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PATRON : David Russell

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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 my submission of 26 February 2001 (copy enclosed), I wish to add the following points based on feedback from affiliated budget services.

Alternatives to bankruptcy

1. There is unanimous support from the affiliated budget services for the availability of Summary Instalment Orders to continue, albeit with some rework on some of the inconsistencies being applied to administration of the Summary Instalment Orders (District Courts) Rules 1970. Feedback from around the country points to variances brought about from disinterest by some Court Managers, poorly trained Court staff, and more recently with the Department of Courts restructuring, unavailability in close proximity to any Summary Instalment Order service in terms of available Judges or time. Based on the latter experience, centralisation of administration just would not work.
2. Raising the maximum allowable unsecured debts to a value of \$40,000.00 creates its problems in that unless the time limit of three years is increased, the required repayment rate would mean, either:
 - a) Very few having the income to service the repayments on top of living expenses, or
 - b) Greater use made for orders to repay at less than the full rate.However, leaving the maximum of unsecured debt at a \$12,000 value will, in today's debt environment disenfranchise some from the option of Summary Instalment Orders.
3. There is no present remedy for people who find themselves over-committed with secured loans and Hire Purchases. They are forced to surrender the goods which after depreciation still leaves substantial liabilities to be met. One option is that certain essential items (e.g. refrigerator, washing machine, beds, clothing, etc) be allowed to be included in the value of unsecured debt for the purpose of eligibility to access a Summary Instalment Order. The Department of Work and Income has already done some work in this regard so it would not be totally new ground. A schedule could be added to the new legislation or there could be discretion and guidelines for Judges.

Credit which the consumers cannot pay

Current law does not place enough responsibility on the creditor for actions in extending credit. There should be some recognition for irresponsible risks. This could be framed in some formula of credit value as a ratio of income. Some examples from our members include:

- (i) Unsolicited issue of credit card applications. The worst case reported was an application sent to long term invalid beneficiaries of poor intellect who on application received a \$10,000 limit which they proceeded to spend to the full limit. Had there be any checks done, the bank would easily have discovered a trail of bad debt and low income and no likelihood of real improvement.
- (ii) Automatic raising of credit card debt. The same couple having reached its approved limit was automatically given an increase. Ultimately, after much advocacy by a budget adviser the bank had to accept the responsibility and wipe the full \$14,000.00.
- (iii) There is a questionable practice for a person to take out hire purchase for another person with or without the permission of the trader.

Early Intervention

There is wide-spread doubt that a fourteen day stay of proceedings would achieve what the Ministry intends. The period needs to be prescribed in law. In the Federation's first submission I advocated up to six weeks. It is our practice as budget advisers for the following to happen when bankruptcy seems a likely outcome:

- a) Ensuring a working bank account after bankruptcy
- b) Continuation of utilities
- c) Preparation for restrictions of bankruptcy
- d) Ensuring living expenses are covered, and
- e) Preparation of a long-term plan to repay debt over a set time as an alternative to bankruptcy, or
- f) Preparation of a long-term plan to avoid a repetition.

I would be pleased to discuss my submissions with you.

Yours sincerely,

Raewyn Nielsen
Executive Officer