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About this Submission and AFCCRA

This submission provides comments on the Exposure Draft of the *Bankruptcy Legislation Amendment Bill 2009*. We note that ‘the exposure draft is intended to provide a basis to seek further feedback from stakeholders and the public on the proposed reforms.’

The submission has been prepared by the Australian Financial Counselling and Credit Reform Association (AFCCRA). AFCCRA is the national peak body for financial counsellors. It adopts a federated system of membership, with each state and territory represented on the Association’s National Council.

Financial counsellors provide free, confidential and independent information to consumers in financial difficulty. A thorough assessment of an individual or family's situation is followed by identifying what can be done to address the financial problems, and the possible advantages and disadvantages of those choices. Financial Counsellors are based in community agencies and are funded largely by State or the Federal Governments.

AFCCRA has long been involved in policy reforms around bankruptcy. For example, we are represented on the Bankruptcy Reform Consultative Committee. Our former Chair Jan Pentland, who passed away recently, was either the sole or joint author of two seminal reports into problems with how the bankruptcy laws currently operate. These reports were:

- ‘Homes at Risk: Using Bankruptcy to Collect Small Debts’¹ in November 2007; and
- ‘Debt Agreements: Remedy or Racket’² in November 2005.

Jan had lobbied heavily for changes and would have welcomed a number of the proposed reforms.

AFCCRA was formed in the early 1980s and received government funding until 1993 to fulfill its peak body role. This funding was withdrawn at that time. Since then, AFCCRA has operated entirely through the efforts of its voluntary Council. The Federal Government has recently again provided a modest amount of funding to

¹ Eastern Access Community Health (Jan Pentland), *Homes at Risk: Using Bankruptcy to Collect Small Debts*, November 2007.

² Consumer Credit Legal Service Inc and Eastern Access Community Health, *Debt Agreements: Remedy or Racket?*, November 2005.

AFCCRA. AFCCRA has now employed an Executive Director, but this position has only been in place for four weeks.

Our submission therefore has been subject to this constraint and we touch only on the 'high level' issues. In a few more months, when the organisation is again able to coordinate the sector more effectively, we would have had the ability to provide a more comprehensive response, including case studies.

However, AFCCRA endorses the comments made in the joint submission of the Consumer Action Law Centre and the Financial and Consumer Rights Council. A number of the proposals in that submission are informed by the two reports described above.

Overall Response

AFCCRA supports the majority of amendments to the *Bankruptcy Act 1966* as set out in the exposure draft.

We are particularly supportive of the increase in the minimum debt for a creditor's petition from \$2,000 to \$10,000.

However, we do not support the proposed increases in the thresholds for debt agreements. There have been continuing problems with the way these agreements are marketed and implemented.

Specific Comments

Increasing the minimum debt for a creditor's petition to \$10,000 (Schedule 4)

As set out above, we strongly support the increase in this limit.

However this amount should relate to the original debt owed. The amount should not include additional figures for interest, collection costs, fees and so on. To do so will defeat the intention of the amendment, since debts can quickly escalate in this way. This problem was highlighted by Jan Pentland in her report 'Homes at Risk: Using Bankruptcy to Collect Small Debts'.³

It will be much clearer, as well as fairer, for the threshold to be set at the level of the original debt, before additional fees.

Increasing the stay period that follows the declaration of intent to file a debtor's petition

We support the extension of the time period from seven days to 28 days. However, there should be the facility for a further 28 day period to run, in certain circumstances, as approved by ITSA. For some debtors, 28 days may not be a sufficient length of

³ Jan Pentland, 'Homes at Risk: Using Bankruptcy to Collect Small Debts', Eastern Access Community Health, 2007.

time to seek advice from a financial counsellor, negotiate with all of their creditors, or for example, to sell their home to avoid bankruptcy.

Debt Agreements

The reason for increasing the threshold for a debt agreement is to encourage more people to consider this option, given that the thresholds were last adjusted in 2002.

The problem with this approach is that the 'product' itself has many flaws. Until these are addressed access should not be expanded. We see no reason as to why this issue cannot be addressed in the review proposed for 2010.