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20 November 2009

Mr Peter Hallahan
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hallahan

Inquiry into the Bankruptcy Legislation Amendment Bill 2009

Introduction

The Australian Finance Conference (AFC) appreciates the opportunity to make a submission to the Inquiry. By way of background, the AFC (membership list attached) was formed in 1958 and has evolved to become a non-institutionally based financial services association. Our membership includes participants actively involved in both the banking and non-banking sectors. AFC caters for members' needs in relation to their consumer and commercial activities across Australia, including consumer credit and housing finance, equipment leasing and finance, wholesale and receivables finance, deposit-taking and other fundraising activities.

General Comments

Firstly, it has been and continues to be the AFC's view that the better approach is the Government's original proposal for a more comprehensive review on the role and operation of the personal insolvency system – with appropriate research, identification of specific issues and consideration of relevant options in a more holistic way. We were a little perplexed when the Government suggested a handful of proposals aimed at “responding to increasing numbers of bankruptcies and other personal insolvency administrations”. We remain to be convinced that these ad hoc proposals are the best way to improve our bankruptcy system. In addition, we are concerned that the decisions incorporated in the Bill may well restrict the scope of options available when the broader review is undertaken, which we understand is still on the Government's agenda.

The Explanatory Memorandum states that a policy objective is to “do more to encourage informed decision making and access to alternative solutions”. If this is the Government’s aim, we believe that the aforementioned comprehensive review needs to consider ways of ensuring debtors have greater access to independent advice before entering an arrangement under the Bankruptcy Act. We believe this would be a more effective way to achieve the objective rather than the amendments in the Bill.

Secondly, the Government’s *draft* proposals included a suggestion that the maximum bankruptcy period be reduced to 12 months for first time bankrupts with the possibility of earlier discharge. We strongly support the Government’s decision not to go ahead with that proposal. That proposal would have reduced the deterrence of bankruptcy. Debtors have been, and should continue to be, encouraged to consider other arrangements as a viable alternative to bankruptcy. However, a 12 month period would have provided a greater incentive for debtors to seek bankruptcy as a solution. We support the diversity of arrangements that currently exist in Australia ranging from informal arrangements with creditors, hardship arrangements, debt agreements, through to bankruptcy. This spread, which includes the current bankruptcy period of 3 years, should be maintained.

The AFC also supports the government’s decision not to pursue a proposal to change the permanent status of the public record of bankruptcy and associated personal insolvency events on the National Personal Insolvency Index (NPII). Such information has been important when making lending decisions and is increasingly so with the increased focus on responsible lending standards within the finance industry where financiers are required to conduct reasonable inquiries and checks as to the credit history of an applicant prior to credit being provided. Any reduction in the access to the NPII records would inhibit the carrying out of such responsibilities. Long term data on debtors provides a better predictive picture on the credit risk of an individual. A personal insolvency that is recorded but not made accessible will not provide a complete credit history and may impair the judgment on repayment ability.

Specific Comments on Provisions in the Bill

Increasing the minimum debt for a creditor’s petition to \$10,000

We are aware there is a divergence of views as to what is the appropriate threshold amount. One primary concern is that the proposed \$10,000 will diminish the debtor’s incentive to pay debts up to that amount if the possibility of a creditor’s follow through is reduced. AFC is of the view that an increase of 150% to \$5000 is, on balance, a more reasonable increase rather than a 400% increase to \$10,000.

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

Appreciating that a longer period would allow debtors more time to speak to creditors, consider other options or seek advice, AFC has concerns that 28 days is too long. Ideally, providing a longer period would encourage greater dialogue between debtors and creditors with a view to

working out alternative arrangements to settle debts. In reality there are doubts that the 28 days would be used for that purpose. In the meantime, legitimate judgment debts cannot be enforced. Again, AFC is of the view that a more comprehensive review including research is required to determine such matters as to how, when and where debtors seek advice and what options are offered and explored. Only then can better solutions be proposed. However, if the Bill proceeds, AFC suggests that a doubling of the period to 14 days would be a more appropriate balance than quadrupling to 28 days.

AFC has no objections to the other amendments proposed in the Bill.

Yours sincerely

David Thorpe
Associate Director



AFC MEMBER COMPANIES

Advance Business Finance Alleasing American Express Australian Finance & Leasing Automotive Financial Services Bank of Queensland BMW Australia Finance Capital Finance Australia Caterpillar Financial Australia CBA Asset Finance Centrepont Alliance CIT Group Citi Australia CNH Capital Collection House Credit Corp Group De Lage Landen Dun & Bradstreet Enterprise Finance Solutions Esanda FlexiGroup Ford Credit GE Capital Genworth Financial GMAC HP Financial Services HSBC Bank Indigenous Business Australia Institute of Mercantile Agents International Acceptance John Deere Credit Key Equipment Finance Komatsu Corporate Finance Leasewise Australia Liberty Financial Lombard Finance Macquarie Consumer Finance Macquarie Equipment Rentals Macquarie Leasing	Max Recovery Australia Members Equity Bank Mercedes-Benz Financial Services Nissan Financial Services Once Australia t/as My Buy PACCAR Financial Profinance RABO Equipment Finance RAC Finance RACV Finance Resimac Limited Retail Ease Ricoh Finance RR Australia Service Finance Corporation Sharp Finance SME Commercial Finance Solar Financial Solutions St. George Bank Suncorp Suttons Motors Finance The Leasing Centre The Rock Building Society Toyota Financial Services United Financial Services Veda Advantage Volkswagen Financial Services Volvo Finance Westlawn Finance Westpac Wide Bay Australia Yamaha Finance <u>Professional Associate Members:</u> Allens Arthur Robinson Bartier Perry CHP Consulting Clayton Utz Henry Davis York
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