

Submission No: 98.1



Law Council
OF AUSTRALIA

30 June 2004

The Hon Mr Phillip Ruddock MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

Re: Reforming the Offence Provisions of the Bankruptcy Act 1966

Following your recent address to the 4th ITSA Bankruptcy Congress on 14 May 2004 you met with a number of members of the Bankruptcy Reform Consultative Forum convened by the Inspector-General in Bankruptcy.

You may recall that during the course of that meeting, Mr Michael Lhuede of Gadens Lawyers, who represents the Law Council of Australia on the Consultative Forum, made a number of suggestions to you for reform of Australia's bankruptcy laws. As requested by you, we now wish to put in writing those suggestions. For the avoidance of doubt the Law Council has made a separate submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs in relation to the Bankruptcy Legislation Amendment (Anti-Avoidance & Other Measures) Bill.

The first matter raised by Mr Lhuede related to attaining uniformity of meeting procedures between the corporate insolvency and bankruptcy jurisdictions.

As matters presently stand the meeting procedures are quite distinct between the two jurisdictions, and this is a constant cause of frustration to practitioners and creditors alike. There have been previous suggestions for reform in this regard, which have always been supported by the Law Council of Australia.

The second issue raised by Mr Lhuede related to the prospect of undertaking a review of the offence provisions contained in Part XIV of the Bankruptcy Act 1966 ("the Act").

In particular, Mr Lhuede raised the question as to whether it was appropriate to create a specific offence directed at a disposition of property by insolvent persons with the intention of defeating the claims of creditors.

At present, the closest the Act comes to such a provision is section 266 which provides that it is an offence for a person who, after the presentation of petition on which he or she becomes a bankrupt, disposes of property with intent to defraud his or her creditors. That provision is limited to dispositions of property after the presentation of the bankruptcy petition.


As mentioned by Mr Lhuede, if the offence was given greater scope, it might serve to catch those persons who actively advise debtors to deal with their property in such a way as to defeat the interest of creditors at a time when they are otherwise insolvent. This would be possible through the Crimes Act provisions relating to aiding or abetting the commission of an offence.

Further to the above, many of the existing penalties might also benefit from a review.

The Law Council invites the Government to conduct a review of each of the aforementioned matters. As always, the Law Council would be prepared to provide its views in relation to any proposals in this regard.

If we can be of any further assistance, do not hesitate to contact me or, alternatively, Mr Michael Lhuede can be contacted at the Melbourne office of Gadens Lawyers on (03) 9252 2516.

Yours sincerely


Peter Webb
Secretary-General