



Reducing the bankruptcy period

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The current default bankruptcy period is three years but there's a Bill proposing a reduction to one year. What will this mean?

In April 2016, the Australian Federal Government announced three major insolvency law reform proposals in its *Improving Bankruptcy and Insolvency Laws Proposal Paper* ("**the Proposal Paper**").

On 19 October 2017, the *Bankruptcy Amendment (Enterprise Incentives) Bill 2017* ("**the Bill**") was introduced into the Senate. The Bill is for the *Bankruptcy Amendment (Enterprise Incentives) Act 2017* which, if enacted, will amend the *Bankruptcy Act 1966*.

One of the proposed changes in the Proposal Paper is the reduction of the default bankruptcy period from three (3) years down to one (1) year where no offence has been committed.

Why is a reduction in the bankruptcy period being considered?

The reason given for the proposed changes is that the current three year period of bankruptcy may discourage innovation and reduce the number of new business start-ups, and a shortened default period would encourage entrepreneurial activity and reduce the associated stigma of being a bankrupt.

In addition, there are restrictions placed on bankrupts for the duration of their bankruptcy in relation to:

1. overseas travel;

2. the incurring of further debts;
3. the continuation of some employment (for example, acting as director of a company); and
4. the holding of some licences (for example, bankrupts cannot hold real estate licences).

It is thought that the proposal to reduce the bankruptcy period to one year is intended to alleviate some of the above restrictions as well as the stigma that is often associated with bankruptcy.

The rationale for the proposed changes also seeks to address the causes of bankruptcy that arise as a result of necessary risk-taking or misfortune in running a business rather than intentional causes.

What goals are sought to be achieved if the bankruptcy period is reduced?

The objectives of reducing the bankruptcy period is to give a bankrupt an opportunity to start over, learn from mistakes and continue with new innovative ventures.

If the period of bankruptcy is to be reduced to one year it is proposed to:

1. retain the bankruptcy trustee's ability to object to discharge and to extend the bankruptcy period to eight years;
2. retain the permanent record of bankruptcy in the National Personal Insolvency Index;
3. align licencing and industry restrictions with the reduced one year default bankruptcy period, in consultation with relevant industry and licensing associations;
4. reduce the current restrictions on a bankrupt obtaining credit or undertaking overseas travel, to one year subject to any extension for misconduct;
5. impose a continuing obligation on the bankrupt to assist in the proper administration of their bankruptcy, even after discharge; and
6. retain the bankrupt's obligation to pay income contributions for three years, regardless of the one year discharge, with the possibility of income contributions to be extended to five or eight years.

If the Bill passes, what impact will it have on creditors and trustees?

The proposed changes, if the Bill is passed, are likely to commence in mid-2018 and will likely have little impact on creditors, whose right to claim in the bankrupts estate will be unaffected.

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Likewise, the bankrupt's trustee's statutory powers to recover vested assets and voidable transactions will still be available. The only other likely impact of the proposed changes are that a bankrupt's trustee's ability to recover "after-acquired" property"; that is, property which is acquired by the bankrupt before they are discharged, will only be available for the suggested one year bankruptcy

term.

Invariably any change in the the reduction of the default bankruptcy period must balance the competing interests of creditors, debtors and the general community.

Currently Australia's bankruptcy laws in respect to discharge periods and associated restrictions on debtors during those periods are considered to favour creditors.

Should you have any questions about the proposed changes in the bankruptcy default period, please feel free to get in touch directly with today's blog writer, Commercial lawyer, [Toni Monteleone](#).

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