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## Bankruptcy debate stirs emotions

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Sometimes bankruptcy is the only way creditors can recover a debt. But at other times it is a sledgehammer which has tragic consequences, as in the unfortunate case of Melbourne man Luke Phillips.

His case gives a human face to the political debate about proposed changes to the Bankruptcy Act.

On Wednesday, the Senate Legal and Constitutional Affairs Committee divided along party lines on the government's proposal to increase the minimum debt required to bankrupt a person.

The opposition says increasing the minimum debt from \$2000 to \$10,000 would unfairly prejudice small business. But consumer credit advocates argue the move is needed to prevent bankruptcy being used as a debt collection tool and trustees feasting on a debtor's assets by racking up fees far exceeding the debt.

This is what they say happened in Phillips's case. He was treated in 1996 at Melbourne's Vauluse Hospital after being seriously injured when he fell from a third floor balcony. The injury left him unable to look after himself properly.

His insurer refused to pay his bill of \$4887 and nine years later the hospital bankrupted him in his absence. Phillips was hit with trustee's fee nearly three times the original debt.

However, he successfully applied to have the bankruptcy set aside.

Federal magistrate Grant Riethmuller was scathing of the hospital's and trustee's actions. "The only asset available to the respondent to meet these fees is his interest in a home," Riethmuller said at the time. "The debt was for a relatively small sum, which is equivalent to only one-third of the trustee's claims for remuneration and expenses. . . . He is solvent and should never have been made bankrupt."



Prushka Fast Debt Recovery's CEO Roger Mendelson: . . . 'bankruptcy is effective and necessary'. Photo: ANDREW DE LA RUE

But the proceedings took a toll on Phillips and his family; soon afterwards he committed suicide.

Phillips's lawyer Chris Jennings — who acts for both creditors and debtors — said he had mixed views on the proposed bankruptcy changes. "There are scumbag debtors but they are mostly commercial people; they don't deserve any protection," Jennings says. "But someone like Luke, a consumer debtor, needs protection."

The lawyers for the hospital in Phillips's case was Melbourne firm Mendelsons. The website for the firm boasts that it has "industrialised the legal process relating to debt recovery".

Mendelsons is owned by debt collection agency Prushka Fast Debt Recovery Agency. The chief executive, Roger Mendelson, has

been one of the strongest opponents of the bankruptcy amendments. Last week, Mendelson issued a press release saying: "Bankruptcy is effective and necessary, but is also judiciously pursued."

"The threat of bankruptcy is important for getting debts paid from recalcitrant debtors," he says.

Prushka is not alone. The peak body for Building Societies and Credit Unions, Abacus, told the committee that, while its members rarely petition for bankruptcy, "retaining the ability ensures customers make every effort to work through their financial difficulties".

Similarly, insolvency firm PPB told the committee denying creditors access would not encourage incapable debtors, such as Phillips, to deal with their debts. "Instead it allows them to further defer dealing

with their problems," it said. "The consequence is that debts will be allowed to increase to a less manageable level before the debtor is obliged to deal with problems."

Central to the consumer advocates case is the 2007 study *Homes at risk, using bankruptcy to collect small debts*, which found bankruptcy was often a first resort by debt collectors, where the debtor owns an asset, usually a house. It recommended that the minimum bankruptcy debt be increased from \$2000 to \$10,000.

"If [the bankruptcy system] was not set up to give them some quick fix to debt collection," Consumer Action Law Centre Policy and Campaigns Director Nicole Rich says. "It was set up to deal with genuine insolvency, so it is actually a perversion of the policy intent behind the bankruptcy system in any case."