# Return of the one-year Bankruptcy Bill

The one-year Bankruptcy Bill was introduced into federal parliament on October 19, reducing the default period of bankruptcy from three years to one year. Similar legislation was previously in the Bankruptcy Act 1966 before being repealed in 2003. So why has it been reintroduced?

Phil McGibbon

Jirsch Sutherland partner Phil McGibbon says one of the reasons for the Bill is to reduce the stigma associated with bankruptcy. “However, there is very little stigma associated with bankruptcy now,” he says. “It is really only older people who consider the stigma still exists; young people do not.”

Another reason for the change is to encourage entrepreneurs to re-engage in business, but Phil says discharged bankrupts will still find it difficult to borrow money after one year.

“When the bankrupt period was spread over three years, bankrupts were able to establish a new credit rating through their savings, income or paying their bills on time,” he says. “So the reduction to one year will make this more difficult.”

Following the introduction of the Bill, it’s likely that more people will declare bankruptcy, rather than find a solution to their financial problems. Phil says those most likely will be those with credit card debt who are keen to rid themselves of problem debts. “There is a concern that these people will just continually run up debts and declare bankruptcy a second or third time,” he says.

But while the reduction to one year may benefit those who want to re-engage with business earlier, it makes sense to try and avoid entering into bankruptcy altogether.

“People who want to pursue their own business venture will still need to obtain the proper business advice before they start,” Phil says. “It is those people who have not obtained the right business advice before commencing who are likely to fail and declare bankruptcy.”

**Income contributions: the challenges**

He warns that the Bill refers to one year bankruptcy but three years of income contributions. “Monitoring and undertaking collection of income contributions will be difficult in years two and three,” Phil says. “This will lead to Trustees lodging objections to discharge so that the person remains bankrupt until all contributions are paid for in years two and three.

“Some people will try to ensure their income is below the thresholds and therefore pay no contributions in the year of bankruptcy, but look for an increase in income once discharged. Item 34 of the General Outline sets out details to stop high-income earners from abusing the system, but if a person takes a lower remunerated position this is not abuse.”

Phil is working with two bankrupts who have changed their employment position and are receiving much less than they were previously ($200,000 down to $100,000). “But I am confident that once they are discharged they will again seek the higher paid roles,” he says. “This type of action may also affect the amount of child support the bankrupt is required to pay as child support is based on a person’s income.”

Current bankrupts will also benefit from the new Bill. Phil says that current bankrupts will be able to obtain a discharge shortly after this new Bill receives Royal Assent or becomes Law, and this will see many receiving a discharge prior to their original discharge date, so they will benefit the most.

“I do not agree with the reduction to one year; I supported a reduction by one year, back to two,” Phil says. “Of course the fact that Trustees are able to object will mean certain bankrupts may still serve the full period of five to eight years.”

**Features of the Bankruptcy Bill***

- The bankrupt is discharged at the end of the period of one year from the date on which the bankrupt filed his or her statement of affairs.
- Reducing other time periods associated with bankruptcy to one year, including the obligation to disclose one's status as a bankrupt when applying for credit, the requirement to seek permission to travel overseas and the ability to enter into certain professions or positions (e.g. company director).
- Income contribution obligations of discharged bankrupts will extend for at least two years following discharge (five to eight years if the bankruptcy is extended due to non-compliance).
- For ongoing bankruptcies, the advent of the one-year discharge will mean that '[a]ll bankruptcies on foot at the commencement date, except those subject to a section 149B objection, will be discharged if one year has expired since the bankrupt filed a statement of affairs with the Official Receiver.' Other ongoing bankruptcies 'will discharge on the day after the first anniversary of the filing of the statement of affairs with the Official Receiver'.
- The one-year discharge will commence six months after the Bill receives Royal Assent. According to the Explanatory Memorandum, this is designed to 'give trustees time to prepare any objections to discharge, and will enable relevant agencies time to consider whether a one-year licensing or professional restriction is appropriate for their purposes'.
- Ongoing bankruptcies, which have been extended for five or eight years due to an objection to discharge (under s 149B of the Act) will remain unchanged. The ability of a trustee or the Official Receiver to lodge an objection to discharge after the commencement of the one-year default period for bankruptcy will remain unchanged.

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