

29 September 2023

Jenna Priestly
Commercial and Copyright Law Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Via the Citizen Space platform

CPA Australia Ltd

ABN 64 008 392 452

Level 20, 28 Freshwater Place
Southbank VIC 3006 Australia

GPO Box 2820 Melbourne
VIC 3001 Australia

P 1300 737 373
Outside Aust +613 9606 9677

cpaaustralia.com.au

Dear Jenna

Personal insolvency discussion paper

CPA Australia represents the diverse interests of more than 172,000 members working in over 100 countries and regions around the world. We provide this submission in response to the [Personal Insolvency Consultation](#) on behalf of our members and in the broader public interest.

As a professional accounting organisation, our members advise and support both creditors and debtors. Some practice as registered trustees, registered debt administrators or financial counsellors. It is from this holistic perspective that we make this submission.

We support better protecting those genuinely experiencing severe financial stress. We believe the following actions are key to achieving this policy objective:

- encouraging and supporting those in financial difficulty to engage early with regulated advisers
- reducing the stigma associated of insolvency
- better protecting such people from possible inappropriate behaviour by some unregulated pre-insolvency advisers.

Any reforms to insolvency must be deeply considered to ensure they strike an appropriate balance between the interests of debtors and creditors. Such a balance is essential to a well-functioning economy. For example, overly protecting the interests of debtors at the expense of creditors can reduce lender confidence, increase the cost (and risk) of lending and move the financial stress onto creditors, especially small business.

Our views on the key issues under consultation are:

- we do not support increasing the bankruptcy threshold value from \$10,000. We believe that alternative approaches could achieve a better outcome
- we support increasing the period for a debtor to respond to a bankruptcy notice from 21 days to 28 days
- we support in principle a reduction in the time a discharged bankrupt is recorded on the National Personal Insolvency Index
- we support in principle no longer considering entering a debt agreement is an 'act of bankruptcy'.

We are disappointed that the Attorney-General's Department did not consider measures to mitigate harms caused by unlicensed advisers in this consultation paper. With Australia going through a period of economic weakness, the risk that people in financial distress will be targeted by unscrupulous unregulated advisers is on the rise. We recommend the Department progress this work with greater urgency.

Our responses to the consultation paper's discussion questions are included in the attached.



If you have any queries, please contact Gavan Ord, Senior Manager Business Policy on gavan.ord@cpaaustralia.com.au

Yours sincerely,

Elinor Kasapidis
Head of Policy

Encl.



Increasing the bankruptcy threshold from \$10,000 to \$20,000

Question 1: Do you believe that any of the current economic circumstances have the capacity to inform the policy setting for increasing the default bankruptcy threshold to \$20,000? Please expand on your response.

We do not support an increase in the bankruptcy threshold.

We don't believe the proposal will alleviate cost-of-living pressures that have increased under the current economic environment. For many, mortgage stress is their leading financial concern. The amount of such debt is generally significantly higher than the proposed bankruptcy threshold.

While cost-of-living pressures are front-of-mind for many Australians, we are not seeing any data suggest a surge in personal insolvencies. The recent increase in bankruptcies shows them returning to their pre-Covid long-term average. We don't expect that number to materially go above that average.

Impact on small business

We are concerned that increasing the bankruptcy threshold from \$10,000 may impact lending confidence, especially for those small businesses selling on credit.

We note that the consultation paper shows only a small percentage of bankruptcies are for debts between \$10,000 to \$20,000. However, this data doesn't show the impact that being able to petition for bankruptcy between those amounts has on payment (and thus avoiding the bankruptcy statistics).

It should also be noted that reducing the rights of businesses, particularly smaller business to recover debts may transfer financial stress onto them. Debts of up to \$20,000 or \$50,000 are not small for many small businesses. Increased difficulties collecting such debt may in turn place them in financial difficulty.

Question 2: If you do believe that any of the current economic circumstances have the capacity to inform the policy setting for increasing the default bankruptcy threshold to \$20,000, should there be a transition period before any reforms take effect?

If the government decides to raise the threshold, we recommend a suitable transition period. Unlike during the pandemic, the economic circumstances are not so pressing as to justify a large immediate increase in the threshold.

Question 3: If you do not believe that any of the current economic circumstances have the capacity to inform the policy setting for increasing the default bankruptcy threshold to \$20,000, please explain whether an alternative amount should be considered for the threshold and why.

Alternatives

We believe the best approach to assisting people experiencing financial distress is to encourage and support them to seek advice early from regulated advisers.

In our opinion, the key issue that the current economic circumstances raise is the unwillingness of many people in financial distress to seek advice early from regulated advisers. This is predominately because of the stigma associated to bankruptcy. This unfortunately increases the probability of a person being placed into bankruptcy.

Lifting the bankruptcy threshold does not address this fundamental issue. Raising the threshold may also have the unintended consequence of encouraging some people with smaller debts to further delay action. This is detrimental to the debtor and their creditors.

We recommend that the government prioritise encouraging and supporting those in financial distress to seek out regulated advisers early. Any messaging from government, its agencies and others should emphasise the value of early advice from regulated advisers and to avoid those that are unregulated.

Another alternative policy suggestion is combining different bankruptcy thresholds with shorter periods of bankruptcy. For example:

- a minimum one-year discharge period from bankruptcy for debts of between \$10,000 to \$20,000
- a two-year discharge period for debts of between \$20,000 to \$50,000
- the current three-year period for debts over \$50,000.

Increasing the period for a debtor to respond to a bankruptcy notice from 21 to 28 days

Question 4: Do you believe that the period for a debtor to respond to a bankruptcy notice should be increased from 21 days to 28 days? Please expand on your answer and consider any potential impacts.

Yes.

28 days is a reasonable length of time. As the consultation paper notes, the bankruptcy notice is the final step and would follow court judgements and numerous demands for payment. The reasonable debtor would have known about the action and doesn't need any more than 28 days to respond.

We also believe a longer period would unfairly disrupt creditors.

Question 5: If you do believe that the period for a debtor to respond to a bankruptcy notice should be increased from 21 days to 28 days, should there be a transition period before any reform takes effect? Please expand on your answer.

No. We believe this to be a minor change.

Reducing the permanent record on the National Personal Insolvency Index (NPII) to seven years

Question 7: Do you believe that any of the current economic circumstances have the capacity to inform the policy setting for a reduced record period of seven years on the NPII for bankruptcies? Please expand on your response.

In principle, we support removing bankrupts from the NPII after seven years following them being discharged from their bankruptcy.

To reduce the risk of bankrupts gaming such a reform, we recommend that the Regulator be given the power to extend the period the bankrupt's information is kept on the NPII. This power should only be used in exceptional circumstances.

We don't believe a transition period is necessary for this reform.

Circumstances involving debt agreements which serve as an 'act of bankruptcy'

Question 13: Do you believe that any current economic circumstances may have the capacity to inform the policy setting for repealing paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act? Please expand on your response.

In principle, we support reforms that would no longer consider entering into a debt agreement or having that debt agreement accepted by creditors, as an 'act of bankruptcy'. As noted in the consultation paper, this would encourage the use of debt agreements and may boost the number of people in financial distress seeking advice from regulated advisers early.

If, however the debtor does not comply with the terms of debt agreement, there should be a process under the Act to effectively treat such non-compliance as an 'act of bankruptcy'.