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Insolvency Law Review  
Ministry of Economic Development  
PO Box 1473  
WELLINGTON

Attention Martin Fowke

Dear Mr. Fowke,

### **Insolvency Law Review: Tier One**

Further to our meeting with Kay Brown and Ruth Bulmer, the New Zealand Federation of Family Budgeting Services Inc. wishes to make the following submissions and to reserve the right to make further submissions relative to the full tier one proposals.

*Consumer related insolvency: (section 4.2)* – In addition to the four causes identified (changing circumstances, lack of awareness, recklessness and dishonesty), the Federation's experience suggests that there is a fifth predominant cause. This is the mix of relative poverty and desperation. Many of the clients presenting to budget services do not have adequate income to meet contingent needs and are forced to take debt to meet essential needs. For the year ended 30 June 2000, the Federation sampled its members for causes of debt and the results of a representative sampling show that debt among clients falls into the following pattern:

- a) Government departments represented 12% of all debt
- b) Court fines represented 7.6% of all debt
- c) Telecommunication providers represented 16% of all debt
- d) Utility Service Providers represented 9.3% of all debt
- e) Accommodation providers represented 35.7% of all debt
- f) Retail Goods suppliers represented 10% of all debt
- g) Trade suppliers represented 5.7% of all debt
- h) Professional Services represented 3.7% of all debt

New clients presented with debt arrears of \$56,752,856.00, up \$368,095.00 or 0.65% on the previous year.

On the basis of voluntary sampling by 25 of the 156 affiliated members it could be said that debt arrears represent 66.6% of total debt which would make the debt owed by all new clients presenting last year to be about \$85,214,500.00. On the basis of the same sampling exercise certificated budget advisers retired 19% of all debt after intervention. This equates to a total of \$16,190,755.00 debt being removed through the support of Federation budget advisers.

*Alternatives to bankruptcy (section 5.1)* – The Federation strongly advocates the benefits of Summary Instalment Orders. Currently about 60 of the 150 affiliated budget services supervise Summary Instalment Orders. While there are known inconsistencies in the administration of the current system, the Federation believes that these can be fixed, and is willing to work closely with the Ministry to identify the problems and solutions to enable this to occur.

As an organisation committed to the concept of voluntary referral, the Federation has weighed the compulsion element of Summary Instalment Order against this philosophy and is satisfied that as long as it remains the choice of debtors to elect or decline to apply for a Summary Instalment Order then this is a viable budgeting tool. The Federation believes it has the skills and resources to provide administration of Part XV proposals and Summary Instalment Orders.

Part XV of the Act is little used by budget services but most operate “Creditors Pools” in one form or other. There is room to continue this less formal method of retiring debt.

These options are useful for having individuals accept responsibility for their financial obligations, where a means to do so exists. Neither option however addresses the secured debt situation which is prevalent. Raising the limit to \$40,000.00 will still exclude secured debts and disenfranchise a large group of people from these alternatives to bankruptcy.

*Credit which the consumers cannot repay – Section 5.4.3.* The Federation strongly favours a review of credit law that puts more onus of responsibility on lenders in offering credit. The Federation is pleased that there will be a form of securities register but sees this as only a first step in reducing the risk of exposing people who lack basic living skills or judgement to decide proper spending priorities. The Federation believes that those lenders that take unreasonable risks should take the consequences of those risks and absorb the costs of collection or loss. The affiliated budget services will have numerous anecdotal accounts of Credit Cards, Hire Purchase and other retail providers that almost willfully trapped people into unsupportable debt.

*Early Intervention – section 7.2.* The Federation strongly advocates early intervention. It has conducted a profiling exercise for the past two years encouraging people to seek out budgeting advice before a crisis situation develops. There are two significant obstacles though. These are the stigma attached to self realisation that a person lacks

financial management skills in a money-oriented society and the new generational culture of acceptance of debt as a norm. The proliferation of credit cards, high mortgages, student loans, etc carries the common message that success is linked to high indebtedness.

The Federation is strongly committed to community education and 135 of its 150 affiliated budget services undertake delivery of education to community groups, schools, churches, tertiary institutions and any other interested party on budgeting and budget planning. These sessions are tailored to specific groups but may include utilities contracts, tenancy agreements, guarantors, repossession, insurances, hire purchase, credit terms, budget worksheets, taxation issues, income support entitlements, consumer law and fines and court procedures. There are 47 dedicated community educators and the trend is increasing for budget services to engage paid or volunteer specialist educators. The aim of these presentations is to destigmatise budgeting and encourage people to know the risks and obligations and seek early intervention when things go wrong.

The Federation supports the proposal to have an “audit” prior to adjudication of bankruptcy. It believes though that the suggested 14 day stay of proceedings is insufficient for other than a cursory appraisal of the debtor’s full financial position. It is the experience of Federation budget advisers that it takes anywhere from two to ten meetings/discussions over a two to six week period to establish the true financial position and contributing factors. The Federation fear that the 14 day period would lead to a simple draft budget worksheet being drafted (the first step of a twelve step programme to develop a budget plan) which would result in many cases proceeding to bankruptcy when other alternatives are viable. It is the experience of the Federation budget advisers that creditors are prepared to wait a reasonable time in the knowledge that skilled advisers are intervening to assess the ability to repay debt.

*Discharge - Section 7.3.2.2* . The Federation shares the objective that people should be able to regain self-dependence as soon as possible. It has concerns about a general reduction to 6 or 12 months for discharge in those circumstances where the people created debt through an inability from disability or lack of skill to manage their financial affairs. In addition to the proposed three monthly declarations for the first year after bankruptcy there should be some process for referral for counseling in those cases where there is evidence to suggest that the person is not coping.

Yours faithfully

Raewyn Nielsen  
Executive Officer