

P O Box 2261  
Wellington  
Ph: (04) 471-1420  
Fax: (04) 471-1490  
Email: [nzbudget@xtra.co.nz](mailto:nzbudget@xtra.co.nz)  
[www.familybudgeting.org.nz](http://www.familybudgeting.org.nz)

**PATRON: David Russell**

8 January 2008

Kristina Ryan  
Insolvency Law Review  
Ministry of Economic Development  
PO Box 1473  
WELLINGTON

Dear Kristina

The Federation's expertise is in consumer-related insolvency and for that reason I do not propose to comment on the bill's application to corporate insolvency and the regulation of liquidation practitioners. My only observation in this debate is that if there was to be accreditation of corporate practitioners then this may eventually extend to Summary Instalment Order Supervisors and that may be a little more problematic.

The Federation has made earlier submissions on Tier One and Tier Two and met with officials to discuss the intentions. Please refer to our submissions of 26 February 2001, 5 April 2001 and 13 June 2001. The intentions outlined in the draft Insolvency Law Reform Bill are in line with those we expected.

In its final form the bill delivers a fine balance. Our concern has been that increasing the upper limit of unsecured debt from \$12,000 to \$40,000 for both Summary Instalment Orders and Non Asset Procedure could discourage debtors from seeking advice early and could encourage them to commit to more unaffordable debt. On the other hand it does allow greater access to both these alternatives to bankruptcy and does address our call for more responsibility to be borne by creditors who offer credit without due caution. Creditors who extend unsecured credit to a consumer with limited means to pay or secured credit well in excess of repossession values will, under the new provisions find themselves carrying an appropriate share of the risk.

The formula for Summary Instalment Orders of \$40,000 over 3 years (or five at the Official Assignee's discretion) means that full repayment of the maximum debt would involve a weekly outlay as high as \$256.41 and a low of \$153.85. In our experience this will result in few Summary Instalment Orders returning 100% of the debts to the creditors and the ratio may become very low (as little as 10%). Whether this is likely to persuade more creditors to oppose a debtor's application and lead to clogging of the process is yet to be seen.

The Federation totally supports Clause 330(2) requiring parties to be heard if they wish to. The centralisation of proceedings by the Courts has been a problem for debtors and for budgeting services making application on behalf of debtors. We believe there needs to be easy access for debtors to be heard remotely even if this means the Official Assignee has to establish a system of tele-conferencing or appointing examining agents in local communities. It would not be equitable if debtors had to find the additional costs of attending in one of the central locations where Official Assignee offices are based.

Clauses 258 to 260 introduce a radical departure from Section 94 of the Insolvency Act 1967 in respect of post-adjudication interest. As it reads these clauses seem to apply to Summary Instalment Orders. In our experience because few debtors of large debt could pay all the accepted proofs of debt, it is unlikely that they will be in a position to have surplus means to pay interest. However, the application of this to Summary Instalment Orders does appear to make the administration overly complicated. For example,

- Does this mean that every Summary Instalment Order must run for 3 years irrespective of accepted proofs of debt being paid earlier?
- Does this mean that the Supervisor must seek a change to the Summary Instalment Order if, when accepting proof of debt, it is apparent that the creditor has rights to post-adjudication interest?
- Does this mean that those debtors who seek Summary Instalment Orders for relatively minor debt have to pay post-adjudication interest while debtors who run up larger debts and offer less than 100% recovery are not subject to extra charges?

None of these options would encourage use of Summary Instalment Orders as a method for repayment or partial repayment of debt. If these clauses are not intended to apply to Part 5 options then perhaps this should be made clearer in the Bill.

One of the most satisfying initiatives that the Insolvency Law Review produced were the procedure for dialogue prior to adjudication and for the opportunity for NAP debtors to learn skills to avoid falling back into unserviceable debt. These measures above all else reflect the philosophy of the Federation to have people accept their financial responsibilities through education and support. I am not totally convinced that these procedures are clearly identified in clauses 45 to 47 or in clauses 347 to 357.

Yours sincerely

Raewyn Nielsen  
Executive Officer