Committee Secretary,
Senate Legal and Constitutional Affairs Committee,
CANBERRA. ACT

Dear Sir,

My name is Betty Weule. I have been a financial counsellor since 1976 and established financial counselling in NSW. I was also a founder member of financial counselling in Australia. I was a member of the Federal Attorney General's Regular Repayment of Debts consultative committee in the 1980s and advised on legislative changes for many years, including the introduction of debt agreements in the 1966 legislation.

Debt Agreements were first introduced in Part IX of the Bankruptcy Legislation Amendment Act 1966 as an alternative to Bankruptcy for low income consumers with little or no assets. It was intended to be a low or no cost administration for those who would be disadvantaged by bankruptcy but who could not afford a Part X. The legislation provided no set format and was virtually unregulated. The early debt agreements were proposed, mainly by financial counsellors, by letter to the Official Receiver in each state who administered them.

The introduction of debt agreements was a long time coming but their introduction took Australia to a leading position in the world in insolvency matters. An industry quickly built up and it became obvious regulation was urgently needed to prevent consumer debtors from being ripped off. These included compulsory trust funds, rules for termination, voting powers, advertising guidelines, registration of debt administrators and an audit system by AFSA.

Further regulation is required but Debt Agreements do play an important role – particularly for consumers who need to protect an asset that would be vested in the Trustee in Bankruptcy or who would lose their employment if bankrupt. A debt agreement can also allow debtors to pay off a significant portion of their debt without going bankrupt.

I would like to make the following brief comments:

- I strongly support the limitation of the life of a debt agreement. However, I feel five years would be a reasonable time. Three years would make many debt agreements non-viable

- It should be possible for debt agreements to be extended when severe hardship occurs, such as severe illness, loss of employment, relationship breakdown.

- Brokers should be banned. I work in an Aboriginal community. Names and phone numbers are obtained by the broker and consumers are cold called and convinced to sign up for a so called ‘government consolidating loan’. No mention is made of the Bankruptcy Act. These brokers appear to be mainly Queensland based but call throughout Australia.

- Greater power given to the Regulation Branch of AFSA to check the affordability of debt agreements, to ensure debt administrators do appropriate checks on income and expenditure, adhere to the Advertising Guidelines and regular audits be conducted on all debt administrators. Power to suspend their licence should be given for serious breaches. For example, a debt agreement cannot be viable when the budget shows $30 per week for food for a sole parent with three children or $70 per week food for a couple with three or four children. Both these examples I have seen recently.

- A restriction on the fees charged to set up an agreement. At present I see them set up for under $2000 to over $5000. Some debt administrators charge additional large fees for extra services such as amending credit files (which cannot be done unless an error has occurred), assisting clients to enter voluntary bankruptcy (a service that can be provided free of charge by any financial counsellor). These add-ons often attract interest.

- Debt Administrators need to keep proof that the budgets are accurate and have not been falsified to encourage creditors to approve them. There needs to be a record kept of pay slips, bank statements to verify expenditure, rent or mortgage proof etc.

- I have concerns about the proposal for payment to income ratio. Every debtor is an individual with individual needs. It is not realistic to establish an income to payment ratio.

- My final comment concerns debt administrators who factor debts. For example, I had a client this morning with five factored debts to the one company. These totalled 85% of her debts. If she had gone to a debt administered who had factored these debts, I believe there would be a conflict of interest. Debt Administrators in this situation should not be allowed to vote.

Please contact me if you require any further information.

Betty Weule, A.M. PhD (law) BA (Social Work)

Financial Counsellor,