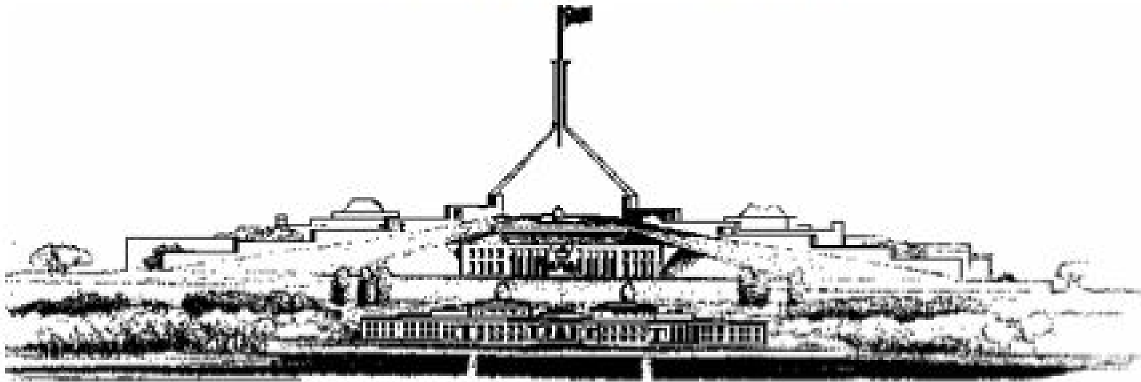
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

BANKRUPTCY LEGISLATION AMENDMENT BILL 2009

Second Reading

SPEECH

Thursday, 26 November 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Thursday, 26 November 2009	**Source**	House
Page	11	**Proof**	Yes
Questioner		**Responder**	
Speaker	Rishworth, Amanda, MP	**Question No.**	

Ms RISHWORTH (Kingston) (5.09 pm)—I am very pleased to rise to speak on the Bankruptcy Legislation Amendment Bill 2009. As noted by the Attorney-General in his second reading speech, the purpose of the bill is to modernise the National Personal Insolvency Scheme to make it more effective. In modernising our laws in this area, the Attorney-General also made mention of the need to strike the right balance between the interests of businesses in recovering their debt and the interests of individuals who are prevented from contributing to our economy by the penalties and stigma associated with the bankruptcy process. The Australian economy, the Attorney-General says, needs to have strong but fair bankruptcy laws—and I agree with him.

As we engage in the process of modernising Australia's bankruptcy laws and making it responsive to our times, it is worth bearing in mind the larger historical picture. Bankruptcy laws in this country have come a long way since their origins in 12th and 13th century England, where it became commonplace for debtors to find themselves in prison for failure to pay their debts. Over the past 700 years, important advancements have been made. These changes have produced better outcomes for debtors who have been offered alternatives to imprisonment and, likewise, advancements have provided alternatives to bankruptcy to be given to creditors who then have a greater chance of recovery of the money owed to them. At the heart of these reforms has been an understanding that a robust economy needs strong but fair bankruptcy laws. Last year there was a record 36,475 administrations for personal insolvency in Australia. This was an increase of 11 per cent from the year before and reflects how these tough economic times are hurting Australian families.

I would like to discuss a few of the significant changes introduced by this bill which will seek to make our bankruptcy laws strong, fair and responsive to the present economic times. Firstly, the bill raises the minimum debt for creditors' petition for bankruptcy from $2,000 to $10,000. The figure of $2,000 was set in 1996, as previous speakers have mentioned. Considering the cost and complexities of the bankruptcy process, this increase is long overdue. The increase is also designed to stop creditors using bankruptcy proceedings as a means of enforcing very small debts. Such debts can be more effectively dealt with through other avenues, including negotiated payment arrangements, civil debt recovery, garnishing income and seizing assets.

Last year 20 per cent of bankruptcies in Australia related to debts between $2,000 and $10,000. Too often bankruptcy for very small debts hurt individuals and families struggling under financial pressure when another option could well be available. I have met a number of these people in my local electorate who have found themselves in a difficult situation. They have perhaps at times been ill-advised about taking out a loan or signing up to some payment option and find themselves in real trouble. There are a number of alternatives that they often say they would be willing to enter into but have not been given that as an option. There are alternative options and in most cases these are more appropriate for debtors, more appropriate for creditors and more appropriate for communities. Bankruptcy really should only be a last resort for the recovery of debts.

Secondly, these amendments increase the stay period for a declaration of intent to file for bankruptcy from seven days to 28 days. This increase in the period in which creditors are barred from taking action to recover debts will allow debtors some extra breathing space for assessing their options. Hopefully this extended four-week period will offer a more realistic chance for debtors to seek advice from a financial counsellor or a lawyer or to negotiate the debt with creditors. Recently, I held a debt forum which was open to people across my electorate of Kingston to get advice from experts in the area, such as financial counsellors, Centrelink staff or lawyers. We had a panel of people to advise people. One of the issues that came through at that forum was that people really did not know what they could do. They felt very pressured into making a decision very quickly. Increasing this time will allow people to have a little bit of breathing space, and that will be welcomed by many of the people I met at the debt forum in the electorate of Kingston. That is a very important amendment that I can see having on-the-ground practical use.

Thirdly, the amendments open up the option to more individuals of entering into debt agreements. This will be achieved by increasing the income threshold for such agreements by 20 per cent. A debt agreement is a popular alternative to bankruptcy and offers better

returns to creditors. These changes will allow many individuals and their families to avoid the stigma and cost involved in bankruptcy and also allow small businesses to increase their returns from debts that they are owed. Fourthly, the bill provides for a minimum entitlement of remuneration to trustees for their administration of bankruptcy estates. This will offer certainty for trustees and also ensure that an estate is not unnecessarily diminished by non-streamlined administration fees.

Importantly, these and other amendments in the bill have been developed through a process of extensive consultation with industry and stakeholders on both sides of the creditor-debtor relationship. A wide variety of input has been made through submissions to the exposure draft of the bill that was released in August this year. It is very important to acknowledge that there has been discussion across a wide range of stakeholders and other interested parties to get this information.

I would like to say—and I have spoken about this in this House before—that prevention is better than cure. The people who attended the debt forum I held in Noarlunga gave a real sense that they wanted to know more, that they felt they were not in control of their finances and that they did not really know what options were available to them. The previous speaker talked about the importance of financial counselling services, and I know that there are some very, very good counselling services in my electorate, and one in particular is UnitingCare Wesley. They do an enormous job in helping people understand what is going on, counselling them and helping them work out their finances so that they do not get to a point where they have to file for bankruptcy.

I believe that we need to improve financial literacy in this country. Many people speak to me about signing contracts that contain a huge amount of fine print. While it is all well and good for companies to say that the fine print was there, if you have ever tried to read it you would understand that it can be very, very small. There is also a lot of pressure on people to sign contracts. In fact, I have had people from certain companies door-knock me and ask me then and there to sign contracts that would last 12 months or even 24 months. It is very important for people to be educated about financial matters so that they have a better understanding of them. This will improve their financial literacy so that they understand what some of these things mean. Hopefully, this will go a long way to preventing people from even getting to the point where they need to choose whether or not to file for bankruptcy. Rather, they will work out other ways so that they do not have this problem.

We live in a society which increasingly relies on the seamless creation and payment of debts, from our credit cards, to our phone bills, to accessing loans as part of our personal and business lives. The economic necessity of the credit system has been well known for many hundreds of years; however, there will be circumstances in which individuals struggle to repay their debts. In dealing with these cases, it is important that our laws strike the right balance between the interests of debt recovery and the interests of individuals who are penalised by the bankruptcy process. The amendments introduced by this bill offer a timely realignment of these interests in light of the present economic situation. I therefore commend the bill to the House.