

Article Information

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Bankruptcy Law reform update - 8 July 2024

Reform of our Australian bankruptcy landscape has been the focus of policymakers for some time. The new changes lead by the Attorney-General's Department, will see the implementation of reforms to the *Bankruptcy Act 1966 (Cth)* (Bankruptcy Law Reforms) and further consultation on a Minimal Asset Procedure (as foreshadowed during our recent Personal Insolvency Forum) (Minimal Asset Procedure). A further development regarding the treatment of capital gains tax (CGT) is included in this update.

These reforms are intended to ensure that Australia's bankruptcy system is fairer and operate in the best interests of Australians.

Bankruptcy Law reforms

Briefly, the key changes proposed by the Bankruptcy Law Reforms include:

- an increase in the threshold for involuntary bankruptcies from \$10,000 to \$20,000, with the threshold to be indexed each year;
- an increase to the timeframe in which a debtor may respond to a bankruptcy notice from 21 days to 28 days;
- a reduction to the period a discharged bankruptcy is publicly recorded on the National Personal Insolvency Index to a period of seven years following discharge from bankruptcy; and
- the removal of the proposal, or acceptance, of a debt agreement as an act of bankruptcy for the purposes of subsection 40(1) of the Bankruptcy Act.

There are mixed views on the utility of some of these reforms for example, can small business afford a debt to run up to \$20,000 before enforcement and whether a further seven days to respond to a bankruptcy notice is necessary?

Minimal Asset Procedure

In addition to these proposed changes, the Attorney-General's Department has now opened a consultation period on the introduction of a Minimal Asset Procedure in Australia.

The Minimal Asset Procedure is a process available for individuals to apply to participate in the procedure which is intended to be less onerous and restrictive than bankruptcy. The Minimal Asset Procedure is intended to last for only 12 months, with a period of 4 years post-discharge to be listed on the National Personal Insolvency Index. Eligibility for the Minimal Asset Procedure (in its proposed form) is as follows:

- a maximum debt threshold of \$50,000;
- a maximum threshold for income (to be determined);
- a maximum threshold of \$10,000 in assets with exceptions for tools of trade and a motor vehicle; and
- condition that a debtor may only enter into a Minimal Asset Procedure once during their lifetime.

The above reforms are intended to ensure a fairer outcome for debtors in the personal insolvency system and reduce the stigma associated with an individual entering into bankruptcy and, with particular regard to the Minimal Asset Procedure, align the Australian bankruptcy system with international bankruptcy models which include the 'No Asset Procedure' in New Zealand.

Stakeholders are encouraged to engage with the Attorney General's Department on the Minimal Asset Procedure by 29 July 2024.

CGT

An issue relevant to Trustees in Bankruptcy is the treatment of capital gains in bankruptcy.

In *Robson as trustee for the bankrupt estate of Lanning v Commissioner of Taxation* [2024] FCA 720, the Federal Court recently upheld a private ruling of the Commissioner made under the *Taxation Administration Act 1953* (Cth).

Briefly, the issue is whether a Trustee is liable for the CGT from the sale of a bankrupt's property that vested in the Trustee.

Downes J held that a Trustee is a trustee within the definition of the *Income Tax Assessment Act 1936* (Cth) (**ITAA**) for the purposes of CGT and is subject to the retention obligations under the ITAA and furthermore, will not be liable in respect of any tax payable from the sale of the property prior to the issue of a Notice of Assessment. This decision gives rise to a number of practical difficulties for Trustees for the reasons advanced by the Applicant in these proceedings.

For more detailed information and guidance on navigating the Bankruptcy Law Reforms, individuals and businesses are encouraged to seek professional advice and stay informed about further developments.