



Australian Financial Counselling & Credit Reform Association Incorporated

ABN: 67 073 167 361

Chairperson: Jan Pentland

Secretary: Joanne Lowth

30 March 2005

David Bergman
Advisor, Policy and Legislation
Insolvency and Trustee Service Australia
GPO Box 821
Canberra 2601

Dear David,

Re: Discussion paper: Strengthening bankruptcy anti-avoidance provisions

Thank you for the opportunity to comment on the discussion paper and the current initiatives to strengthen the anti-avoidance provisions of the Bankruptcy Act. As previously stated, AFCCRA supports the broad thrust of the Government's intentions in this area. Abuse of the Bankruptcy Act by high income bankrupts to hide assets from creditors and continue to maintain their life style brings the bankruptcy system into disrepute.

However, the number of bankrupts taking these actions remains small with the vast majority of bankrupts being our client group with low incomes and exempt assets only. We therefore request that any changes to bankruptcy law to address the issues under discussion be framed in the context of not further disadvantaging the majority of bankrupts who will not be able to access legal advice and who rely on financial counsellors for assistance. Further complexity in the Bankruptcy Act increases the difficulty for financial counsellors in keeping abreast of the changes, ensuring that their clients receive all relevant information on possible implications for them, and supporting them through the bankruptcy process.

While we know that it will be only a very small number among our client group who may potentially be affected, we do see families where family assets are transferred for valid reason, eg gambling and other addictions. The Discussion Paper seems to indicate that where there are resources to access expert legal advice and individuals and families

can organise their affairs in advance to protect their assets, this is legitimate. Our clients are unlikely have the resources to access this expertise.

2.

While the Government's stated intention is to prevent high income earners from hiding their assets, care must be taken to ensure that any reform of the Act catches those it intends to catch and not the small number among our client group who may be affected.

AFCCRA does not support the proposals in the Discussion Paper to create rebuttable presumptions of insolvency where the bankrupt has failed to lodge a tax return or failed to keep proper books and records. Many of our clients, through lack of knowledge and resources and in the midst of a chaotic personal situation, fail in these areas. We also do not support the proposal to make failure to lodge a tax return an act of bankruptcy. We do not support changes to the Bankruptcy Act to address deficiencies which would be better addressed by the Australian Taxation Office.

We look forward to participation in further discussion on these matters.

Yours faithfully,

Jan Pentland
Chairperson AFCCRA
18 Mangarra Road
Canterbury 3126

Phone: 0407 042 483

Email: janpentland@hotmail.com

