Joint submission by:

Financial Rights Legal Centre

Consumer Action Law Centre

Financial Counselling Australia

Justice Connect

Redfern Legal Centre

Indigenous Consumer Assistance Network (ICAN)

Financial Counsellors' Association of Western Australia

Financial Counsellors' Association of New South Wales

Care

Marrickville Legal Centre

WEstjustice

Attorney General's Department

Personal Insolvency Discussion Paper

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Recommendations

This submission makes the following recommendations.

- The bankruptcy threshold should be raised to $50,000. This will more equitably balance the interests of creditors and debtors while addressing some of the more egregious misuses of the bankruptcy system. We support a swift transition with immediate effect for new bankruptcy notices.
- Effective immediately, extend the timeframe to respond to a bankruptcy notice from 21 days to 60 days to provide sufficient and equitable access to assistance with insolvency matters.
- Part 13 of the *Bankruptcy Regulations 2021* should be comprehensively updated and modernised to ensure the National Personal Insolvency Index (NPII) operates in a fair way with a proper purpose, and in alignment with Australia's credit reporting framework.
- A person's listing/s on the NPII should be completely removed two years from discharge from bankruptcy.
- A person's listing/s should be completely removed from the NPII within 28 days of the date their bankruptcy is annulled.
- A creditor's petition dismissed by the Court should not appear on the NPII.
- The Attorney-General should make a legislative instrument setting the 'payment-to-income ratio' such that the effective minimum annual income threshold to enter a debt agreement is linked to the Base Income Threshold Amount ($66,639) or, alternatively, the National Minimum Wage ($45,905).
- A No Asset Procedure, with expedited bankruptcy discharge, be considered.

Introductory comments

Thank you for the opportunity to respond to the Personal Insolvency Discussion Paper.

We were disappointed to find the Paper contains multiple instances of irrelevant or misleading data, and misconceptions about the relationship between the bankruptcy threshold, voluntary bankruptcy and insolvency alternatives. We are concerned this may impact the quality of responses to this consultation, given the framing of the issues being addressed is inaccurate in a number of ways.

We strongly support raising the threshold to protect low-income debtors from the harsh consequences of creditors pursuing bankruptcy over small debts. The proposed level does not adequately balance the needs of both creditors and debtors.

Being forced into bankruptcy can have severe and unfair consequences, including relationship conflict and breakdown, deterioration of mental health and homelessness. It involves highly stressful court proceedings, with tens of thousands of dollars in legal and trustee fees added to the debt in the process.

Most personal insolvency stakeholders agree that unnecessary bankruptcies over small debts do not benefit families, creditors or the broader community.

The existing threshold of $10,000 for a creditor's petition is far too low. It means that a small debt from a credit card, or overdue strata levy, can lead to the loss of the family home, as some case studies in this paper attest. Raising the threshold to only $20,000 as presently proposed will continue to facilitate misuse of the bankruptcy system as a harsh and disproportionate debt collection tool.

The Discussion Paper's proposals for addressing the endemic problems we see in bankruptcy are inadequate. It is our view that:

- The bankruptcy threshold should be $50,000
- Bankruptcy notices should allow a 60 day response period
- Listings on the NPII should align with credit reporting obligations (that is, removal 2 years after the bankruptcy is completed)
- While we support the debt agreement proposals, there is a broader discussion needed around additional personal insolvency options including a No Asset Procedure.

Creditors should continue be able to use the court system to recoup unpaid monies. Increasing the threshold for involuntary bankruptcy does not affect other court enforcement options which remain available to creditors. Presently, the inappropriately low threshold results in bankruptcy proceedings being used to aggressively pursue people for very small amounts, in lieu of collection options that are less stressful, humiliating and expensive for the debtor.

People want to pay their debts where they can

People's willingness to pay debt is largely dependent on their capacity to pay, or their perception of the legitimacy and fairness of the debt, rather their perception of available creditor remedies. There is no evidence that people intentionally borrow amounts below the current threshold because they will be able to get away with not paying those amounts back. People regularly incur debt far in excess of the current threshold, and routinely pay back debts which are below it.

There is no moral hazard in increasing the bankruptcy threshold. Further, taking away forced bankruptcy as an option for smaller debts does not leave creditors without recourse as there are other enforcement options available.

The bankruptcy system is intended to facilitate the orderly distribution of assets in circumstances where a person is insolvent and cannot meet all their debts. It is not intended to be another debt collection tool, and certainly not a debt collection tool of first resort.

Increasing the threshold

1. **Question 1:** Do you believe that any of the current economic circumstances have the capacity to inform the policy setting for increasing the default bankruptcy threshold to $20,000? Please expand on your response
2. **Question 2:** If you do believe that any of the current economic circumstances have the capacity to inform the policy setting for increasing the default bankruptcy threshold to $20,000, should there be a transition period before any reforms take effect?
3. **Question 3:** If you do not believe that any of the current economic circumstances have the capacity to inform the policy setting for increasing the default bankruptcy threshold to $20,000, please explain whether an alternative amount should be considered for the threshold and why.

We welcome the proposal to increase to the bankruptcy threshold. However $20,000 will not be enough to address forced bankruptcy for inappropriately small amounts.

The $20,000 proposal is incredibly conservative. As outlined in the AFSA data table on page 9 of this submission, the difference between a threshold of $20,000 and $50,000 is 47 additional forced bankruptcies.

As we discuss at length in this submission, legal and debt collection fees add so much additional debt to the original debt that the path toward bankruptcy becomes unavoidable other than by forced sale of an asset (if there is one). This means people are effectively bankrupted into homelessness.

A higher threshold incentivises fair and reasonable debt collection behaviour, in order to genuinely attempt to recoup the debt or come to an arrangement before pulling the trigger on bankruptcy proceedings. A willingness to act fairly toward a debtor is notably absent in the case studies presented in this report.

In the Australian context, a $20,000 debt is relatively small and the consequence of being pursued – including the loss of a home where there is one – is disproportionately harsh. We can go some way toward fixing this by setting a suitable threshold, which in our view, is $50,000.

Getting the data analysis right - forced bankruptcy data only must drive threshold decisions

We are deeply disappointed the Discussion Paper fails to discern key differences between forced bankruptcy and voluntary bankruptcy. This critical difference is the starting point for establishing an appropriate threshold.

The graphs and data included in the Discussion Paper are at best irrelevant and at worst misleading to stakeholders who are not as familiar with voluntary vs involuntary personal insolvency proceedings. The only truly relevant data contained in the first section of the Discussion Paper about increasing the threshold is found on Page 6:

> "In 2021-22, 91% of new bankruptcies were initiated by debtors' petition (voluntary bankruptcies). This proportion decreased from 95% in the 2020-21 financial year. In 2021-22, 9% of new bankruptcies were initiated by creditors petition, and 5% in 2020-21."

To be absolutely clear, voluntary bankruptcies will be unaffected by the proposed change to the threshold. Debtors can choose to go bankrupt for any amount of debt after weighing their options. There is no minimum amount. The Discussion Paper concludes that setting the threshold for involuntary bankruptcy at $20,000 would mean that 81.9% of new bankruptcies would continue to meet the threshold. In fact, based on historical data in the Department's own August 2020 Discussion Paper dating back to 2007, between 88% and 95% of bankruptcies will proceed unaffected whether the threshold is increased to $20,000, $50,000 or indeed $100,000. The aforementioned 2020 Discussion Paper suggests that in this time period, the percentage of bankruptcies initiated by creditors petition has not exceeded 12% and was lower than this in all but one financial year. The analysis in the current Discussion Paper is simply wrong-headed and there is a lot more room to change the threshold than the paper suggests, while still having a minimal impact on the overwhelming majority of bankruptcies.

The paper also points out that 52.7% of bankruptcies in the 21/22 financial year involved debts of less than $50,000. Again, the overwhelming number of those bankruptcies were voluntary and will be unaffected by any change. Data obtained from AFSA and reproduced later in this submission shows that only 3.3% of bankruptcies involving total debts below $50,000 were initiated by creditor's petition, representing only 87 bankruptcies. While these numbers could grow as the cost of living crisis develops, and the backlog of enforcement action from the COVID-19 impacts works through the system, this reform will inevitably only impact a very small percentage of bankruptcies. However, the impact on those people who are made bankrupt as a result of enforcement action can be profoundly negative.

The Discussion Paper also appears to misconstrue the relationship between the bankruptcy threshold and insolvency alternatives, such as debt agreements. On page 6 the Discussion Paper suggests that increasing the threshold will encourage the use of alternative insolvency options. On page 14 it suggests that debt agreements are only available to people with debts of less than $10,000. This relationship does not exist. The threshold of unsecured debt below which a person may enter a debt agreement is an indexed amount currently sitting at

$137,537.40[1]. Debtors who meet the criteria for a debt agreement can already enter a debt agreement for amounts far above the threshold, and that possibility will be unaffected by any change in the threshold for involuntary bankruptcy.

Current economic circumstances

Many current economic circumstances support raising the threshold, including:

- High rates of inflation increasing the cost of living and reducing the relative worth of money;
- Australia's average household debt is extremely high, having grown 7.3 per cent to $261,492 in 2021-22[2]. High interest rates, combined with high household debt levels, leading to high levels of financial stress and a significantly larger proportion of the population carrying debts exceeding the threshold.

However, these are not the main driver of the need to increase the bankruptcy threshold. The main driver from the consumer perspective is the need to prevent the misuse of the insolvency system as a heavy-handed, disproportionate debt collection tool, when there are other more appropriate tools available. We don't want people being forced to sell their homes where it is avoidable. These arguments are elaborated on more fully below.

Impact on Lending Confidence

The Discussion Paper suggests that increasing the threshold may have a negative effect on lending confidence. The purpose of the bankruptcy threshold is not to discourage or prevent people from incurring unmanageable debt – that is why we have responsible lending laws.

The availability of credit in the economy is important to everyone – debtors, creditors, businesses, and government. We reject the implication of the Discussion Paper that a higher threshold will in some way result in less credit being made available because of a change to a threshold for involuntary bankruptcy. It does not change the criteria lenders must apply to meet responsible lending obligations, nor prevent a loan being offered on terms agreed by both parties, nor does it prevent any party who is owed a debt using the legal means available to collect a debt.

Businesses are adept at making decisions to offer credit or services while considering an array of risks. More recently, a highly sophisticated credit reporting regime has been implemented that allows participants to access the repayment history of potential customers, to also inform their lending decisions. Businesses will continue to make decisions in the interests of

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[1] https://www.afsa.gov.au/professionals/resource-hub/resource-hub/indexed-amounts as at 20 September 2023

[2] Australian Bureau of Statistics, 13 December 2022, *Average household debt grows 7.3 per cent*, https://www.abs.gov.au/media-centre/media-releases/average-household-debt-grows-73-cent

themselves and their shareholders that take into account a range of circumstance, not just the bankruptcy threshold.

Over use of credit isn't the only reason people are made bankrupt

Not all bankruptcy proceedings are due to credit that can't be repaid. Analysis from Financial Counselling Australia indicates that for the 2023 year to date, 8% of bankruptcy filings have been initiated by owners corporations seeking unpaid levy contributions. Our 2019 report *Who is making Australians Bankrupt*? found the Australian Tax Office (ATO) to be the most prolific user of the bankruptcy system to pursue debtors. Court data indicates that the ATO has significantly increased collection activity in 2023, In some instances, debts can relate to micro businesses being unaware of obligations to charge GST on products, or the requirement to pay the Superannuation Guarantee, which results in a debt to the ATO. Records of parties bringing creditors petitions in the Sydney registry by our financial counsellors also show high usage of the bankruptcy process by strata corporations, the ATO and a workers compensation insurer. Again these organisations do not offer credit in the sense envisaged by the Discussion Paper.

We also see clients in bankruptcy proceedings due to accidents and underinsurance – once again, not due to any apparent 'current economic conditions' that could result in a reduction of available credit to the economy.

Raise the forced bankruptcy threshold to $50,000

Any person can choose to enter bankruptcy for any amount of debt. There is no threshold for voluntary personal insolvency. The key issue for these proposed reforms is the amount of debt over which a person can be forced into involuntary bankruptcy by their creditors.

Voluntary bankruptcy makes up the vast proportion of personal insolvencies in Australia, as AFSA's data shows. For these people, bankruptcy is an active decision they make after weighing up the negatives and positives in light of the debt they have accrued and are unable to repay.

People <u>forced</u> into bankruptcy are in a different situation, and are not making the same calculated decision. In our experience, many people want to pay their debts but simply cannot afford the payment amounts demanded by their creditors. Small business financial counsellors tell a similar story - that most small business owners simply cannot afford to pay what is demanded of them in the timeframe required.

The debt threshold of involuntary bankruptcy is therefore an important protection that both gives recourse to creditors looking to collect their debt and debtors who are willing to make arrangements to repay.

We sought data from AFSA to understand the number of **forced** bankruptcies occurring. 51.1% of <u>all</u> creditor's petitions were for amounts under $50,000. At least 34% of creditor's petitions were for debts under $30,000.

In the period 2021-2022, there were 87[3] forced bankruptcies (sequestration orders) for amounts under $50,000. This constitutes only 3.3% of all bankruptcies under $50,000 that year. This is the group of people for whom a higher threshold would have protected from forced bankruptcy.

Creditor's petitions during 2021–22 financial year

Liability amount	Number of creditor's petitions	Proportion of total creditor's petitions
Claims not reported	21	2.1%
Less than $10,000	0	0.0%
$10,000 – $19,999	215	21.2%
$20,000 – $29,999	131	12.9%
$30,000 – $39,999	93	9.2%
$40,000 – $49,999	58	5.7%
$50,000 or more	495	48.9%
Total	**1,013**	**100.0%**

Type of bankruptcies with less than $50,000 liabilities in 2021–22 financial year

Liability amount	Number of debtor's petitions	Number of sequestration orders	Number of bankruptcies	Proportion of bankruptcies that were debtor's petitions	Proportion of bankruptcies that were sequestration orders
Less than $10,000	347	27	374	92.8%	7.2%
$10,000 – $19,999	685	20	705	97.2%	2.8%
$20,000 – $29,999	600	15	615	97.6%	2.4%
$30,000 – $39,999	523	15	538	97.2%	2.8%
$40,000 – $49,999	424	10	434	97.7%	2.3%
Total	**2,579**	**87**	**2,666**	**96.7%**	**3.3%**

Data caveat

- Data has been extracted from AFSA's live systems and is subject to development. This may lead to small variations with AFSA's final official statistics.
- Liability statistics are sourced from the Statement of Affairs – also called the 'Bankruptcy Form' – which is self-reported to AFSA by debtors.

[3] We note that 27 sequestration orders were for amounts below $10,000. We do not know what led to these orders but we assume they originated from creditors petitions for amounts above the current threshold that were subsequently reduced, or in the other limited circumstances in which a debtor petition cannot proceed without an order of the court.

Raising the threshold to $20,000 as proposed would mean that up to 47 of the above sequestrations order would not be made and 215 creditors petitions would not be issued based on last financial year's data. However, it would only take a relatively small amount of additional legal fees or interest to take these debtors back into the danger zone. Increasing the threshold to $50,000 would pick up another 40 sequestration orders and 282 creditors petitions, but more importantly, it would make sure that the debts in the lower range would remain below the threshold, and enforced via alternative means. In our experience, as many of the case studies in this submission attest, the underlying debts for creditors petitions in the $20,000-$50,000 range are often below $20,000 in any event, with the balance made up of legal fees. Setting the threshold at $50,000 is effectively setting a $20,000 threshold for the underlying debt.

A low threshold means bankruptcy is not being used as a 'last resort'

Forced bankruptcy should be the very last resort when it comes to debt enforcement. Instead, we continually see people being pursued for debts as a first response, rather than a last resort.

The creditor's petition threshold is not indexed and has fallen behind the rising cost of living, and increased size of consumer credit loans in Australia. We strongly support increasing the threshold to $50,000 for many reasons, and particularly:

- to prevent the disproportionate impact of bankruptcy when used to enforce small debts;
- to ensure that the threshold is proportionate to the typical costs of the bankruptcy process, including legal and trustees' fees added along the way – often exceeding $50,000;
- to discourage bankruptcy action over small debts, as a means of intimidation and harassment;
- encouraging the use of the other, often more appropriate, options creditors have to enforce debts; and
- to reduce opportunities for debt collectors and lawyers to benefit from the bankruptcy process at the expense of both debtors and creditors, as we observe in relation to strata schemes.

Punitive effect of bankruptcy for small debts

The punitive effect of bankruptcy on people with small debts is disproportionate to the problem it addresses, particularly given there are more appropriate ways to protect the interests of creditors. Bankruptcy proceedings against people with small debts results in disproportionate harm to the debtor, because:

- they are usually forced to sell their homes (or have it sold by the trustee in bankruptcy);
- they face all the restrictions and personal ignominy of bankruptcy; and
- even if they are able to annul the bankruptcy, it can cost tens of thousands of dollars in legal and trustee fees. For a debt of $10,000, the combined fees are often 4-5 times the debt itself – and often over $50,000.

Many clients we have assisted over the years in relation to forced bankruptcy have been retired or forced to retire early because of illness or disability. Their home had been a crucial part of their plan to maintain a satisfactory standard of living in retirement.

In our experience, many debtors are willing to make reasonable repayment offers, or compromise arrangements, that would result in a significant proportion of all creditors' debts being paid. Sometimes the debtor can afford to repay the debts but cannot afford the legal and other fees that are continuously added along the process.

Forced bankruptcy can be an enduring result of financial abuse

The consequences of bankruptcy are exacerbated for victim survivors of domestic violence and financial abuse. Financial stress perpetuates domestic violence and financial abuse,[4] and the significant risks associated with bankruptcy often create a cycle of ongoing financial abuse by incentivising the perpetrator to put debts in their partner's name to avoid the threat of bankruptcy.

Where a victim survivor of financial abuse is forced into bankruptcy, they lose standing to seek an adjustment of interest with respect to property under the *Family Law Act 1975* (Cth). That is, they lose the right to seek a property settlement with their ex-partner (except in relation to superannuation). However, the perpetrator is still able to seek an order for a property settlement and seek that they be prioritised over the creditor, because a non-bankrupt spouse can seek an interest in property that has vested in the trustee, even where their conduct has contributed to the forced bankruptcy. We acknowledge that this interaction between the *Bankruptcy Act* and the *Family Law Act* is intended to protect the non-bankrupt spouse. However, perpetrators of family violence often exploit the system to the detriment of the victim survivor who is left bankrupt, has no standing in the Family Court, and often loses their home, while the perpetrator is able to seek priority over the property vested in the trustee.

Louisa's story

Louisa* was married for almost twenty years. Unbeknownst to her, her husband listed her name as a director of several companies and then proceeded to make risky investments through those companies. He held all assets in his name and left her with all the risk. Louisa signed some documents after experiencing relentless pressure and threats from her husband, not fully understanding the legal implications of what she had signed.

Louisa's husband's business dealings resulted in her becoming bankrupt. Louisa separated from her husband. Proceedings were commenced in the Family Court and Louisa attempted to represent herself. As she was a bankrupt, she had no standing to seek orders for a property settlement. Her husband retained the assets in his name, including a property. Louisa, as a bankrupt, received nothing. Had she not been made

[4] Kutin, J., Russell, R., and Reid, M., Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress. Australian and New Zealand Journal of Public Health, 2017. 41(3): p. 269-274.

bankrupt as a result of her husband's business dealings, Louisa would have been able to seek a property settlement. Louisa now has no grounds to set aside the Orders made by the Court.

This case shows the significant disadvantages experienced by a party who has been financially abused, and the interactions between Family Law and Bankruptcy legislation. This is an area of law which needs reform to protect people experiencing financial abuse.

Source: Redfern Legal Centre

Impact of added legal and trustee fees

As detailed in our 2019 report *Who is Making Australians Bankrupt?*, small debts quickly become very large debts due to the addition of debt collection, legal and trustee fees throughout the debt enforcement and bankruptcy process.

The creditor's petition process alone involves the addition of significant legal fees. Many debtors who seek advice from our services can pay, or indeed have already paid, the original debt but cannot afford the fees that have since been added. While the legal costs awarded by the court in relation to a creditors petitions are about $8,000, in our experience legal practitioners often claim significantly more in negotiations in order to withdraw the petition.

Accordingly, there should be a significant buffer in the creditor's petition threshold so that creditors cannot meet the threshold by the addition of legal fees alone. Given a single consumer debt is often as high as $30,000-$35,000, and a buffer of $15,000 for legal fees is reasonable, a threshold of $50,000 is appropriate.

Fred and George's story

Fred and George received a bankruptcy notice for about $26,000. They said the Notice mostly related to legal costs stemming from legal action from a neighbourhood dispute, which was ultimately settled out of court. They said the costs were assessed, but they were never entitled to see the costs assessment and that extra charges were also added.

They put forward a payment proposal through the solicitor who acted for them in the neighbourhood dispute, and it was rejected. The creditor's solicitor gave them a very short time to respond before they threatened to proceed with a creditor's petition, which is when they contacted us for legal help.

This matter was complicated, because Fred and George's home was bought with personal injury compensation money Fred received after a car accident many years prior. The home is held in both names as joint tenants. This meant that only Fred's share of the home would be protected in bankruptcy, not George's, meaning the home was at risk.

Fred and George scraped together half the amount on the bankruptcy notice, and Fred's parents agreed to pay the other half.

The creditor’s lawyers then demanded an extra $2,400 disbursements and legal costs (for putting together terms of settlement) which Fred and George can't afford to pay. In our experience, the safest thing to do in this situation is to pay these costs as quickly as possible, in order to limit your exposure to further legal action and costs.

Source: Financial Rights Legal Centre, C236959 (2023)

Sheree’s story

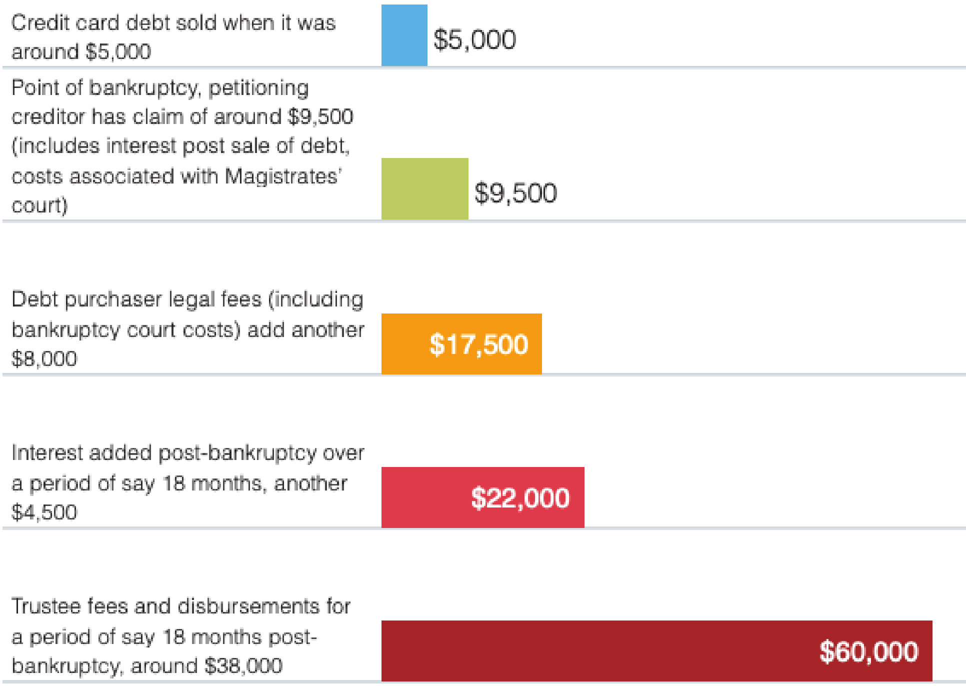
Sheree’s small business was hit hard by drought, a storm surge and then bushfires. While her business did not burn, it was severely impacted by the evacuation of the town and then the sharp decrease in the tourist trade. One of her suppliers then tried to bankrupt her for a debt. Upon further investigation it became apparent that Sheree had already reduced the debt to the supplier from $27,000 to $4,000, but $16,000 had been added in legal fees.

While her business interruption insurance paid the storm surge claim for the disruption, they said she needed a new claim for the fires. They told her that the monthly payments would be slow to come through due to the increase in insurance claim volumes as a result of the multiple disasters.

Financial Rights took on Sheree’s case and was able to get her an adjournment on the bankruptcy proceedings so that negotiations could continue. She was eventually able to pay the creditor from a bushfire grant (which would not have been enough to annul the bankruptcy had the creditor’s petition proceeded on the first occasion). Small business owners like Sheree are very vulnerable to aggressive enforcement action by their creditors, and have few rights or protections at law or under industry codes or guidelines. Raising the threshold would give small business owners affected by extreme weather events a fighting chance. Creditors can still use other legal processes to pursue their debts.

Source: Case study provided by Financial Rights Legal Centre (C199922)

The following example, excerpted from page 8 of the Report, is from the casework of Consumer Action Law Centre and involved a client who had an initial credit card debt of around $5,000 (when the bankruptcy threshold was $5,000). The amount outstanding 18 months after the forced bankruptcy was around $60,000.



This example shows how a creditor choosing the forced bankruptcy process to enforce debt can result in $40,000-50,000 of fees and charges along the way. Debtors have few effective means to challenge these fees, even when exorbitant. It is a very poor use of the bankruptcy process – and the consequential stress and adverse consequences for the debtor – when the debtor's liabilities are far less than the cost of the process. An increased threshold of $50,000 would have prevented this outcome.

These issues have not been fixed by the increase of the forced bankruptcy threshold to $10,000. This is unsurprising given that small debts quickly surpass $10,000 due to the addition of debt collection and legal costs, as the following case studies demonstrate.

Hann's story

Hann had a credit card with a $6,000 limit. About four years earlier he had been through a period of unemployment and had stopped making repayments on the card. The resulting debt had been sold to a debt collector and a bankruptcy notice had been issued on a judgment debt of nearly $9,000.

Hann rang the National Debt Helpline for advice when he faced a creditor's petition to make him bankrupt for $16,000. The debt had increased due to costs. Hann was paying off a house with a mortgage that his mother and brother were living in, but the home had very little equity. He did not want to go bankrupt and lose the house. He was earning a decent salary but he was renting and supporting a wife, child and mother in law. He offered $300 per month but the debt collector said that was not adequate.

After receiving advice on six occasions over the coming week, he ultimately agreed with the debt collector that it would withdraw the proceedings by consent and set aside the default judgment if he paid $10,000 by the following Monday and a further $5,500 by the following day. It was unclear, but it appeared he was borrowing the money to meet this arrangement.

Source: Case study excerpted from Who is Making Australians Bankrupt?

Lynda's story

Lynda is a 30-year-old Aboriginal woman who is married with two children. She suffers from severe depression. She and her partner are paying off their home and have a $180,000 mortgage in regional NSW. She is currently on sick leave and waiting for Centrelink to be approved. Her partner works but earns a relatively low income.

Four years ago, she obtained a credit card as a result of buying goods on credit in a department store. She asked for a $5,000 limit but was granted $10,000. She fell into financial difficulty not long afterwards as a result of a back injury and reduced working hours. Her mental health also deteriorated and she stopped responding to collection calls and correspondence.

A debt collector bought the debt, obtained judgment in the Local Court and proceeded to make Lynda bankrupt via a creditor's petition in the Federal Circuit Court. The debt had by then increased to $16,000 with interest and legal fees. At the time of seeking advice, the trustee in bankruptcy said it would take $48,000 to annul the bankruptcy. Neither Lynda, her partner nor their extended family could raise this much money, which was roughly the same as the equity they held in the home. Lynda and her family had no choice but to allow the trustee to sell their home, or to seek permission to try to sell it themselves and annul the bankruptcy.

Source: Case study excerpted from Who is Making Australians Bankrupt?

Thilini's story

Thilini was served with a bankruptcy notice for school fees of $30,000 during COVID lockdown. She and her husband had divorced and she was struggling to make the payments on her own. She didn't want to change her daughter's school during the pandemic.

Thilini did not answer door when she was served. She did not see the bankruptcy notice or the Creditor's Petition and was declared bankrupt in her absence. English was Thilini's second language, so when she received a letter from her Trustee stating that she had been made bankrupt, she asked her daughter to telephone the Trustee and ask how much they had to pay to get out of bankruptcy. Thilini thought that perhaps she could borrow the money from relatives.

Instead, Thilini was told that that with the additional of trustee and legal fees, she now owed close to $100,000 – an amount she could only repay by selling the home that she and her daughter lived in.

Source: Justice Connect client, 2021

We note that a lot more bankruptcy notices and creditor's petitions are issued than result in sequestration orders. According the AFSA statistics quoted above, there were 1013 creditors petitions issued, of which 497 were for amounts below $50,000. From these only 87 sequestration orders were made.

Data included in the Department's August 2020 Discussion Paper suggests that there are at least twice as many bankruptcy notices issued as creditors petitions. Creditors use this process because it is a very effective means of debt collection. Many debtors pay up because they are threatened with bankruptcy, often resorting to desperate means to find the money. Our advice line staff report that people faced with these processes borrow the amount demanded from high interest credit providers, lean heavily on family who may themselves be already in hardship, and in some cases express suicidal ideation.

Sven's story

Sven is in his mid-50's. He owns a property that his ex-wife and son live in. Sven makes all the mortgage payments.

Sven told us that his ex-wife obtained a credit card online in his name. He was not aware that she had done this. At some stage, a debt from the credit card was assigned to a debt collector.

The debt collector obtained judgment against Sven in relation to the credit card debt. He was not aware of the judgment debt until he received a bankruptcy notice. Sven contacted us for advice after the bankruptcy notice had expired, At this stage the debt was just over $20,000.

Sven and his ex-wife agreed that Sven would pay $15,000 towards the debt and that she would pay $5,500. However, after the debt collector sent them the account details to make the transfer, Sven's ex-wife decided that she did not want to make the payment. Sven paid the $15,000, which was all he had in savings.

Several months later, legal representatives for the debt collector contacted Sven. He was told that if he did not pay the remaining $5,500, the $15,000 he had already paid would be returned and they would proceed to bankrupt him.

Sven became very distressed by this and told the legal representative that he intended to commit suicide because he could not handle the stress.

Source: Financial Rights Legal Centre (S268900), 2021

Lawyers and Insolvency Practitioners have a vested interest in keeping the threshold low

In many cases at the creditors petitions stage, the level of legal fees requested in return for the creditor consenting to set aside the creditors petition can be significantly higher than the amount that would be awarded by the Court. For example, in one matter where a Financial Rights Legal Centre financial counsellor was assisting at the bankruptcy list, the judgment debt was $15,000 and the applicant's solicitor had added $25,000 in legal costs, making it $40,000 to settle the debt. The client had tried to negotiate as he could access $15,000 in funds via a loan from his accountant but the legal fees were prohibitive. The court said it couldn't comment on, or interfere in, negotiations. The client in this case had no money or assets, so just accepted the bankruptcy. In the event, the costs awarded by the court to the applicant's solicitors were under $9,000, but we are concerned that in other cases these unreasonable fees are paid by debtors to avoid the bankruptcy, making insolvency as a debt collection tool very lucrative for lawyers

We note that while legal practitioners and insolvency professionals are valuable contributors to this debate because of the experience they bring, it must also be noted that they have a considerable conflict of interest. The lawyers involved earn considerable fees in bankruptcy matters and therefore have an interest in keeping the potential pool of people who may be subject to bankruptcy proceedings as large as possible. Insolvency professionals also benefit from more insolvency activity, because that is how they earn their income. They are also more likely to be able to recover their fees from bankrupt estates that are initiated by creditors petition, because people with assets rarely choose voluntary bankruptcy. It makes much more sense to sell their assets to pay their debts or enter full and final settlement agreements, rather than go bankrupt.

Creditors have a range of effective options to enforce debts that are less expensive for the debtor

Increasing the forced bankruptcy threshold to $50,000 will not leave creditors without options to enforce debts. Creditors have a range of options, after obtaining a court judgment, other than bankruptcy. These include:

- Garnishee of money in a bank account
- Garnishee of wages
- Examination of financial position
- Instalment order
- Repossession via the Sheriff of goods and real estate.

Indeed, these options tend to be preferable as they incur fewer costs than bankruptcy.

While most creditors obtain a judgment because it is the surest way to establish an act of bankruptcy on which to found a creditor's petition, many do not use the other enforcement mechanisms available to them through the courts before proceeding to bankruptcy.

This is because, as noted above, the threat of bankruptcy is a very effective mechanism for demanding payment, and often serves to put the interest of the creditor making the threat above all others.

The low existing threshold is one of the drivers of creditors using the threat of bankruptcy as a debt collection tool. It effectively shifts any cost of debt collection onto the debtor. It does not incentivise fair treatment and an attempt to reasonably recoup the debt using the other means available (repayment arrangements, garnishing wages etc), presumably for a range of reasons including it may take longer to recoup the debt. It is clear that in a significant number of cases, pursuing forced bankruptcy is simply a very effective debt collection mechanism.

Maree's story

Maree incurred a legal bill of $12,000 that she couldn't pay. Maree's lawyers pursued this amount straight away via a bankruptcy notice, without any chance to make payments or come to an agreement. The creditor's petition was filed and, after extended proceedings, Maree was declared bankrupt. Her only asset was a home she had bought decades earlier.

Even though she had made payments towards the debt during the proceedings, the additional legal fees meant that she was not reducing the debt and the only way to recover the amount was to sell her property. This left Maree, an older woman with health issues who was unable to secure full-time work, without a home leaving her at far greater risk of financial hardship in retirement.

Source: Justice Connect client, 2016 - present.

Rafael's story

Rafael had been out of work and receiving Centrelink for a few months when he received a bankruptcy notice from the strata company from his investment property. The Notice was for $5,100. Rafael made a payment toward the debt but, due to his depression, failed to attend the bankruptcy hearing and so a sequestration order was made against him. Due to personal circumstances, he was only able to file a review of the order 6 months later.

Although he successfully had the sequestration order overturned due to his personal circumstances, the Trustee sought to be paid $55,000 from the estate. Rafael was eventually required to pay $30,000.

Source: Justice Connect client, 2018

Owners' corporations and strata are aggressive users of creditors petitions as a debt collection tool

Owners' corporations – also known as strata plans or body corporates – are of increasing concern among financial counsellors and community lawyers for their willingness to use the bankruptcy process to enforce relatively small debts, often under $30,000. These debts quickly become much larger due to legal and other fees. We have assisted clients where the amount they were bankrupted for was effectively legal fees that were aggressively added to small levy arrears.

Financial Counselling Australia analysed all bankruptcy hearings at the Federal Circuit Court in 2022 and discovered that 10% of bankruptcy proceedings nationwide were instigated by owners' corporations.

Financial counsellors are seeing people struggling to pay their body corporate levies, particularly as the cost of living rises. In the absence of mandatory hardship policies for lot owners in temporary financial difficulty, owners' corporations are using legal action to recoup funds including forced bankruptcy through the Federal Circuit Court.

This problem is exacerbated in NSW because the threshold for getting a writ for levy of property is $20,000, making bankruptcy (where the threshold is only $10,000) the enforcement option of first preference.

We appreciate that the financial hardship of the debtor must be balanced with the impacts on other members of the owners' corporation when levies go unpaid. However, sometimes there is a legitimate grievance underlying the dispute or delay in payment: sometimes the levies are unfair or unaffordable, or the owners' corporation manager has very poor processes for communicating with people for whom English is an additional language, or the additional legal fees are excessive.

Even where the issue is simply financial hardship, the current system where enforcement fees are added quickly and unit holders are unable to catch up on the escalating arrears benefits lawyers first and foremost, rather than other unit holders. Diverting the limited available funds of the unit holder toward legal fees, or the equity available in the unit once sold to trustees fees, does not benefit other unit holders either and should be minimised where there are reasonable prospects of the unit holder getting back on track.

Additionally, service providers see time and again instances of unpaid strata levies being used as a tool of financial abuse by perpetrators of domestic violence, who have left the family home or been excluded from the home due to an intervention order. The victim survivor can be at risk of homelessness if they are unable pay the levies where there is an extensive delay securing a property settlement with their ex-partner through the Federal Circuit and Family Court.

Forced bankruptcy in these circumstances is another way of perpetuating financial abuse.

Nila's story

Nila contacted us in March 2023. She was unable to work after suffering PTSD, anxiety and depression brought on by a violent relationship and a drawn out family law property settlement.

Nila fell behind in her strata payments, as she was relying on Centrelink as her sole source of income. Her strata obtained 3 court judgments against her totalling $10,040. Nila made an application to pay by instalments which was initially accepted by the Registrar, but later disputed by Strata and overturned, on the grounds it would take too long to pay off the debt.

Strata was unwilling to negotiate any other arrangement and proceeded to serve Nila with a bankruptcy notice. We gave Nila advice on bankruptcy, the bankruptcy notice and consequences of not paying. Nila was able pay the entire amount on the notice by borrowing from friends and avoided bankruptcy.

Source: Case study provided by Financial Rights Legal Centre – May 2023

Samsara's story

Samsara, who is of non-English speaking background, received a creditor's petition from her owners' corporation in July. The debt owed to the owners' corporation was $46,000.

Samsara's home is in her name only she but also lives with her partner. She also has two adult children living overseas. The property is worth around $650,000 and Samsara has about $370,000 owing on her mortgage. While the mortgage is up-to-date, Samsara fell behind her owners' corporation levies, following it commissioning works that, for her, were unaffordable. Samsara struggled to negotiate, because of her limited English. Samsara owns her own vehicle and works as a food delivery driver for a platform business, and makes sufficient money to meet most of her expenses, but couldn't manage a large one-off payment.

Samsara attended the court in response to the bankruptcy notice. With the help of friends who were acting as interpreters, Samsara explained that she had tried to arrange a payment plan of $4,000 per month for the next 12 months but it appeared to be too late because the debt had already been transferred to lawyers. Samsara now says that her adult children may be able to help with the debt.

With the support of a financial counsellor, Samsara was able to obtain a short adjournment but would need convince the creditors to accept a payment plan and withdraw the petition or come up with the lump sum before the next court appearance, including legal fees.

Source: Case study provided by Consumer Action Law Centre – as at November 2022

Elizabeth's story

Elizabeth is 72 and widowed. She receives a pension from Veteran's Affairs. She previously paid off a $10,000 debt to her building's body corporate for strata levies with the help of a charity and is paying it back out of her pension. She says she has kept up with current levies via constant payment arrangements and has even paid a bit extra. Now she has received a bankruptcy notice over $11,000 in legal fees.

She fell behind in her strata fees nine years previously when her husband died. At about the same time she had been a victim of an internet fraud costing her $60,000. She was very upset because she had been negotiating the repayment arrangements with lawyers because the strata management firm would not deal with her directly, but no one told her she was racking up legal fees.

A solicitor reviewed the legal costs and found that $20,000 had been charged over essentially a $7,000 bill for strata levies. While this seems excessive, there was nothing obvious in the bill to challenge and the legal firm had already obtained judgment. There was a real risk that challenging the bill could cost Elizabeth more in the long run and she was already at risk of being made bankrupt, losing her home and accruing more costs due to trustees' fees.

Source: Case study excerpted from Who is Making Australians Bankrupt?

Small Business is often the target of forced bankruptcy

Protecting small business is often raised as a reason not to raise the bankruptcy threshold, but in our experience small businesses are just as likely to be subject to bankruptcy proceedings as to be using the bankruptcy process to collect their debts. Many small businesses would benefit from raising the threshold.

As mentioned elsewhere, some services who contributed to this submission attend the Bankruptcy List at the Federal Court to provide advice to unrepresented debtors attending court. Around one third of parties we assist are small business debtors who are subject to bankruptcy proceedings. AFSA data suggests about 41% of bankruptcies are business related[5].

The Small Business Debt Helpline (SBDH) services primarily micro businesses, who are typically individuals working on their own or with fewer than 5 staff. Callers to that service

[5] https://www.afsa.gov.au/newsroom/provisional-personal-insolvency-numbers-increase-july-2023 accessed 21-09-2023

often face levels of debt they cannot pay. In some instances, the debt has built up over years during Covid, during which there was a moratorium on collections, and that total debt is now being collected over a short period of time. Collection activity is often the trigger for people to seek advice.

Most commonly, callers are seeking assistance with relatively large debts to the ATO, a commercial or retail landlord, and business or equipment financing. The ATO's repayment timeline is often at odds with what people can afford to pay.

Similar to the client base of community legal centres and financial counsellors, the SBDH understands these small business are run by people who are experiencing vulnerable circumstances similar to those of individual consumers. The difference is that hardship entitlements do not always exist for small business.

For the services who attend the Federal Court, it is apparent that raising the threshold to $50,000 will also help small businesses avoid forced bankruptcy for smaller debts and encourage creditors to seek workable repayment arrangements rather than divert available funds to pay legal and trustee fees.

Implementation considerations

We seek this threshold change to take effect as soon as possible, with no transition period.

The risk of implementing a transition period is the potential to trigger a last minute flurry of enforcement activity on debts below the new threshold. Harm is best avoided by a swift transition. Changes made without a transition period during Covid were confusing enough for some creditors, and non-compliance resulted in harm to consumers as Cameron's case below attests. Unambiguous information for creditors will be required to ensure similar issues do not arise with the next transition.

Cameron's story

Cameron lives in a strata title property. He has been on the Disability Support Pension for a number of years. Last year, due to medical expenses in particular, Cameron fell behind on his strata levies. In early 2020, his Strata got a judgment against him for around $6,000 and, by the time Cameron contacted Financial Rights in late May, he was served paperwork to attend a Creditor's Petition hearing. A bankruptcy notice had been issued and served on him in early March 2020.

In response to the pandemic, the Government made changes to the Bankruptcy Act and regulations which took effect from 25 March 2020, including raising the threshold of minimum amount to present a Creditor's Petition against a debtor from $5,000 to $20,000.

Financial Rights disputed the filing of the creditor's petition for an amount less than $20,000 after 25 March 2020. The solicitors for the Strata maintained they were entitled to bankrupt Cameron as the bankruptcy notice was issued before 25 March

2020, and sought their cost of the petition of almost a further $6,000. In our view the bankruptcy notice was valid, but the subsequent creditor's petition was not.

Cameron was able to access his superannuation under the COVID-19 early release rules and pay the outstanding levies and associated legal fees of around $10,000. Cameron's Strata continued with the Creditors Petition hearing and continued to seek their costs of the Petition.

We instructed Counsel who appeared at the hearing and sought orders that the Court exercise its discretion not to award costs to the creditor. We were successful in arguing the petition should never have been presented and costs were not awarded.

Had the threshold not been temporarily raised, Cameron may have lost his home over a $6000 Strata debt.

Source: Extracted from Financial Rights Legal Centre Annual Report 2019-2020.

1. **Recommendation: The bankruptcy threshold should be raised to $50,000. This will more equitably balance the interests of creditors and debtors while addressing some of the more egregious misuses of the bankruptcy system. We support a swift transition with immediate effect for new notices.**

Extending the period to respond to a bankruptcy notice to 60 days

4. **Question 4:** Do you believe that the period for a debtor to respond to a bankruptcy notice should be increased from 21 days to 28 days? Please expand on your answer and consider any potential impacts.
5. **Question 5:** If you do believe that the period for a debtor to respond to a bankruptcy notice should be increased from 21 days to 28 days, should there be a transition period before any reform takes effect? Please expand on your answer.
6. **Question 6:** If you do not believe that the period for a debtor to respond to a bankruptcy notice should be increased from 21 days to 28 days, please explain whether an alternative duration should be considered and why.

We are seeking to extend the notice period to 60 days, effective immediately.

For most people, the bankruptcy process is too fast, too confusing and completely overwhelming without an advocate or access to advice. During the Covid-19 pandemic, the timeframe was temporarily extended to 6 months, which worked well. We are now calling for the timeframe to be 2 months. We know extending the timeframe is an easy fix to reduce pressure on the system, and our services. It is unclear why the Discussion Paper acknowledges the COVID-era's extension's effectiveness but doesn't suggest replicating it permanently.

No compelling arguments have been put forward in the Discussion Paper as to why a longer notice period would be problematic.

Receiving a bankruptcy notice can sometimes be the first time a person finds out that there has been court proceedings against them. Obligations around serving statements of claim vary by jurisdiction – in New South Wales for example they can be served to a person's last known address, and default judgment applied for after 28 days – without the confirmed direct knowledge of the person. Even where a Notice might be anticipated, people can experience shock and feel overwhelmed and unsure what to do.

The bankruptcy notice itself is confusing and written in language that is specialised and unlikely to be understood by people with low literacy levels. The accompanying Information Sheet, is also complex, though we do recognise that AFSA is reviewing the content of those documents. Despite this, in our view most people do not understand these documents; nor is it clear how and where they can get assistance with the bankruptcy notice. For those who do seek help, waitlists and limited access to free legal and financial counselling services mean that it is very difficult to get meaningful advice and support to negotiate with creditors. People need time to get financial counselling assistance and assess whether they are solvent, what options they have and get their affairs in order to avoid being sequestered.

All of these problems are magnified when people do not speak English as their first language, or at all. Many of the respondents in the bankruptcy list appear to be from culturally and linguistically diverse backgrounds. For the Federal Court financial counselling service offered by Consumer Action Law Centre in Victoria, 20% of their clients did not speak English as their first language.

A bankruptcy notice is fundamentally different to the other provisions of the Bankruptcy Act cited in support of the 28 day time frame

Failure to comply with a bankruptcy notice is an act of bankruptcy. This has serious consequences. Once an act of bankruptcy occurs a person is at risk of being subject to a creditors petition and sequestration order, which in turn fundamentally affects their freedom of movement and their rights to manage their own financial affairs. These rights should not be restricted lightly.

By contrast, none of the other provisions cited have such serious consequences, and the majority are administrative in nature. Many impact professionals in the course of their professional duties, where it is reasonable to expect that the person will be both aware of their professional obligations and sufficiently resourced to execute them. Subsection 82(5) relating to debts provable in the bankruptcy only applies in the narrow circumstances where a the value of a debt provable in the bankruptcy is not clear on the face of it and the person wishes to dispute the trustee's valuation. While the monetary consequences of this could conceivably be significant, and the creditor could be an unsophisticated person, the consequences of failure to meet the timeframe is having to accept the trustee's assessment, not a fundamental change in the person's legal status.

The more reasonable comparison is the 28 days to respond to a statement of claim, summons or other initiating proceedings to enforce a debt or make a claim in a civil court which applies in many states. While we accept this is a more valid comparison, there are still important points of distinction:

- Failure to lodge a defence within the 28 days has no consequence until such time as default judgment is actually entered, whereas the consequence of failing to pay upon a bankruptcy notice is immediate;
- For debts due to regulated consumer credit, the debtor has the option to lodge a complaint with the Australian Financial Complaint Authority (AFCA), effectively staying the legal proceedings, whereas a complaint to AFCA does not prevent or delay an act of bankruptcy from being committed for failure to pay a bankruptcy notice;
- A person has a right to apply to set aside a default judgment in much wider range of circumstances than applies to setting aside a bankruptcy notice;
- Once a judgment has been entered, the affected party can pay the amount, apply to the court to pay by instalments or negotiate directly with the party enforcing the judgment. If a person does not pay on a bankruptcy notice they are at immediate risk of being made bankrupt, they can no longer apply to pay by instalments, the creditor no longer has to accept payment, or part payment, and legal fees start accruing so fast that even if a person can pay the debt, the legal fees are often beyond their reach, rendering bankruptcy almost inevitable.

There is ample justification for providing a longer period to respond to a bankruptcy notice to roughly twice as long as the time to respond to a statement of claim. The other provisions cited are largely irrelevant.

Free legal bankruptcy advice takes time to access

In our collective experience, people don't turn to financial counselling or legal help as soon as they receive a bankruptcy notice. It is usually some period of time after they have sought to borrow money (informally from family and friends, or from a credit provider). There is always a delay between needing help and getting it.

While financial counsellors can provide some information and advice about insolvency in general, there are only limited places people can seek **legal** help with a bankruptcy notice. People receiving a bankruptcy notice are unlikely to afford a private bankruptcy solicitor. Having received the notice, people then need to be able to find the information and services they need. Some services, like Legal Aid NSW, do not give bankruptcy advice. Others provide general or very limited advice. Two free bankruptcy services available are:

- **Financial Rights Legal Centre**. Like all community legal centres, our services have periods of high demand and we offer a callback service that allows people to leave a message for a solicitor to contact them. Our service prioritises any calls that mention a bankruptcy notice, and is typically responded to in 1-2 days. Often the client needs further legal advice on the underlying debt, and/ or financial counselling advice on insolvency and what they can afford. It also provides information about insolvency options where it is requested.
- **Justice Connect's Federal Self Representation Service**. This free service via the community legal centre Justice Connect provides legal advice to people seeking to undertake self-advocacy on their bankruptcy matter. Justice Connect offers legal advice appointments to people on a first available basis. During these appointments,

advice is provided to people on discrete issues arising in their bankruptcy matters, including in relation to bankruptcy notices, debtors petitions, creditors petitions and sequestration orders. The service is offered to self-represented litigants in New South Wales, Victoria, Tasmania and the Australian Capital Territory.

For complex matters where a person has a legal ground to argue in a bankruptcy matter, preparing and filing the paperwork to object to or extend time for compliance takes time. Services have very limited capacity to help with this, and it can be very difficult to get pro bono assistance where there are short timeframes. Extending the timeframe of a bankruptcy notice will help services fully assist people who attend our services needing help.

Justice Connect initiates contact with a person seeking information within 2 days of the person contacting the service. However on average it is 15 days between their first contact with the service to the first available in-depth hour-long advice appointment with the Federal Self-Representation Service. This means it is uncertain whether a help seeker gets advice before the date for compliance with their bankruptcy notice, because they may not have either identified the Federal Self-Representation Service, or been referred to the Service with sufficient time.

While the average time until the advice appointment time was somewhat shorter than 15 days for bankruptcy notice advice, extending the response time for bankruptcy notices would increase the likelihood of the client being able to receive legal advice regarding their bankruptcy notice.

Consumer experiences at the Federal Court

Financial Rights and Consumer Action also participate in a program that funds financial counsellors to attend the Bankruptcy List of the Federal Court. This allows the registrar to refer debtors attending bankruptcy matters without legal representation to discuss their options on-the-spot. In most instances, it is too late to intervene to prevent the bankruptcy but we are able to provide people with guidance on their options.

Financial Rights' data from September 2022- August 2023 offers the following insights:

- 90% of the 31 people we assisted were male (28).
- At least 9% spoke a primary language at home other than English.
- 64% of those people were given a non-legal support service (a financial counselling session), 8% were given information, 8% were given legal advice, and 20% resulted in a task done by the service on their behalf (mostly court appearances by the financial counsellor or negotiations with other party, a small number of affidavits prepared by lawyers).
- Around 29% of those clients were small business debtors.

In the 31 cases we assisted, the following outcomes occurred:

- Sequestration orders - 39%
- Petition dismissed - 29%
- Still open - 26 %
- Application to set aside bankruptcy - 6%

The most common applicants were:

- Strata schemes (various) – 45
- ATO – 23
- Workers Compensation Nominal Insurer – 12

We think the Bankruptcy List service has proven an incredibly successful intervention for people in an incredibly vulnerable situation, who have not previously obtained advice in navigating their bankruptcy.

Source: Financial Rights Legal Centre, September 2023

Appropriate timelines will give First Nations consumers equitable access to bankruptcy advice

First Nations-led financial counselling and legal service Mob Strong Debt Help provide services to clients Australia wide, including those living in remote communities.

In some areas, visiting a face-to-face financial counsellor can be a 5 hour drive away – or a flight away during the wet season. In some regional areas, clients may not have an actual mailbox or individual mailing address to send documents too.

The digital divide remains a reality in many parts of regional and remote Australia. Compounded with digital exclusion, it can be incredibly difficult to get access to critical information and act or appoint an advocate in a timely way.

60 day notice periods would give First Nations people more equitable access to bankruptcy help.

Financial counselling services remain in high demand

Financial counselling services are also able to assist people navigating a bankruptcy notice, and demand for financial counsellors is high. Financial Counselling Australia's October 2022 report Demand Survey[6] found that 22% of new and existing clients had unmet demand. That is, over 1 in 5 people were unable to access financial counselling within 14 days.

One financial counselling state peak body told us in June that in their state around 65% of agencies are experiencing a further increase in demand, and that new clients are waiting 2-3 weeks for an appointment (emergency appointments are prioritised). In at least one state, some financial counselling services are at capacity and not taking client referrals. One service estimated in July that there is a 6-8 week wait for appointments.

An appropriate time to respond will assist people to navigate forced bankruptcy

As noted in above, financial counsellors also attend the Bankruptcy List at the Federal Court. While providing on-the-spot advice is helpful, the more time a person has to access advice, the better their ability to make a considered decision. We think the Federal Court is being clogged

[6] Financial Counselling Australia, *Demand Survey Results*, October 2022.

up with too many unnecessary creditors petitions, which could be resolved if more time was available to the debtor.

The gap between creditors petitions and sequestration orders indicates that people are willing to try and find ways to pay debts, but it is not always a quick process to access funds – particularly after legal fees have been added, increasing the debt that needs to be paid.

Extending the timeframe can result in earlier engagement by debtors in the process, and avoid unnecessary bankruptcies, if it is coupled with better information (informed by behavioural science and consumer-tested) and better engagement by AFSA with debtors earlier in the forced bankruptcy process. The National Debt Helpline (NDH) phone number is already prominently displayed on credit default notices which has been successful in prompting people to seek help, but this only occurs where the debt has resulted from regulated consumer credit or where the practice of including the NDH phone number has been voluntarily adopted by a particular industry segment.

We recognise that some debtors will leave taking any action to the last minute, regardless of the length of the period given to respond to the notice. However, for those who do try to take action such as seeking advice or trying to raise the funds, it is important that there is sufficient time for them to do so.

2. **Recommendation: Effective immediately, extend the timeframe to respond to a bankruptcy notice from 21 days to 60 days to provide sufficient and equitable access to assistance with insolvency matters**

Reducing National Personal Insolvency Index (NPII) listings

The current regime of lifetime listing of a bankrupt person's name and home address on publicly accessible register is an entirely unnecessary and punitive feature of our insolvency system. While we support the removal of lifetime public listings on the NPII, we do not support the proposal to 'reduce' listings on the NPII to 7 years post-discharge (which is effectively 10 years if the bankruptcy is not extended, and longer if it is). Keeping records of an insolvency listing 7 years post-discharge is entirely at odds with the ability for bankruptcy to form a line in the sand and an opportunity for a debtor to have a fresh start.

The fundamental purpose of the NPII needs clarification. If its purpose is to give information to creditors before further lending, the NPII should be aligned with credit reporting framework.

If it is about ensuring that people who were bankrupt are not able to hold public office, or informing regulatory agencies or professional bodies about a person's bankruptcy status where this is relevant to their ability to be employed or licensed in certain professions, then these aims can be achieved by a private index managed by AFSA with restricted access, rather than the current system.

Australia's NPII is particularly punitive and antiquated when compared to the United Kingdom. In the UK, debtors are removed from the equivalent public index, the Individual Insolvency Register, three months from discharge.[7] Indeed, the UK reformed the IIR in 2004 to reduce the

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[7] https://www.insolvencydirect.bis.gov.uk/eiir/IIRFAQ.asp#13.

timeframe from two years-post discharge to three months, with the aim of reducing the stigma of bankruptcy. Australia is decades behind best practice.

Bankruptcy is retained on a person's credit report for the longer of 2 years from discharge or 5 years from the date of bankruptcy – effectively a minimum of 5 years. We strongly recommend the duration of NPII listings be aligned with this framework. The credit reporting system in Australia is regularly reviewed to ensure it strikes the right balance between consumer privacy and the needs of creditors when making lending decisions. Stakeholders that use the credit reporting system have been thoroughly consulted about the timeframes therein. It is a broadly supported and appropriate benchmark by which to make decisions about the NPII.

The most consistent reform would be to update the Regulations so that a person's listing on the NPII is entirely removed two years from discharge.

3. **Recommendation: Part 13 of the *Bankruptcy Regulations 2021* should be comprehensively updated and modernised to ensure the National Personal Insolvency Index operates in a fair way with a proper purpose, and in alignment with Australia's credit reporting framework.**

7.	**Question 8:** Would a reduced record period of seven years on the NPII for bankruptcies benefit debtors? Please expand on your response.

Policy decisions around the NPII need to be able to clearly demonstrate what benefits a listing provides beyond the times required under the credit reporting framework. We do not support the policy setting that current and former bankrupts should be at risk of, or worried about, permanent homelessness or ongoing punishment for a bankruptcy that has been legally discharged.

The paper states that given bankruptcy is the most serious of personal insolvency measures, a 7 year period is appropriate. Why the Department believes 7 years post discharge – that is, 10 years - is the optimum amount of time to be listed on the NPII is not stated.

Long listings on the NPII simply increase the amount of time bankruptcy can be used to punish someone for past debts. We agree that bankruptcy is the most serious act of personal insolvency. But it is also a fresh start, and an opportunity to draw a line over past debts. Particularly for people who are bankrupted for small amounts, there is little benefit to keeping them in a state of perpetual punishment.

Listings on NPII can impact a person's ability to obtain stable housing or move into a new career – which is why listing should be as short as possible while keeping consistent with other regimes like credit reporting.   People may struggle to access rental accommodation, as detailed in John's story below. While the Privacy Act explicitly prevents real estate agents – a notoriously poorly regulated industry – from accessing the credit reporting system, agents can access the NPII. Bankruptcy should not prevent a person from being able to put a roof over their head.

John's story – NPII bankruptcy listing prevents client from renting

John went bankrupt a couple of years ago, and is currently undischarged. He has been living in rental accommodation with a friend. John and his friend are applying for new rental accommodation and the real estate agent wants all people in house to be on the lease but, because John is bankrupt, their applications are being refused. John believes the real estate agent has looked at the NPII or his credit report. John doesn't know what to do. He got advice from a tenancy service but it did not help. Bankruptcy will be listed on the NPII for the rest of his life, so he is worried it will be impossible for him to find housing and he will be at risk of homelessness.

Case study provided by Financial Rights Legal Centre (C193550) – as at 3 March 2022

Domestic and family violence survivors are exposed by the NPII

Listing on the NPII – for any extended period – is particularly unfair for victim/survivors of family violence.

Through our casework, we see forced bankruptcy being used as a tool of family violence through procedural abuse that ultimately benefits private trustees and perpetrators (for example, by enabling contact from the abusive partner). We also see victim/survivors of family violence bankrupting on bad debts where, had they received better upfront advice and support, they should have been released from liability for debts that were, in reality, their partner's.

On top of these practical impacts, the psychological impact of listing on a public record can not be understated. Bankruptcy should offer a 'fresh start' and support the debtor's financial rehabilitation, and encourage future entrepreneurialism. But that purpose is undermined by long duration NPII listing. It prevents people moving on, as it reminds them of a period in their lives that was incredibly challenging and often the source of much shame.

Annulments

At present, bankruptcies that are annulled remain on the NPII, with a notation that the bankruptcy was annulled on a particular date. Again, this is a harsh and disproportionate outcome. In the UK, debtors are removed from the equivalent index 28 days after receipt of the order rescinding or annulling the bankruptcy order.[8] Australia should do the same.

8. **Question 9:** Do you believe that there may be any adverse impacts from reducing the permanent record period on the NPII to seven years for bankruptcies? Please expand on your response and consider any mitigating factors.

[8] https://www.insolvencydirect.bis.gov.uk/eiir/IIRFAQ.asp#13.

For some people with insurmountable debt, bankruptcy is the right choice. Our services talk to people on a daily basis that are very concerned about their perceived creditworthiness, even when they are in dire financial situations. Bankruptcy is not an act people enter willingly, and the ongoing stigma of a listing on the NPII is part of that. Long listings on the NPII are at odds with a bankruptcy process that wipes clean old debts and allows people to move on.

9.	**Question 10:** Do you believe that any circumstances should be exempt from a reduced record period on the NPII for bankruptcies? Please expand on your response.

There may be legitimate concerns about a minority of debtors deliberately engage in serious offences under the Act that may warrant extra precautions. However, these few individuals should not dictate the policy settings for the majority of bankrupts, who through creditors' irresponsible lending or unexpected life events end up with insurmountable debt. Any concerns about a particular bankrupt's behaviour can be managed through trustee discretionary tools already built into the law.

As we understand, where a record on the NPII is removed (such as a debt agreement after the specified period), AFSA maintains an administrative record of the matter and associated documents are retained by the Official Receiver as part of this administrative record.[9] There is also provision for the Inspector-General in Bankruptcy to grant access to subsets of NPII information to approved organisations.[10] These systems could be used to share information in appropriate situations.

Creditor's Petitions dismissed by the Court should not be on the NPII

Many creditor's petitions are ultimately dismissed by the Federal Circuit Court. Despite this, a permanent listing will remain on the NPII because Reg 77, Item 1 of the Regulations makes clear that a creditor's petition is to be listed on the NPII, even if a sequestration order is not made.

For example, Consumer Action has been contacted by a person who reported that he found out he was on the NPII after applying for finance. He told us that he paid a $17,000 credit card debt in full and the creditor's petition was dismissed.

For people in this circumstance, the creditor's petition will remain on the NPII for life, and will likely impair their ability to obtain further credit – and all for a debt that was ultimately paid. This provision operates particularly harshly where there was no basis for the creditor's petition.

We question the need for a creditor's petition to ever be listed on the NPII. If they are to be kept, the duration of the listing should also be reduced.

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[9] Official Receiver Practice Statement 8: The National Personal Insolvency Index, para 4.4, available at: https://www.afsa.gov.au/resource-hub/practices/practice-guidance/national-personal-insolvency-index.

[10] Ibid para 5.8 and Annexure A.

10.	**Question 12:** If you do not support reducing the permanent record on the NPII to seven years for bankruptcies, please explain why.

As outlined above, NPII listings do not align with our credit reporting framework under the privacy legislation, which is explicitly designed to share appropriate and time-limited information on a person's creditworthiness only to relevant parties. The NPII is an alternative source of information for parties who are specifically prevented from accessing credit reporting information.

The proposed permanent, non-public NPII listing does not appear to be underpinned by any appropriate public policy purpose not already facilitated in the powers already available to AFSA and the Inspector-General . As such, while we welcome moves away from lifetime public listing, we still urge alignment with credit reporting obligations.

11.	**Question 11:** If you support the proposed reform to reduce the NPII permanent record to seven years for bankruptcies, should there be a transition period before any reforms take effect?

Removal of permanent listings should begin as soon as practicable, as should alignment with the credit reporting regime.

4. **Recommendation: A person's listing/s on the NPII should be completely removed two years from discharge from bankruptcy.**
5. **Recommendation: A person's listing/s should be completely removed from the NPII within 28 days of the date their bankruptcy is annulled.**
6. **Recommendation: A creditor's petition dismissed by the Court should not appear on the NPII.**

Debt agreements and acts of bankruptcy

12.	**Question 13:** Do you believe that any current economic circumstances may have the capacity to inform the policy setting for repealing paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act? Please expand on your response.
13.	**Question 14:** Do you believe that there may be any adverse impacts from repealing paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act? Please expand on your response and consider any mitigating factors.
14.	**Question 15:** Do you believe that any circumstances should be exempt from repealing the acts of bankruptcy provided for under paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act? Please expand on your response and identify the circumstances you consider should be exempt and explain why.
15.	**Question 16:** If you support a reform to repeal paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act, should there be a transition period before any reforms take effect? Please expand on your response.
16.	**Question 17:** If you do not support a reform to repeal paragraphs 40(1)(ha) and 40(1)(hb) of the Bankruptcy Act, please expand on your response.

We see a benefit to repealing paragraphs 40 (1) (ha and 40 (1) (hb) so that entering a debt agreement or having a debt agreement accepted is no longer considered an act of bankruptcy. Too many people still end up applying for a debt agreement after bad advice from untrustworthy advisers. By removing applying as an act of bankruptcy, these people have a hope of getting on a better path.

However, encouraging greater uptake of debt agreements should not be a policy goal in itself as the paper suggests. Individuals should have access to a range of appropriate personal insolvency measures – including bankruptcy. Debt agreements are appropriate for some people, but it is a narrow band of debtors who own a home or want to carry on being a Director of a company.

There are a number of other debt agreement reforms that need to be addressed to improve their appropriateness. In particular, the long standing issue of untrustworthy advisers needs to be finally addressed. We see clients who apply for a debt agreement after getting poor advice when they have no assets to protect, which can mean bankruptcy is a better choice for them.

Payment to income ratio needs to be introduced for debt agreements

Our services continue to see Registered Debt Agreement Administrators advise people to enter patently unsuitable and unaffordable debt agreements. The Attorney-General can quickly and easily fix this problem by setting the 'payment-to-income ratio' by legislative instrument.[11]

This unmade legislative instrument is unfinished business from the 2018 reforms to debt agreements.[12] Once implemented, it will finally introduce an affordability gauge for debt agreements. The ratio would effectively create a much-needed minimum income threshold to enter a debt agreement. There is no point being in a debt agreement unless you can afford to make all the required payments, because all the benefits are undone if the debt agreement terminates for 6 months of arrears. When this happens, the original debts are reinstated without reduction (minus any amounts paid) and debt enforcement can immediately recommence. In fact, most people are left in an even worse position after termination for arrears because they have paid thousands in fees to the Registered Debt Agreement Administrator along the way – money that should have gone to paying down the debts, not the middleman.

In our submission the Department's 2018 Legislative Instruments Consultation Guide for the *Bankruptcy Amendment (Debt Agreement Reform) Act* 2018, we strongly opposed to the proposed prescribed figures.[13] These figures created an effective minimum income of only $12,500 to enter a debt agreement. No-one attempting to live off $12,500 income per annum can afford to make any repayments on their debts and still put food on the table.

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[11] The Attorney-General is empowered to do so under s 185C(4B) of the Bankruptcy Act 1966.

[12] *Bankruptcy Amendment (Debt Agreement Reform) Act* 2018 (Cth), part 4.

[13] Available at: https://consumeraction.org.au/debt-agreement-reform-proposed-legislative-instruments/.

We maintain our recommendation from the 2018 consultation that the prescribed amounts be set so that the ratio creates an effective minimum annual income threshold based on either:

- the Base Income Threshold Amount (BITA) ($66,639) to align Part IX repayments with income contributions in bankruptcy; or
- the National Minimum Wage ($45,905), which is formulated with the living standards and the needs of the low paid in mind and is intended to guarantee a modest but adequate standard of living.

Michael's story is a good example of a very recent and entirely unsuitable debt agreement that would have been prevented had the ratio been implemented at BITA or the National Minimum Wage. However, his unaffordable debt agreement would have passed the ratio if set at figures proposed by the Department in the 2018 consultation.

Michael's story – Unaffordable Part IX Debt Agreement entered in 2022

Michael (name changed) contacted a debt management firm (DMF) for help to find the best option to manage his debts of approximately $7,300 – mostly credit cards and personal loans. The DMF advertises itself as an expert in debt advice, and its aligned business units hold a licence to provide debt management services and a Debt Agreement Administrator registration.

On the advice of the DMF, Michael entered a Debt Agreement under Part IX of the Bankruptcy Act in early 2022. The Debt Agreement is administered by the DMF's aligned Registered Debt Agreement Administrator (RDAA). Michael doesn't recall being presented with options to manage his debts other than a Debt Agreement.

At the time he entered the Debt Agreement, Michael:

- was in his late 70s and receiving the age pension as his sole income;
- did not have any significant savings and did not own any assets other than basic household items;
- had not worked for several years due to a workplace injury and had no expectation of returning to work due to his age and injuries.

As a result, Michael was effectively "judgment-proof," meaning that his creditors would not have been able to force him to make debt repayments from his social security payments, and he had no property that could be seized.

In these circumstances, a debt agreement was clearly an inappropriate option to manage Michael's debts. A Financial Counsellor likely could have obtained a debt waiver on commercial and/or hardship grounds for free. Michael also had underlying claims against some of his creditors for breaches of the responsible lending laws and the ASIC Act that would have reduced his liability and entitled Michael to compensation from those creditors.

Instead, under the Debt Agreement Proposal prepared by the RDAA:

- Michael was required to make fortnightly repayments of $100 totaling over $7,500 (on top of $1,500 Michael had already paid in set up and lodgment fees) – more than his total debts when he approached the DMF for help;

- the DMF and RDAA stood to receive combined fees totaling approximately $4,200, consisting of: set up fees paid prior to the preparation of the Debt Agreement Proposal: $1,300; set up fees to be collected under the Debt Agreement: approximately $1,000; and ongoing administration fees: approximately $1,900; and

- the budget included a buffer of just $20 between his estimated fortnightly expenses of approximately $880 and his fortnightly income of around $900.

The Debt Agreement was clearly unaffordable and unsustainable for Michael, given his income and expenses. To comply with his obligations under the Debt Agreement, Michael would have to live below the poverty line, and not incur any unforeseen expenses above $20 per week.

Michael could only manage one fortnightly payment under the debt agreement before falling into arrears. Michael felt that $100 repayment was "breaking him" and that he was no better off under the Debt Agreement. Michael sought help from a Financial Counsellor and Consumer Action, which are continuing to assist him.

How to fix this

Set at an appropriate level, the "payment-to-income ratio," which was legislated in 2018 but not yet in effect, could have prevented this outcome.

We recommend setting the prescribed figures so that the payment-to-income ratio creates an effective minimum annual income threshold to enter a Debt Agreement based on:

- the Base Income Threshold Amount (BITA) ($66,639) to align debt agreement repayments with income contributions in bankruptcy;

- alternatively, the National Minimum Wage ($45,905), which is formulated with the living standards and the needs of the low paid in mind and is intended to guarantee a modest but adequate standard of living.

Had the ratio been implemented at either BITA or the National Minimum Wage, Michael's Debt Agreement would not have passed this test and would not have come into effect.

Source: Case study provided by Consumer Action Law Centre as at May 2023

7. **Recommendation: The Attorney-General should make a legislative instrument setting the 'payment-to-income ratio' such that the effective minimum annual income threshold to enter a**

debt agreement is linked to the Base Income Threshold Amount ($66,639) or, alternatively, the National Minimum Wage ($45,905).

Other insolvency options need to be considered

More broadly, we think there is a role for new insolvency options. Having a discussion about the involuntary bankruptcy threshold and debt agreements is incomplete without discussing the need to add additional insolvency procedures to the Bankruptcy Act. In particular we are interested that the possibility of the introduction of a No Asset Procedure (NAP), with expedited bankruptcy discharge, be considered. The right to access a NAP is not envisaged to be an alternative to a higher bankruptcy threshold; the two should co-exist.

A NAP was introduced in New Zealand in 2007 as a means to assist people who have no available assets or insufficient income to repay debts up to $40,000 (now $50,000) without entering bankruptcy. Debtors are able to be discharged after one year (instead of three in bankruptcy) but they can only enter a NAP once in their lifetimes.

When the NZ NAP was independently evaluated it was found that this new insolvency procedure NAP is successful in achieving social and economic goals of the policy. It is beneficial in assisting in genuine situations of indebtedness and providing a fresh start and should remain as an available option for people in difficult, unmanageable debt situations, especially 'no fault' insolvency situations. The evaluation also found that the NAP provides a short-term solution for people in serious debt and importantly does not provide a catalyst for people to adopt long-term irresponsible fiscal behaviour.[14]

The policy was introduced after review of the insolvency law, owing to changes in the types of debtors applying for bankruptcy. AFSA's statistics show that more than 50% of debtors entering voluntary personal insolvency now have less than $50,000 in debt. Many of the debtors we assist in our services have no assets, and for them a NAP would be a much less stigmatising and punitive way of dealing with unmanageable debt. It is also a more efficient and cost effective insolvency option for Government to administer.

Analysis in 2011 of time-code data in NZ showed that the NAP achieved overall savings of approximately 4.5 FTEs per year for the Insolvency and Trustee Service. These savings would be even higher for Australia considering the larger number of overall personal insolvencies. In NZ in the last financial year over 42% of personal insolvencies were NAPs. [15]

[14] Evaluation of the No Asset Procedure: Final Report, July 2011. Prepared by the Ministry of Economic Development. Available at: https://www.mbie.govt.nz/dmsdocument/2278-evaluation-no-asset-procedure-final-report-pdf

[15] https://www.insolvency.govt.nz/about/statistics/

Rose's story

Rose is a First Nations woman with 2 children, who separated from her partner 2 years ago. She lives in public housing and works during school hours in order care for her children, earning between $800-$1000 a week. She doesn't own a car.

Rose called us earlier this year, as she is considering bankruptcy. She has around $30,000 of debt, all of which was accrued before her separation (other than a single debt for a $1000).

Rose has not received any threats of court or default notices, but she is being harassed by debt collectors and does not have the money or income to repay the debts. We referred her to face to face financial counselling so she could consider all options, including bankruptcy or making payment plans, and advised her to tell the debt collectors she was doing so and request they cease contacting her.

Rose told us she really can't afford anything and she feels bankruptcy is her main option. She told our solicitor that she likes that bankruptcy can affect her ability to get credit in the future, as she does not want to borrow money in the near future.

Case study provided by Financial Rights Legal Centre (S294427) – July 2023

8. **Recommendation: A No Asset Procedure, with expedited bankruptcy discharge, be considered.**

Concluding comments

Raising the bankruptcy threshold to $50,000 will help stamp out existing misuse of the bankruptcy system, whereby relatively small debts are aggressively pursued. When vulnerable people who are denied the opportunity to repay their debts in an affordable way, the only winners are private law firms, trustees, and debt collectors. Giving people an opportunity to avoid forced bankruptcy wherever possible, by extending the time available to respond to a bankruptcy notice, is another important step toward a fair system that looks after the interests of both creditors *and* debtors.

We welcome the opportunity to discuss this submission in further detail. Please contact Sarah Wilson sarah.wilson@financialrights.org.au.

Yours sincerely

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CEO

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WESTJUSTICE

About Us

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

About the Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

About Financial Counselling Australia

Financial Counselling Australia is the peak body for financial counsellors. Financial counsellors assist people experiencing financial difficulty by providing information, support and advocacy. Working in not-for-profit community organisations, financial counselling services are free, independent and confidential.

About Redfern Legal Centre

Redfern Legal Centre (RLC) is a non-profit community legal centre that provides access to justice. RLC provides free legal advice, legal services and education to people experiencing disadvantage in Redfern and in NSW, including through the state-wide Financial Abuse Service. We work to create positive change through policy and law reform work to address inequalities in the legal system, policies and social practices that cause disadvantage.

About Justice Connect

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and progress social justice. We help those who would otherwise miss out on assistance, focusing on people disproportionately impacted by the law and the organisations that make our communities thrive.

About Marrickville Legal Centre

Marrickville Legal Centre is a not-for-profit community legal centre based in Sydney's inner-west, serving NSW. Our vision is to promote social justice – by providing free and accessible legal and related services to people who experience social and economic disadvantage.

About Financial Counsellors Association of Western Australia

FCAWA supports all financial counsellors and financial capability workers in WA ensuring best practice by providing access to professional development, information, resources, and relevant casework support. We are experts in financial hardship, financial literacy, and financial counselling. We focus on identifying emerging issues, recording current trends and responding to social and systemic issues in the social services sector.

About Indigenous Consumer Assistance Network (ICAN)

Over its fifteen years of incorporation, the Indigenous Consumer Assistance Network (ICAN) has strived to Empower Indigenous Consumers by providing:

- Financial counselling to relieve poverty and alleviate consumer detriment.
- Education that promotes financial wellbeing and informed consumer choice
- Advocacy to highlight systemic consumer disadvantage.

Taking a community development approach, ICAN establishes a registered training organisation, ICAN Learn in 2017, with the goal of building vocational education pathways for our staff (“Team”), the communities we service (“Community”) and the national financial well-being sector (“Sector”) more broadly.

About Care

Care is an independent community based organisation striving for Financial Fairness for All. Care provides financial counselling information, advice, advocacy and support, a consumer law program offering legal advice and representation on credit, debt, telecommunication, insurance, bankruptcy and fair trading, a community loans program offering interest free loans to purchase essential household goods and services and a community education program to provide practical information and tools on topics such as budgeting, dealing with debt and understanding consumer rights.

About Financial Counsellor’s Association of New South Wales

The Financial Counsellors’ Association of NSW Inc (FCAN) is the peak membership body that represents and supports Financial Counsellors in NSW. FCAN was established in 1980, as the Institute of Financial Counselling. Since that time, FCAN has been providing services and assistance to members, including accreditation, training programs, professional development and peer supervision.
FCAN represents the financial counselling sector to advocate for suitable regulation and products to protect the financially vulnerable and to prevent people and families from experiencing financial hardship.

About WEstjustice

Westjustice is a human rights and community legal centre in the Western Suburbs of Melbourne servicing the local government areas of Maribyrnong, Hobsons Bay and Wyndham, and the broader western suburbs community with a collective population of almost a million people. We provide free legal advice, representation, education, community development, advocacy, and systemic reform across four impact areas: people experiencing economic injustice; people experiencing family and gender-based violence; youth; and culturally and linguistically diverse (CALD) communities.