THE AUSTRALIAN

Carnegie warning on changes to bankruptcy laws

GLENDA KORPORAAL THE AUSTRALIAN DECEMBER 10, 2015 12:00AM

Investment banker Mark Carnegie.

Investment banker Mark Carnegie yesterday warned that the Turnbull government's proposed changes to insolvency laws ran the risk of "letting the fox into the hen house".

The proposals, outlined in the government's innovation statement on Monday, are aimed at encouraging a culture which is prepared to embrace more risk.

But Mr Carnegie said the proposal for companies that found themselves in financial difficulties to be allowed to continue trading provided they brought in a “restructuring adviser” could open up a new business for people in the insolvency business.

“It is grotesque the amount of money that receivers make out of assets,” Mr Carnegie told a breakfast in Sydney yesterday hosted by Blenheim Partners and the Macquarie Graduate School of Management for the release of a new report, *The Challenges of Attaining Growth*.

“The personal incentive of letting the fox into the hen house who then sees about three beach houses in the potential new business, who looks around at the business and says ‘I told you you were going to be fine, but now you are not’. It is obscene what happens in the insolvency industry in Australia.”

The government is proposing a series of changes to the laws around insolvency and bankruptcy that would reduce the default bankruptcy period from three years to one. It also plans to introduce “safe harbour” provisions to protect directors from personal liability if a company continues trading while insolvent, provided they appointed a restructuring adviser “to develop a turnaround plan for the company”.

The changes would also end the situation where business contracts were automatically terminated when a company went into insolvency, making it very difficult for the company to trade its way out of trouble.

Mr Carnegie said the government should also consider changes to the bankruptcy laws that would protect the family home and a person’s superannuation savings in the event of bankruptcy, which was the case in some states in the US.

Speaking at the breakfast, Assistant Treasurer Kelly O’Dwyer said the proposed changes to the bankruptcy laws had been recommended by the Productivity Commission. She said the changes moved towards a more USstyle system, but did not involve the adoption of its Chapter 11 regime that allowed companies in difficulties to continue trading under court protection.