

Submission to the Commerce Select Committee on the Insolvency Amendment Bill

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 50 nationally organised societies and national members. NCWNZ has 26 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, families and the community through research, study, discussion and action.

This submission has been prepared by the Economics Standing Committee after consultation with branches, individuals and corresponding members of the Committee. More responses might have been forthcoming given more time to consider the possible consequences of this Bill. However we welcome the opportunity to present our views.

Access to credit

In New Zealand, women are prominent in small to medium business enterprises (SME), and are therefore more vulnerable to the changes proposed by this Bill. In guidelines to investors from the Bank of International Settlements (BIS) in Basle, Switzerland, SME are given the highest risk-weighting, in contrast to the low weighting accorded investment in government securities and public utilities. In addition, women have a lower average income than their male counterparts, and have more difficulty accessing credit.

In the current economic climate, there is a strong likelihood of an increasing number of business failures, with a corresponding increase in insolvencies. SME already face compliance costs, debt servicing costs, losses from theft, and losses as an unpaid creditor as other enterprises fail. As people tighten their belts and demand for goods and services drop, SME typically operating on thin profit margins will fail and some file for bankruptcy.

Part 1 Amendments to Insolvency Act 2006 Clause 8 New section 377A inserted

It is a general concern of NCWNZ members that fraudulent practice with or without bankruptcy be addressed. Anecdotal evidence suggests that 'sharp operators' can go bankrupt or merely cease trading, leaving debts unpaid, and 'go round the corner and start all over again.'

NCWNZ welcomes the inclusion of clause 8 providing new section 377A of the principal Act, making debt incurred by fraud or breach of trust an exception to debts that are cancelled as part of a 'no asset procedure' (NAP). The NAP should benefit only people who are in genuine financial strife, and not become the bolt-hole for confidence tricksters who trade in deceit and theft.

Clauses 9 – 13 Public registers

There is concern among respondents that this Bill, by amending the after-effects of the NAP (i.e. placing credit details on a public register for 4 extra years, as set out in Clauses 9 and 10), goes too far from the intention to provide debtors a fresh start, and adds stigma associated with bankruptcy that was initially thought better to avoid.

Some members suggested a shorter period (1–2 extra years) and many recommended budgeting and/or business training during this period as a part of the NAP event. There was concern that insolvents unable to access reasonable credit for even ordinary living expenses for too long would be forced to turn to loan sharks and other expensive credit sources, thus perpetuating poverty, debt and mismanagement.

It is noted that the Bill includes provision in Clause 7 for the Official Assignee to extend the period of the NAP beyond the year designated in the existing Act. Extending the time beyond the Official Assignee's purview that the insolvent's credit details are on a public register is thought by some members to be not only unnecessary, but inappropriate to the original intention of NAP. Anecdotal evidence from an agency that works with people who have mental health issues and credit problems suggests that NAP as defined by the existing Act has been a good thing.

Clauses 9 to 13 of the Amendment Bill constitute a potentially dangerous departure from the Privacy Act and also the Credit Reporting Privacy Code 2004, by proposing to retain multiple insolvents' details on a public register with no statute of limitations. This departure is of grave concern to many respondents. In the absence of fraud, some suggest that even the existing bankruptcy register provisions of seven years are too long. Very few thought that they should go beyond the seven years. One respondent suggested that banks (as creditors) were responsible for the current economic crisis, and there was no need to give them more advantages.

Some respondents wished to support Privacy Commission and Ministry of Justice concerns about the effects this Bill would have if passed. They wished to know how the Government would reconcile the proposal to keep a permanent public record of multiple insolvents' credit histories, with the Credit Reporting Privacy Code 2004 which prohibits credit reporting agencies from keeping information on bankruptcy for more than seven years. Concerns were also expressed on how the discrepancy might impact on credit reporting agencies.

Conclusion

Although a few respondents disagree, NCWNZ general view is that, again in the absence of fraud, Government should not take too punitive a stance when it comes to small and medium business failure. We would prefer to see an approach which encourages this level of enterprise from both the production and consumption aspects. An economy dominated by small business, not just in numbers of employees but also in market share, tends to be characterised by a fairer distribution of ownership, income and wealth. SME have formed the basis of New Zealand's continued relative prosperity, a positive economic climate for women and their families, and indeed for all New Zealanders.

An economy dominated by SME also tends to support stronger, more cohesive communities, a settled workforce and locally based trade. These are aspects of societal structure that will be instrumental not only in economic recovery, but in reducing our collective carbon footprint and, through enhanced community self-sufficiency, buffering the worst effects of the various impending global crises – peak oil, food, water and energy.

This Bill, if passed, will have the effect of substantially reducing the number of SME over time, by barring more and more people from access to reasonably priced credit. This Bill might be characterised as short-sighted, privileging as it does the financial institutions over the producers of the real economy. Given the economic and environmental challenges we are faced with, keeping an increasing number of people out of doing business seems entirely counterproductive.

Insolvency is not a crime, yet the Bill proposes to punish insolvents permanently for fewer events than that proposed for criminals for repeated crimes. Insolvents are often demonised as rogues and cheats, or belittled as having poor business skills and bad judgement, yet nothing is said of the poor judgement and greedy risk-taking of creditors. In the words of Doctor Samuel Johnson:

“Those who made the laws have apparently supposed, that every deficiency of payment is a crime of the debtor. But the truth is, that the creditor always shares the act, and often more than shares the guilt, of improper trust.”

NCWNZ thanks the Select Committee for the opportunity to comment on this Bill.

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