CHAPTER 2

Overview of the Bill

2.1 This chapter provides a brief overview of the purpose and key provisions of the Bill. The Bill comprises four schedules, which contain the following categories of amendments:

- remuneration of trustees of estates of bankrupts – Schedule 1;
- offence provisions – Schedule 2;
- removal of bankruptcy districts – Schedule 3; and
- other amendments – Parts 1 and 2 of Schedule 4.

2.2 A brief outline of these categories is provided below, with an emphasis on those provisions particularly examined during the course of the inquiry.

Remuneration of trustees of estates of bankrupts

2.3 Items 1 to 17 of Schedule 1 aim to provide a clearer regime for setting and reviewing the remuneration of trustees of estates of bankrupts by providing for:

- a more accessible and streamlined process for challenging a trustee's remuneration claim;
- enhanced oversight for the Inspector-General in Bankruptcy to ensure trustees are following the rules when claiming remuneration; and
- a streamlined process for claiming a basic amount of remuneration (set at $5,000) which reflects the essential tasks undertaken by every trustee.[1]

Offence provisions

2.4 Items 1 to 84 of Schedule 2 of the Bill:

- provide for the introduction of an infringement notice regime as an alternative to prosecution for offences of strict liability;
- ensure that the penalties for some offences (particularly those involving fraud) reflect the seriousness of the conduct and are consistent with penalties for similar offences in other federal, state and territory legislation;
- provide stronger powers to obtain a 'statement of affairs' from a bankrupt who fails to file this document as required; and

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1 Replacement Explanatory Memorandum, p. 2.

- provide stronger powers for the Inspector-General in Bankruptcy to investigate possible offences under the Act.

Removal of Bankruptcy Districts

2.5 The overall purpose of Schedule 3 is to deliver a more efficient, national personal insolvency scheme. Essentially, the Bill seeks to achieve this objective by removing the concept of bankruptcy districts from the Act.

Other amendments

2.6 Schedule 4 of the Bill – comprising Parts 1 and 2 – relates to 'other amendments'. The three key amendments examined during the course of the inquiry are contained in Schedule 4 and are categorised by the REM as follows: increasing the minimum debt for a creditor's petition to $10,000; increasing the stay period that follows the declaration of intent to file a debtor's petition; and increasing the debt income and assets thresholds for eligibility for debt agreements. These amendments are described in detail below.

Increasing the minimum debt for a creditor's petition to $10,000

2.7 At present, the Act allows a creditor to petition for bankruptcy where the debtor owes at least $2,000. Similarly, a creditor can request that the Official Receiver issue a bankruptcy notice where the debtor owes at least the same amount. This amount has not increased since 1996. Item 1 of Schedule 4 would increase this amount to $10,000, and items 2 and 3 of Schedule 4 would do likewise in respect of filing a creditor's petition and an application for administration of a bankrupt estate. The REM explains the proposed changes as follows:

> It is wrong to set in motion all the machinery of bankruptcy for the purpose of winding up a debtor's estate when, as is often the case, one creditor has a debt due to him of an amount not much more than $2,000. Raising the amount of the petitioning creditor's debt will lessen the opportunity to use bankruptcy procedures as a debt collection process. It is an established principle of the law of bankruptcy that, when a creditor sets in motion proceedings in bankruptcy, they do so for the benefits of all the debtor's creditors. Moreover, there has been a significant change in the value of money and levels of individual indebtedness since 1996 when the Bankruptcy Act was last amended in this respect.[2]

2.8 The REM reports that, during 2008-09, of 1,953 sequestration orders made across Australia and matched by amounts in bankruptcy notices, 1,551 were for an amount greater than $10,000; 217 were for an amount between $5,001 and $10,000; and 174 were for an amount between $2,000 and $5,000.[3] However, the REM does

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2 Replacement Explanatory Memorandum, pp 22–23.

3 Replacement Explanatory Memorandum, p. 23.

not explain why the new threshold would be set at $10,000: there is no indication of any assessment of acceptable debt levels.

Increasing the stay period that follows the declaration of intent to file a debtor's petition

2.9 The Act also currently allows a debtor to give the Official Receiver a declaration of intent to file a debtor's petition. Once the debtor's declaration of intent to file is given, creditors cannot take action to recover any debts for a stay period of seven days. Item 5 of Schedule 4 would increase the stay period from seven days to 28 days. The REM states that:

> A 7 day stay period does not give debtors enough time to assess their options. If a debtor is not fully informed about their options they may act precipitously. In any given 7 day period there will only be at most 5 working days (less when a public holiday falls during the seven day period). Given that most professional advisors that a debtor may wish to consult during the stay period are only open during normal working hours it would be very difficult for a debtor to obtain adequate advice during the 7 day stay period. If the 7 day stay period falls during the period leading up to the end of the financial year or during the Christmas period the debtor's difficulties in obtaining adequate advice during the stay period will be compounded. In addition, debtors typically owe money to a number of creditors and it can be difficult, at a time of financial stress, to achieve an outcome with each individual creditor within 7 days.[4]

2.10 Items 6-8 of Schedule 4 would also provide that a declaration of intent to file a debtor's petition must be accompanied by a statement of the debtor's affairs:

> The requirement to file a statement of affairs will mitigate the risk of the debtor dissipating assets during the stay period.[5]

Increasing the debt income and assets thresholds for eligibility for debt agreements

2.11 A debt agreement is a voluntary agreement between a debtor and creditors proposed by the debtor. It is principally aimed at consumer debtors with lower levels of income, assets and debts; consequently, there are statutory thresholds which determine eligibility.

2.12 At present, the Act provides for the threshold amount as being seven times the amount that, at a particular point in time, is specified in column 3, item 2, Table B, point 1064-B1, Pension Rate Calculator A, in the *Social Security Act 1991*.

2.13 Item 11 of Schedule 4 would increase the threshold amount for eligibility for debt agreements by increasing the multiplier from 7 to 8.4, translating into a 20 per

4 Replacement Explanatory Memorandum, p. 23.

5 Replacement Explanatory Memorandum, p. 24.

cent increase. The present thresholds are: after tax income of less than $62,735.40; *or* unsecured debts, and assets, of less than $86,647.20. The REM explains:

> These thresholds were last revised in 2002 with the aim of making debt agreements more widely available. They were also considered in a review of debt agreements conducted prior to amendments which commenced on 1 July 2007. During that review, it was decided to retain the thresholds at their current levels until the next review of debt agreements scheduled for 2010. This was to allow time to evaluate the effectiveness of the 2007 amendments which were aimed at restoring creditor confidence in the system and addressing the unacceptably high failure rate. However, it is considered that a modest increase in the thresholds in advance of the 2010 review is consistent with current policy and merely recognizes the increases in debt, wealth and available income since the thresholds were last revised. Since the 2007 amendments, the termination rate has fallen to around 4% of debt agreements made since 1 July 2007. This compares with a termination rate of 35-40% under the previous rules. In addition, the rate of acceptance by creditors of debt agreement proposals has increased from less than 70% to over 85%. This demonstrates greater confidence by creditors in the system.[6]

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6 Replacement Explanatory Memorandum, p. 24.