs of different system users including consumer debtors with few assets, more sophisticated debtors with

more complex asset holdings and creditors (including small business owners and larger financial institutions) and the impact of a higher threshold on lending confidence.

An appropriate bankruptcy threshold value should ensure bankruptcy remains an option of last resort, while minimising the opportunities for debtors to incur additional debt.

Options for a shorter discharge period from bankruptcy for some bankrupts

Participants had a productive discussion on the appropriate default discharge period for bankruptcy and divergent opinions on whether the period should remain at 3-years or be reduced to 1-year. With regard to a reduction in the bankruptcy period, participants canvassed a range of potential options, including whether the reduction of a bankruptcy term should be afforded to all bankrupts and whether such a process ought to be debtor or trustee initiated. A further alternative raised by some participants was a simpler process for 'no asset' bankruptcies, modelled on New Zealand's No Asset Procedure. Participants noted there would be merit for low income assetless bankrupt estates to be discharged more quickly.

It was recognised, however, that a 1-year bankruptcy may be insufficient time to administer complex estates or non-compliant bankrupts. Participants noted that this would need to be considered in any future policy analysis on this issue.

Options for easier annulment for inappropriate bankruptcies

There was agreement across stakeholder groups that the annulment process, which allows a bankrupt to have their bankruptcy discharged early, be improved where there is evidence that a bankruptcy should be annulled in certain circumstances.

This would mean, for example, that where there is evidence the debts leading to the bankruptcy are the result of financial abuse that a bankrupt could have their bankruptcy annulled. Participants noted that due to the obligations on trustees in bankruptcy even with early notice that a bankrupt will seek to annul a bankruptcy, costs incurred can be significant. Participants noted that improvements in the annulment process would allow the procedure to be more effective and less costly.

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

There was robust discussion among participants about the appropriate period for a bankruptcy notice, and whether the current 21-day notice period was sufficient.

Participants canvassed a range of options, including a proposal that the notice period be increased to 60 days. Some participants noted it can be difficult for debtors to obtain appropriate and timely advice about bankruptcy and a debtor's options in response to the bankruptcy notice under the current 21-day period.

Other participants noted that a bankruptcy notice is often the final step in the process and usually follows a court judgement and demands for payment. In this regard, they noted a debtor ought to have been on notice of the issue for longer than the 21 days from the service of the bankruptcy notice.

An alternative option of an extension to the 21-day period was also canvassed where a debtor is able to produce evidence of financial or legal advice obtained which necessitates a further period for consideration.

Alternative suggestions to varying the notice period discussed by participants included increasing funding for financial counselling and legal assistance services and better information be included with the bankruptcy notice provided to debtors.

Options to identify and scope measures to address poor practice

Participants agreed that the problem of 'untrustworthy advisors', should be prioritised but also noted the term lacked scope and was too emotive. Participants noted that the provision of legal, financial, tax or insolvency advice is regulated but other advisors, particularly in the pre-insolvency space that provide unlicensed advice to vulnerable debtors remain unregulated.

Proposals included:

- increased information gathering powers for regulators;
- new offences of accessorial liability;
- a cross regulator taskforce;
- high profile prosecutions.

Examples of poor practice by pre-insolvency advisors were also shared throughout the roundtable as examples of untrustworthy advisors.

Other issues

In addition to the above five areas of reform that participants identified as priorities for policy development, the following issues were also raised for consideration by the department:

- lifetime listings on the National Personal Insolvency Index (NPII);
- options for legislated mediation prior to sequestration;
- better education or financial literacy training for bankrupts, small business owners and/or the community generally;
- the appropriate duration of debt agreements;

- difficulties for small businesses who may be engaged in both corporate and personal insolvency proceedings;
- a small business specific insolvency regime;
- ensuring any amendments to the *Bankruptcy Act 1966* (Bankruptcy Act) are appropriately monitored over time to measure their effectiveness;
- better access and use of insolvency data held by regulators;
- harmonisation across corporate and personal insolvency systems;
- consistent treatment of fines in bankruptcy across all states and territories;
- examples of poor creditor behaviour and options for industry specific codes of practice;
- amendments to gambling offences under the Bankruptcy Act;
- better responses to family violence in the bankruptcy context. For example, where perpetrators of family violence use the bankruptcy system to harass or coerce their partner;
- general modernisation of the Bankruptcy Act and a review of the insolvency system;
- amendment to Part IX of the Bankruptcy Act, which covers debt agreements;
- the treatment of capital gains tax in bankruptcy; and
- the difficulties faced by bankrupts pursuing complaints against financial services providers.

The department would like to thank participants for their time and contributions to robust and productive discussions. The roundtable provided valuable insights into key stakeholder views on what is working and what could benefit from further government consideration of the personal insolvency system. The department will consider the outcomes from the roundtable and brief the Attorney-General on potential reforms arising from the priority issues raised at the Roundtable.

Participants

The participants attending the Ministerial Roundtable on Personal Insolvency were:

1. Association of Independent Insolvency Practitioners (AIIP)
2. Australian Banking Association (ABA)
3. Australian Financial Complaints Authority (AFCA)
4. Australian Institute of Credit Management (AICM)
5. Australian Restructuring Insolvency and Turnaround Association (ARITA)
6. Australian Retail Credit Association (ARCA)
7. Australian Small Business and Family Enterprise Ombudsman (ASBFEO)
8. Chartered Accountants Australia and New Zealand (CA ANZ)
9. CPA Australia
10. Consumer Action Law Centre (CALC)
11. Consumer Credit Law Centre SA (Uniting Communities)
12. Financial Counselling Association WA
13. Financial Counselling Australia (FCA)
14. Financial Counselling Service and Consumer Law Centre of ACT (CARE Inc)
15. Financial Rights Legal Centre
16. Indigenous Consumer Advocacy Network
17. Law Council of Australia (LCA) Business Law Section
18. Legal Aid Queensland
19. Murrays Legal
20. Personal Insolvency Professionals Association (PIPA)
21. Queensland university of Technology Consumer Policy and Regulation Research Group
22. Rural Financial Counselling Service (RFCS) / Regional Small Business
23. Support Program (NEMA)
24. Small Business Debt Helpline