

Predicted tsunami of 'no-fault' bankruptcies may prompt reforms



Michael Murray, insolvency lawyer and commentator

The predicted high number of business-related bankruptcies caused by COVID-19 in the next six to 12 months may motivate the government to consider reforming corporate and personal insolvency laws.

This is the view of leading insolvency lawyer, writer and commentator Michael Murray, who shared his insights as guest speaker on Jirsch Sutherland's recent *Dispelling Bankruptcy Myths* webinar.

Murray also believes the coming 'insolvency tsunami' will help change the negative stigmas associated with bankruptcy, particularly that bankrupts deserve to be punished – a mindset that started in Roman times and has persisted into the 21st century.

"Bankruptcy still has that tone of commercial immorality and wrongfulness, if not quite criminality, but it's all your fault if you went bankrupt and you should serve your term," explains Murray.

Since bankruptcy was first created in Roman times to control fights about unpaid bills, bankrupts have faced harsh and lengthy punishments such as being sent to a debtor's prison and enslavement to the creditor. "Bankruptcy was considered criminal behaviour," says Murray.

Bankrupts have also suffered from numerous stigmas including the perception they are negligent, incompetent or wilfully used bankruptcy to escape repayments to fund a life of luxury. Murray cites Alan Bond and Christopher Skase as continuing this stigma, escaping creditors and continuing to enjoy high-end lifestyles. [Bond was sentenced to seven years in prison for his role in siphoning \$1.2 billion from Bell Resources to Bond Corp but only served four years.]

According to Murray, it's these stigmas and the long-held bankruptcy belief of 'do the crime do the time' that are hampering changes to today's bankruptcy laws.

Murray has long championed bankruptcy reform in Australia; he played a key role in shaping the *Insolvency Law Reform Act 2016* and regularly advises on law reform and policy.

The current period between bankruptcy and discharge of three years and one day will seem severe for people who went bankrupt as a result of the crisis, adds Murray. “A couple of years ago the government tried to reduce the period of bankruptcy from three years to one and there was a lot of opposition to that.”

In its current state, Murray supports bankruptcy as a viable option, enabling people to “wipe the slate clean and get on with their lives”.

Reasons for bankruptcy



Chris Baskerville, Jirsch Sutherland Partner

Murray says most bankruptcies arise from overuse of credit, bad luck or poor health and are handled by an official trustee. “The majority of bankruptcies are consumer related, with business-related bankruptcies making up about 25 per cent. Registered trustees take the more difficult ones, about 20 per cent.”

Today’s bankruptcies are more complex and complicated, Murray adds, with assets, trusts and family law claims with litigation often required – which call for a registered bankruptcy trustee to run the process effectively.

However, with the significantly higher number of people predicted to go into bankruptcy when the government relief measures end, a trustee may be difficult to secure. “There are only 198 registered bankruptcy trustees in Australia,” says Murray.

Like all of Jirsch Sutherland’s bankruptcy trustees, Partner Chris Baskerville supports a reduction in the period of bankruptcy and an easing of penalties in cases of “no-fault” bankruptcy.

“Without the ability to release someone from their debts, there would be little incentive for entrepreneurial activity, the cornerstone of most democratic societies that drives economic

development,” says Baskerville.

“We’re hoping that the many no-fault bankruptcies caused by COVID-19 will help remove the stigmas associated with this process of closing a business.”

The importance of seeking advice early cannot be stressed enough, Murray says. “We don’t want to see good people miss the opportunity to restructure their affairs. Call at the first sign of distress. You have more options and have better results.”