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The Insolvency Law Review
Competition and Enterprise Branch
Ministry of Economic Development
PO Box 1473
WELLINGTON

Attention Martin Fowke & Ruth Bulmer

Dear Mr. Fowke

No Asset Procedure Paper

Thank you for the opportunity to review your current thinking on non-asset consumer bankruptcy. I need to start by saying I like some aspects of the proposal but have some concerns about other aspects. I particularly applaud your initiatives to destigmatise some types of bankruptcy, remove unnecessary compliance and regulatory costs and to pass a greater share of the risk onto creditors for recklessly offering credit availability. My general concern is that the proposal may act as a disincentive for individuals to take and follow sound budgeting advice and could alter the relationship that currently exists between budget advisers and creditors.

I will address my comments in relationship to the paragraph numbers in the paper.

10. The Federation does not necessarily accept that Summary Instalment Orders do not target low-earners. For the twelve months just ended our national profile shows that with 80% of the results analysed 72.8% of the client families are reliant in Department of Work and Income payments. Despite that these budget services are effectively supervising over 1,600 Summary Instalment Orders. (That figure will grow as all annual returns arrive) This suggests to me that there is a place for Summary Instalment Orders to allow debtors the dignity of repaying their debts when they are willing and able. *This Federation does not support the idea that debtors who can afford to meet their commitments should be able to abandon them. The Federation does agree though that for those cases where bankruptcy is the only plausible response then the present deterrents, penalties and creditors' anticipations are meaningless. The progressive stage of considering a Summary Instalment Order and other repayment plans prior to bankruptcy should be maintained.*

16. It is not clear whether the suggested \$18,000.00 income cap applies to each individual and how this translates to a couple with joint debts. If the debtors had some realisable asset but inadequate to avoid insolvency, would there be a process for this person to access this procedure? With a time limit of three years between applications for access to the procedure, is it intended that there be a maximum indebtedness level? What stops a debtor from amassing debt levels for clearance every three years?

17. The procedure does not seem to allow for a referral for financial or budgeting advice before it is activated by the Official Assignee. Again that seems to discourage the debtor being guided to use the other available options of a budget plan, a creditors pool and/or a Summary Instalment

Order. One of the attractive proposals of the Tier One Review was that there would be a period (you suggested 2 weeks - we thought six weeks more practical) for assessment prior to the bankruptcy application being acted on. *The Federation continues to believe that there should be a period of time after filing but before adjudication of bankruptcy for alternatives to be investigated and assessed.* This is inferred in paragraph 36 but the paper does not explore how this should happen.

25. Mandatory budgeting or “budget management training” does not work. The previous Government through a WINZ Special Needs Grants referral scheme tried this and District Courts continue to direct that a debtor accept budgeting advice. Unless a person is genuinely motivated to take and act on budgeting advice then the referral will simply waste the time of the debtor and the valuable time of mainly volunteer budget advisers or commercial debt counsellors. In reality though if a debtor cannot meet past responsibilities through Summary Instalment Order or other repayment plans it is unclear how s/he could be expected to pay for counselling. That is not to say that there are not ways of making positive referrals to budgeting advice and the Federation would be interested in working with the New Zealand Insolvency and Trustee Service to show its staff how this could be done. *The Federation does not believe that it should be sufficient that a debtor undertake mandatory budgeting training. There should be a commitment from the debtor to prepare a budget plan and to demonstrate an understanding and application of this plan over a period of time, maybe of six months to a year.* Nothing less would give any satisfaction that the debtor has acquired adequate skills to prevent a recurrence of avoidable indebtedness. Even insisting that a consumer bankrupt work with a manager in some form of total money management scheme would not provide the level of skill transfer to avoid repetition. Currently the Federation’s budget services have over many years of involvement established a credibility with creditors by working to achieve at least partial debt recovery when that is practical. This has produced an atmosphere of respect and integrity that has meant that creditors are more likely to forgive debt if the budget advisers’ assessments show this is the most plausible and practical solution. There is a school of thought that if budget services were now seen as simply a mechanism for consumer bankrupts to be quickly discharged, those long-established relationships with creditors would suffer. That is the reason that the Federation wants to see bankruptcy remain the last option.

I gained an impression that the motivation for this proposal is to reduce the State’s costs in administering insolvency. That is commendable but the assumption that the debtor, or commercial or community based agencies can pick up the added work without some recognition from the State is I believe, misguided. A debtor reliant on benefit may be looking for the State to pay for his/her “mandatory budget training”. Some of the community based budget services are currently contracted at various levels by Government to assist beneficiaries and to deliver some community awareness and education. There is little recognition for the costs of total money management and most budget services are reliant on community support for those costs. For those that have the capacity to offer this new range of clients some budgeting help, there would need to be some recompense. While the Federation offers free advice to clients, its members services do need to be resourced and funded.

I hope we can discuss this further.

Yours sincerely

Bryan Fox
Resource Manager