Australian Institute of
CREDIT MANAGEMENT

Telephone: (02) 9906 4563
Facsimile: (02) 9906 5686
E-mail: aicm@aicm.com.au
Web: www.aicm.com.au
Level 3, 619 Pacific Highway,
St Leonards NSW 2065

ABN 79 008 455 758

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Australian Institute of Credit Management Submission re the

Bankruptcy Legislation Amendment Bill 2009 – Exposure Draft

This submission has been prepared by the Australian Institute of Credit Management (AICM) following consultation with members and the wider credit industry.

AICM is the association for credit professionals in both commercial and consumer credit comprising both individual and corporate members from all industry sectors in Australia.

This submission is only in relation to the following aspects of the Bankruptcy Legislation Amendment Bill 2009 – Exposure Draft:

- The proposal to increase the minimum debt for a creditor's petition Subparagraphs 41 (1)(a)(ii) and (b)(ii); Paragraph 44(1)(a); Paragraphs 244(1)(a), (b) and (c)

- The proposal to increase the stay period that follows a declaration of intent to file a debtor's petition Subsection 5(1) (paragraph (a) of the definition of *stay period*)

AICM is mindful of the policy objectives which the Attorney-General is endeavouring to achieve by these amendments however AICM would express considerable concern at the intention to increase the minimum debt for which a creditor can petition for bankruptcy from $2,000 to $10,000 for reasons which are set out below.

AICM does support the proposal to increase the stay period from seven to 28 days. Again, the reasons for AICM's support are elaborated below.

Proposal to increase the minimum debt for which a creditor can petition for bankruptcy from $2,000 to $10,000

AICM appreciates the Attorney-General's concerns that there is a proportion of people who become bankrupt due to circumstances which are not of their choosing such as unemployment, illness or disability.

However, a perusal of the *Inspector-General in Bankruptcy Annual Report*[1] (Bankruptcy Annual Report) for 2007-2008 would result in a clearer understanding of the profile of people who become bankrupt[2]. The Attorney-General has been quoted in the media as expressing concern at the impact bankruptcy may have on young people in the long term. In addition, the Attorney-General states in his Media Release of 25 August 2009

> '…[that] *increasingly, bankruptcies tend to involve people who have simply fallen on hard times rather than unscrupulous debtors trying to avoid paying their debts…'*

AICM does not believe that the Bankruptcy Annual Report supports this conclusion.

At Table 8 of the Bankruptcy Annual Report 7.4%[3] of bankruptcies involve people under 25 years of age and 20.1% involve people between the ages of 25 – 34 years. The overwhelming majority of bankruptcies occur in the over 35 years age groups comprising 52.5% of bankruptcies. Whilst bankruptcy at any age is an unfortunate and usually distressing experience there does not appear to be an over representation of younger people.

It is important to place the figures relating to the age profile of bankruptcies in context as due to the recent financial crisis it may be assumed that there has been an increase in bankruptcies amongst younger people. However a perusal of the Inspector-General's Bankruptcy Annual Reports for 2006-2007 and 2005-2006 does not support such a conclusion.

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[1] Inspector-General in Bankruptcy *Annual Report by the Inspector-General in Bankruptcy on the operation of the Bankruptcy Act 2007-2008* [2008]

[2] It should be noted that AICM's analysis excludes arrangements under Debt Agreements (Part IX) and Personal Insolvency Agreements (Part X).

[3] All figures cited are the total for business related and non-business related bankruptcies.

For 2006-2007 8.6% of bankruptcies related to people under 25 years of age and 22.8% related to people between 25 and 34 years. In 2005-2006 people under 25 years of age accounted for 8.4% of bankruptcies whilst for people aged between 25 and 34 years the proportion was 22.7%. Thus the latest figures available indicate a decline in bankruptcies in these age groups.

AICM's view that the majority of people who become bankrupt are not people who have '…fallen on hard times…' is also supported by the Inspector-General's Bankruptcy Annual Reports.

The Inspector-General's analysis of occupational groups highlights that the majority of bankruptcies now occur amongst people who are holding intermediate or senior occupations as the following table[4] highlights:

Occupational Group	2007-2008	2006-2007	2005-2006
Managers & Administrators	12.4%	3.2%	3.1%
Professionals	6.2%	6%	5%
Associate Professionals	8.6%	5.8%	5%
Students, pensioners, retried and unemployed persons	11.3%	31%	36%

AICM would argue that these figures demonstrate a significant shift in the occupational profile of people who become bankrupt. AICM would suggest that the significant decrease in the student, pensioner, retired and unemployed category may be explained by a better understanding amongst this group of the alternatives to bankruptcy such as Debt Agreements and Personal Insolvency Agreements together with better utilisation of the hardship provisions of the Uniform Consumer Credit Code.

Finally, AICM believes that any decision to increase the minimum debt for a creditor's petition should be considered in the context of the number of creditors' petitions lodged.

[4] Extracted from Table 7 Inspector-General Bankruptcy Annual Reports 2007-2008; 2006-2007; 2005-2006 respectively

The Inspector-General Bankruptcy Annual Reports clearly demonstrate that creditors rarely use a creditors' petition. This is because a decision to lodge a creditors' petition is only taken as a final resort after a comprehensive attempt to negotiate with the debtor to achieve recovery of the outstanding debt.

The following extract from Inspector-General Bankruptcy Annual Reports confirms this conclusion:

Bankruptcies on creditors' petitions	2007-2008	2006-2007	2005-2006
National total %	9%	9%	9%

More importantly it should be noted that there has been no increase in the proportion of creditors' petitions lodged for the period under consideration. AICM would submit that this confirms the responsible approach taken by creditors when attempting to recover outstanding debt. There has clearly not been a wholesale increase in the use of this legislative remedy.

AICM would also reiterate that the decision to pursue a debt through the provisions of the *Bankruptcy Act 1966* (Cth) is only made when a thorough assessment of the debtor's situation has been undertaken. There is little purpose in seeking to exercise remedies under the *Bankruptcy Act* if the individual concerned has no assets and little or no income. Creditors' petitions are primarily utilised in situations where the individual has assets and income and is in a position to meet their obligations albeit reluctantly.

For the reasons outlined above AICM does not support the increase in the minimum debt for a creditor's petition from $2,000 to $10,000.

Proposal to increase the stay period that follows a declaration of intent to file a debtor's petition

On the grounds of equity and fairness, AICM does support the extension of time from seven to 28 days.

AICM believes that this reform would prove beneficial to all parties as it would provide an opportunity for the creditor and debtor to attempt to reach a settlement of the matter.

Conclusion

AICM appreciates the reasoning behind the Attorney-General's desire to ensure that there is no additional disadvantage to people who find themselves in circumstances that are not of their choosing. However, AICM believes that the remedy proposed is not an appropriate solution. Instead AICM would recommend that the Attorney-General and the Minister for Financial Services, Superannuation and Corporate Law should collaboratively promote the use of the respective hardship provisions as currently found in the Uniform Consumer Credit Code and which will be enhanced by the proposed National Consumer Credit Protection legislative reforms.