



Australian Government

Insolvency and Trustee Service Australia
Chief Executive & Inspector-General
in Bankruptcy

09/109

11 February 2010

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan

Inquiry into the Bankruptcy Legislation Amendment Bill 2009

Thank you for the opportunity to appear at the 28 January 2010 Public Hearing for the Inquiry.

The attached paper is submitted in response to a question asked by Senator Barnett that was taken on notice at the Public Hearing. The question was concisely summarised by Mr Bergman on page 26 of the transcript.

Mr Bergman—The question is: what if we just take out the number of bankrupt estates where the petitioning creditor's debt was between \$2,000 and \$10,000 and then analyse in those matters what the overall debt position was for each of those bankruptcies—and assets as well, I think I heard you say, Senator?

Senator BARNETT—Yes.

A further issue raised during the Public Hearing before ITSA appeared concerned the number and proportion of debt agreements that have been completed and those that have been terminated. This data is set out in the *Annual Report by the Inspector-General in Bankruptcy on the operation of the Bankruptcy Act 2008-2009* at Table 26.

A figure of 3.7% was mentioned as the Debt Agreement completion rate in the transcript at p10 and Senator Barnett referred to this again on p23. ITSA is unsure of the source of that figure, hence I thought it would be useful for the Committee to also have some clarification in respect of the relevant data. However, it should be noted that the 'completion rate' is a particularly misleading measure of the outcomes of the Debt Agreement System given that it only commenced in 2007 and Debt Agreements typically run for three or more years.

Accordingly, the attached paper details information about:

1. Sequestration orders made on debts of \$10,000 and below - Value of Liabilities, Assets and Number of Creditors
2. Debt Agreements – Clarification of Completion and Termination rates
 - a. A Comparison of the New and Old Systems
 - b. For the 2008/09 financial year

Finally, reference was made by Ms Del Cseti (National Training and Marketing Manager, Australian Institute of Credit Management) at p6 of the transcript to a joint ASIC and ACCC publication for debtors (*Dealing with debt: your rights and responsibilities*).

I wish to note ITSA's support of the publication. The publication is stocked on the counter at each of ITSA's State and Territory offices. Further, ITSA is currently in the process of providing a link on its website to the other joint ASIC and ACCC publication mentioned in the Public Hearing, the *Debt collection guideline for collectors and creditors*.

Contact

Thank you for the opportunity to comment. The contact person for this letter in ITSA is Adrian Wilson, 02 6270 3430.

Yours sincerely

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1. Sequestration orders made on debts of \$10,000 and below Value of Liabilities, Assets, and Number of Creditors

Liabilities

Of the sequestration order bankrupts who lodged a Statement of Affairs in:

- 2009/10 (to 4 February 2010)
 - 61 (98%) disclosed unsecured liabilities, and
 - 35 (56%) disclosed secured liabilities
- 2008/09
 - 224 (95%) disclosed unsecured liabilities, and
 - 132 (56%) disclosed secured liabilities
- 2007-08
 - 245 (93%) disclosed unsecured liabilities, and
 - 130 (49%) disclosed secured liabilities.

A breakdown of unsecured liabilities¹ eg. unsecured personal loans, credit cards, phone and utilities, etc) is shown in the table below.

	Up to \$30,000	\$30,000 to \$40,000	\$40,000 to \$50,000	\$50,000 to \$100,000	> \$100,000
2009/10 (to 4 February 2010)	54%	5%	2%	13%	26%
2008/09	52%	8%	5%	11%	24%
2007/08	50%	7%	6%	15%	22%

From the table above it can be seen that over 50% of debtors that were made bankrupt for a debt of \$2,000 to \$10,000 had unsecured liabilities of \$30,000 or less.

¹ In general, creditors with secured liabilities do not require a debtor to be made bankrupt to recover debts that are not being serviced as they may claim/recover the security held over the debt. Other than for those of the petitioning creditor, ITSA does not receive advice as to whether liabilities were being serviced prior to, or at the time a sequestration order is made.

Attachment 1

A breakdown of secured liabilities (eg. real estate, vehicles, etc) is shown in the table below.

	< \$2,000	\$2,000 to \$5,000	\$5,000 to \$10,000	\$10,000 to \$20,000	\$20,000 to \$30,000	\$30,000 to \$40,000	\$40,000 to \$50,000	\$50,000 to \$100,000	> \$100,000
2009/10 (to 4 February 2010)	3%	0%	9%	0%	0%	3%	0%	9%	77%
2008/09	2%	2%	4%	8%	4%	3%	3%	5%	70%
2007/08	3%	2%	3%	4%	4%	3%	4%	5%	72%

The table above shows that more than 70% of these debtors had secured liabilities of \$100,000 or greater.

Assets

The number and proportion of the sequestration order bankrupts disclosing assets on their Statement of Affairs are:

- 61 (98%) in 2009/10 (to 4 February 2010),
- 226 (96%) in 2008/09, and
- 244 (93%) in 2007/08.

The disclosed net value of assets² is shown in the table below.

	< \$2,000	\$2,000 to \$5,000	\$5,000 to \$10,000	\$10,000 to \$20,000	\$20,000 to \$30,000	\$30,000 to \$40,000	\$40,000 to \$50,000	\$50,000 to \$100,000	> \$100,000
2009/10 (to 4 February 2010)	16%	7%	7%	11%	7%	7%	7%	8%	31%
2008/09	19%	13%	10%	8%	6%	2%	2%	8%	33%
2007/08	25%	12%	12%	8%	2%	3%	2%	7%	30%

² The value after the amount of any secured debt owing on the asset is deducted.

Creditors

The number of creditors that were disclosed by debtors in the sample is shown in the table below.

	1	2	3	4	5	6	> 6
2009/10	12%	15%	10%	11%	8%	6%	37%
2008/09	16%	11%	12%	9%	9%	7%	37%
2007/08	6%	15%	10%	8%	10%	13%	39%

The table shows that more than 60% of debtors had six or less creditors.

Methodology and Sample

Not all Creditor Petitions submitted to ITSA will result in sequestration orders being made by the court. Once a sequestration order is made, the debtor is required to submit a Statement of Affairs to ITSA within 14 days. Bankrupts failing to submit a Statement of Affairs within this time are referred to ITSA's Regulation and Enforcement for appropriate action.

The number of Creditor Petitions submitted to ITSA for amounts between \$2,000 and \$10,000, the number of resulting sequestration orders, and the consequent number of Statement of Affairs being lodged for the years 2006/07, 2008/09 and 2009/10 (YTD to 4 February 2010) is shown below.

	Creditor Petitions lodged (\leq \$10,000)	Sequestration orders arising from Creditor Petitions (\leq \$10,000)	Statement of Affairs lodged following sequestration orders (\leq \$10,000) ³
2009/10 (to 4 February 2010)	463	119 (26%)	62 (52%)
2008/09	837	392 (47%)	235 (60%)
2007/08	771	364 (47%)	263 (72%)

³ It is an offence under s54 of the Bankruptcy Act for a debtor that has been made bankrupt by a sequestration order to fail to lodge a Statement of Affairs within 14 days. Instances of non-compliance are referred to ITSA Enforcement for action.

**2a. Debt Agreements – Clarification of Completion and Termination rates
A Comparison of the New and Old Systems**

	New System (2 years: 2007-08 to 2008-09)		Old system (4 years: 2003-04 to 2006-07)	
	Number	Percentage	Number	Percentage
Debt Agreement Proposals Submitted to ITSA	20,465	-	30,771	-
Proposals to Creditors (less withdrawn proposals) <i>[The percentage is the relation to Debt Agreement Proposals Submitted to ITSA]</i>	17,775	86.86%	30,176	98.07%
Proposals Accepted by Creditors <i>[The percentage is the relation to Proposals to Creditors]</i>	15,139	85.17%	22,221	73.64%
Proposals Rejected by Creditors, or No Vote Received <i>[The percentage is the relation to Proposals to Creditors]</i>	2,636	14.83%	7,955	26.36%
Completed <i>[The percentage is the relation to Proposals Accepted by Creditors]</i>	160	1.06%	7,647	34.41%
Terminated <i>[The percentage is the relation to Proposals Accepted by Creditors]</i>	842	5.56%	5,896	26.53%
Still Running <i>[The percentage is the relation to Proposals Accepted by Creditors]</i>	14,137	93.38%	8,678	39.05%

**2b. Debt Agreements – Clarification of Completion and Termination rates
For the 2008/09 financial year**

		2008-09	
		Number	Percentage
Debt Agreement Proposals Submitted to ITSA		11,353	-
Proposals to Creditors (less withdrawn proposals) <i>[The percentage is the relation to Debt Agreement Proposals Submitted to ITSA]</i>		9,955	87.69%
Proposals Accepted by Creditors <i>[The percentage is the relation to Proposals to Creditors]</i>		8,599	86.38%
Proposals Rejected by Creditors, or No Vote Received <i>[The percentage is the relation to Proposals to Creditors]</i>		1,356	13.62%
Completed <i>[The percentage is the relation to Proposals Accepted by Creditors]</i>			
		29	0.34%
Terminated <i>[The percentage is the relation to Proposals Accepted by Creditors]</i>			
		124	1.44%
Still Running <i>[The percentage is the relation to Proposals Accepted by Creditors]</i>			
		8,446	98.22%