SUBMISSION ON THE
BANKRUPTCY LEGISLATION AMENDMENT BILL 2009

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ABOUT THIS SUBMISSION

This submisison is from the Australian Financial Counsellors and Credit Reform Association (AFCCRA). AFCCRA is the peak body for financial counsellors in Australia.

Financial counsellors assist people in financial difficulty by providing information, support and advocacy. The aim is to help people regain control of their financial situation. Financial counsellors work in community organisations, community legal services and in some government agencies. Their services are free, confidential and impartial.

Because of their role, financial counsellors have an indepth knowledge of bankrupcy law and its administration. In 2005 for example, '25% of bankrupts received information and advice from financial counsellors'.[1]

More importantly, financial counsellors understand the impact that financial difficutly and bankruptcy can have on people's lives. We are well placed to comment on the proposed changes from both a practical viewpoint and provide a human dimension to this issue.

The contact person for this submission is Fiona Guthrie, Executive Director of AFCCRA.

[1] Jan Pentland, 'Homes at risk: using bankruptcy to collect small debts', Eastern Access Community Health, November 2007, citing ITSA Profile of Debtors 2005.

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1 OVERVIEW

As set out in our first submission on the exposure draft of this legislation (to the Attorney-General's Department), AFCCRA:

- supports the proposed increase in the threshold for a creditors petition for bankruptcy from $2,000 to $10,000;
- supports the proposed increase in the stay period that follows the declaration of intent to file a debtor's petition from seven days to 28 days;
- does not support the proposed increases in the threshold for debt agreements. There are ongoingand significant problems with the way these agreements operate.

Our submisison draws on comments and case studies from financial counsellors around Australia.

2 THE CONTEXT IN WHICH OUR LAWS OPERATE

"It is the aggressive and non-cooperative attitudes to debt collection and the amount that they require that is driving the growing number of bankruptcies. When collection departments give totally incorrect information / or no information about hardship and demand monies that will leave people destitute the driver to bankruptcy is the creditor. You can't have your cake and eat it!" Financial Counsellor, NSW

The overwhelming experience of financial counsellors is that consumers want to pay their debts. People see banktruptcy as a last resort and want to avoid it if at all possible.

Given this, why are bankrtupcy numbers increasing?

The quote above describes two reasons, both of which are of great concern: harassment by debt collectors and the difficulties some consumers face in negotiating acceptable payment arrangements with their creditors. Many people feel they have no choice other than bankruptcy.

In our view, bankruptcy numbers are likely to continue to increase. Credit has been easy to access in recent years and the resulting explosion in household debt has been well documented. Even though Australia has escaped the worst fallout from the global financal crisis, there has still been a significant impact on many people, particuarly those who have lost their jobs or seen their hours reduce or who are on low incomes. We will continue to see this fallout for some time yet. Even small changes in household income can be enough to tip a family or individual from making ends meet, to financial hardship.

In framing amendments to the *Bankruptcy Act 1966* (the Act) therefore, the Parliament needs to be mindful of the purpose of the bankrtupcy laws and the context in which they operate.

Bankruptcy is meant to be a last resort, for both debtors and creditors. It is meant to give a debtor a fresh start. It is not meant to be a punishment. It should not leave people in financial difficulty, even worse off. Unfortunately, this is what is happening at the moment, in particular in relation to the use of bankruptcy by creditors in collecting small debts.

3 THE THRESHOLD FOR A CREDITOR'S PETITION

3.1 Why have a threshold in the first place?

The most contentious area of reform is the proposed increase in the threshold at which a creditor can petition for bankruptcy. This threshold is currently $2,000 and it is proposed to increase it to $10,000.

Submissions from financial counsellors, consumer advocacy organisations and legal services support this increase. Submisions from lenders, insolvency practitioners and the debt collection industry suggest a range of lower figures, ranging from no change at all to limits of $3,500, $4,000 and $5,000 (depending on the submitter).

Given this disparity of views, it is helpful to go back to first principles and ask: why have a threshold at all?

One could envisage a system where there was no threshold. The only impediment to a creditor petitioning for bankruptcy would be where the debtor had very few assets and/or a low income and the costs of the petition would outweigh any possible return. In other words, one could leave judgments about costs/benefits to the market to regulate how bankruptcy operated.

We do not have a system along these lines because it has always been recognised that bankruptcy, or the threat of bankruptcy, should not be used as a debt collection tool for small debts. To do so misunderstands the intent of bankruptcy laws, and borders on their abuse. There are other, far more appropriate debt collection tools, for collecting small debts.

Petitioning for bankruptcy or being made bankrupt is serious. It has implications for one's ability to access credit in the future, can impact on employment in some industries and bars an individual from becoming a director. The bankrutpcy remains on an individual's record for ever, through the National Personal Insolvency Index. Administration of a bankrupt's estate is also costly. It is not something that should be undertaken lightly.

The issue is one of proportionality. Individuals and families should not be faced with the threat of losing the family home over a small debt, when there are other and more appropriate debt collection tools available. But this is what is happening.

3.2 Bankruptcy is being used inappropriately to collect small debts

Generally creditors and debt collectors only petition for bankruptcy where the debtor has realisable assets.[2] To do otherwise does not make commercial sense.

Sadly however, some of these bankruptcies are over relatively small debts. People are losing their homes over debts as small as $2,000 ... This is a travesty.

But it makes commercial sense for a creditor to use this avenue. In fact, the 'system' as it operates, almost encourages it.

The 2007 report, 'Homes at risk: using bankruptcy to collect small debts" documents 13 case studies of consumers who either lost their homes or were at risk of losing their homes because of a creditor's petition for bankruptcy. Debts of less than $10,000 led to bankruptcy or the threat of bankruptcy in 10 of the 13 cases. The report notes that:

> "in the large majority of the cases in the report these debtors were vulnerable in a range of circumstances including that they had limited literacy skills; they were elderly; their first language was not English; they were suffering phsyical and/or mental illness; they were experiencing difficult life situations. In most cases, they did not understand the bankruptcy process and its implications; and often when they tried to clarify it, the system let them down."[3]

Attachment 1 is an excerpt from the 'Homes at Risk' report and sets out the 13 case studies on which it was based.

The problem is that bankruptcy is often the first resort for debt collectors, where the debtor owns an asset. Rather than use other more appropriate tools to collect small debts, a creditor's petition is the easy option. Creditors, and especially bankruptcy trustees, benefit.

These practices continue unabated today. Forexample, the case studies below are from the past 12 months.

> Case Study 1 – My client bought a vacuum cleaner and finance was arranged for her. She lost her job and stopped making payments. She found it difficult to face up to her changed financial situation and as a result, judgment was

[2] Although there are the occasional cases where a vindictive creditor may send a person bankrupt as a way of punishing them.
[3] Jan Pentland, 'Homes at risk: using bankruptcy to collect small debts', Eastern Access Community Health, November 2007, section 6.1.

entered against her for $3,500. The creditor, rather than pursue the client by a writ to seize assets, bankrupted her. The client paid the trustee $3,650 to pay the debt. However the trustee's fees were $13,188 by that stage and they lodged a caveat on her property. Trustee fees continued to mount and eventually came to around $52,000. The client lost her home. Her relationship was fragile and appeared likely to break down.

Case Study 2 – This case invovled a private school that has issued a bankruptcy notice for one term's worth of fees ($5,000). The client has no assets and is on a Centrelink benefit. The problem occurred as the client has severe depression and did not answer any corrospendence. The child had left the school. In this case, the solicitor took what appeared the simplest path: a creditor's petition. The assumption is that the client must have had assets. This indicates how bankruptcy is used as a first resort debt collection technique.

Case Study 3 – My clients had been made bankrupt by the xxx bank over a $5,000.00 credit card debt. They subsequently lost their family home and a number of vehicles connected with a small business operation. Had they known about financial counsellors and had time to discuss options with a professional they could have sold various assets and been able to save the business and to save their home and would not have had to endure the costs of a private trustee.

Case Study 4 – The client was elderly and on Centrelink benefits. She owns her own home but is being financially abused by her son who is living at home. The client fell into arrears with land rates and is being taken to court to get judgement on $2,200 and faces potential bankruptcy orders for selling her home. We have arranged Centrepay payments but the Council are still taking her to court.

The Consumer Action Law Centre documented a similar case to those above in its submission on the exposure draft of the legislation. This client had been referred to them from a financial counsellor in Victoria. CALC's June 2009 press release notes:

> (o)ur client is a full-time carer for her daughter and her sole income is a Carer's Pension of just over $670 per fortnight. She has been bankrupted by Telstra's debt collector, Accounts Control Management Services (ACMS), over a 2001 internet services bill for less than $1,000 and will now lose her home, her only asset.[4]

In this case, the client did not understand that she was responsible for the debt. ACMS refused to negotiate a payment plan with her. The trustee's fees were around $15,000.

[4] Consumer Action Law Centre, Media Release, 'Small Debt in a Bigpond – Pensioner to Lose Home in Bankruptcy over a $1,000 Internet Bill, 17 June 2009.

Because debtors can be bankrupted for such small amounts, it is also used as a **threat** by debt collectors, even where the debtor has no assets or income. This is a common scenario for financial counsellors to deal with as illustrated in the case study below.

> Case Study 5 - I currently have two 89 year old clients who owe several creditors, very small sums of money. We were able in both cases to get the majority of creditors in number and the majority in dollar value, to agree to waive the balances outstanding, except for one creditor in each case. Each client owes this creditor less than $4,000.00 but this creditor will not agree to waive the debt. Currently this creditor can make these clients bankrupt, which would destroy both of them given their age, current financial situation and poor health. They both attended financial counselling to avoid bankruptcy. If the threshold amount was raised, it would mean that creditors would take the negotiating process more seriously as they won't be able to say, "Well we will just make you bankrupt". I wish to emphasize that not all creditors do this, but I have had creditors say it to me, to clients and have heard it from debt collectors.

All of these cases illustrate the same flaw: the use of bankruptcy as a first and easy resort for creditors, when other debt collection mechanisms, including a writ to sell assets or negotiating repayments, are available. Unleashing the full force of bankruptcy, because of the serious implications it has for consumers, is not appropriate. Often the impact on debtors, because of trustee fees, is completly disproportionate to the size of the debt.

In summary, our main argument in this submission is that bankruptcy should not be used as a tool to collect small debts.

- There are other more appropriate debt collection tools available to industry.
- The availability of bankruptcy as a debt collection tool for small debts, is an easy option for creditors/debt collectors to use, where a debtor has an asset such as a home. It can make it less likely that they will negotiate payment arrangements.
- The impact of bankruptcy on a debtor is significant. Where the debtor has equity in a home, the potential losses are enormous. It is a completely disproportionate response.
- Where a consumer does lose their home as a result of a small debt, the ripple effect is large. Almost inevitably the consumer invovled will experience psychological stress and possibly poorer physical health. Government agencies may end up having to fund health care, find housing, fund emergency relief grants and so on. The cost to society is significant.
- Bankruptcy is used as a threat against consumers, even where the creditor/debt collector knows it is not a feasible option.

Finally, it is worth noting that the cases set out above also illustrate fundamental problems with the way in which trustees are remunerated. The fees associated with these small bankruptcies are egregious.

3.3 What should the threshold be?

The majority of stakeholders support an increase in the threshold for a creditor's petition. The argument really gets down to what that threshold should be.

As noted earlier, our laws need to reflect the current economic and social realities of our time. An increase in the threshold for a creditor's petition of $10,000 is consistent with current personal debt levels and will greatly reduce the potential for the inappropriate use of bankruptcy as a debt collection tool. No one should face losing their home over a debt less than $10,000 when there are other debt collection tools available.

A lower increase in the limit, to say $5,000, is effectively a status quo option and reflects a CPI only increase. This would be acceptable if we still lived as we did in 1966 – but we do not.

3.4 Responding to industry

Various industry stakeholders, including lenders, debt collectors and insolvency practitioners, have made a number of claims in support of either no increase in the threshold for a creditor's petition or a much lower threshold.

In this section, we respond to some of these arguments. It is also worth pointing out that some stakeholders have strong vested interests in maintaining the status quo. This should be kept in mind by decision-makers in assessing these claims.

Small business will be denied a valuable debt collection tool ...

No, they won't. There are a range of other mechanisms for collecting small debts. These include: oral examinations, garnishee of wages or bank accounts and writs of execution to sell assets.

The courts have also come to the same conclusion, questioning why a creditor's petition was used to collect a debt, rather than other options. In *Vaucluse Hospital Pty Ltd v Phillips & Anor* [2006] FMCA 44, the court noted:

> There is no evidence before me as to why the creditor did not simply move to recover the judgment debt as against the interest of the respondent in the home that he jointly owns with his father and brother. The process is relatively straightforward and relatively inexpensive.

Other enforcment options are ineffective

This assertion is made in a couple of submissions, but no evidence is advanced for it. It is certainly not the experience of financial counsellors, who have the opposite view. Indeed, creditors and debt collectors can and do sell assets to repay debts, but without using the bankruptcy process.

A creditor's petition is only used as a last resort ...

No they are not. The case studies cited in this submission show otherwise.

Interestingly, industry submissions were at odds on this point, sometimes putting diametrically different positions (somtimes in the same submission). For example, stating that bankruptcy was only used as a last resort, but also pointing out how useful it is as a debt collection tool.

Small businesses will be particuarly hard hit

We are talking here about personal insolvencies. Debt collection between SME and SME, where there are company structures invovled, is a completely separate issue.

Well run small businesses should have credit management policies in place to manage their cash flows.

Ultimately, this is a matter of balance and proportionality. Some of the people who owe relatively small amounts of money will owe that money because of the failure of their small business. Where does the balance lie – on the debtor small business owner or the creditor small business owner?

Where the debtor is a consumer debtor, the impacts on these individuals of bankruptcy are severe. Again, where should the balance lie – on the debtor or the creditor?

It is worth keeping in mind, as a number of speakers in the second reading debate in the House of Representatives noted, that sequestration orders for amounts less than $10,000 are relatively few in number, with fewer than 400 made in 2008-09.

Unscruplous debtors will run up multiple debts of $9,000

This seems unlikely. Unscruplous debtors could presumably be running up debts of $1,900 at the moment, with multiple creditors. There is no evidence of this.

And what is left unsaid

Finally, we note that a number of industry stakeholders supported the increase in the minimum remuneration that can be charged by a trustee to $5,000. This will of course become the de facto charge. Should the threshold for a creditor's petition be

set at say $5,000 this will mean that consumers owing a small debt of say just over $5,000 will face a minimum fee of around 100% of the amount owed! The only winner are the trustees.

4 STAY PERIOD

> *"I can tell you that people wanting to access my service and other services will not get an appointment within 7 days. Some services will only book a fortnight at a time and then close the diary for appointments; other services are booking out 6 to 8 weeks at a time. I have had three calls in the last month from people wanting to petition immediately, no doubt to stop any further legal action. I couldn't even offer to do a Declaration of Intent as I knew I could not see them within the 7 day period." Financial Counsellor, WA*

> *"The 7 day cooling off/stay period is totally inadequate, as a service we run a 3-4 week waiting list at all times in our xxx office but at our outreach centres this often blows out to 6 weeks." Financial Counsellor, NSW*

Financial counsellors frequently see clients who ask for information about bankrtupcy and/or assistance in filling out a debtor's petition. However, as the quotes above illustrate, waiting lists for financial counselling agencies can be lengthy and a consumer may not be able to access a financial counsellor for some weeks.

The purpose of the stay period is to give a debtor a 'breathing space' – a chance to take stock of their position, to seek advice and possibly to negotiate with creditors about a possible repayment arrangement. The seven day time frame however is too short to provide these opportunities. This is illustrated in the following quote:

> *"Given the complexity of our clients issues and their complete lack of knowledge about bankruptcy the 28 days is essential to inform them of their rights and responsibilities and to give us time to look for alternatives. The Creditors need to understand that our job is NOT to process bankruptcy BUT to use the time to investigate alternative options. This extended stay may well result in creditors getting a better outcome as the potential bankrupt will have time to consider alternative strategies." Financial Counsellor, NSW*

A practical example of the importance of an adequate stay period is illustrated in the following quote, in relation to access to superannuation.

> *"The 28 days is also very important if a debtor is considering accessing their super to settle their debts. Seven days is inadequate time to process a release. For creditors to choose to close off options seems incredibly short sighted." Financial Counsellor, NSW*

We appreciate that creditors may be concerned that some consumers may dissipate assets during the stay period. This is best dealt with through appropriate penalties

rather than a short timeframe – as it stands, the current period effectively defeats its purpose.

Finally, it is worth noting that some financial counsellors believe that the 28 day timeframe is still too short and should be longer again. Apart from the waiting list issue raised earlier, some creditors are tardy in making decisions as to whether or not to accept an offer from a consumer in relation to paying their debts.

In summary, there are two concerns about the current seven day timeframe:

1. a person who presents a debtor's petition for bankruptcy will find it very difficult to get acess to services that may provide them with information and advice about their options. In particular, it will be very difficult to get an appointment to see a financial counsellor within seven days;
2. where an individual is able to see a financial counsellor during the seven day stay period, the timeframe is not long enough to help a consumer understand their options or for any meaningful negotiations with creditors to take place.

5 AN 'ACT OF BANKRUPTCY'

> *"What worries me the most is the fact that (the Declation of Intention) is presented first as 'getting some time to obtain advice', but it is actually much more serious, as it represents an 'act of bankruptcy' and therefore opens the door to creditors to send someone bankrupt. If the 'declaration of intention' was no longer an 'act of bankruptcy', this would go a long way towards not penalizing clients too early and would encourage more people to seek advice without further fears." Financial Counsellor, NSW*

Lodging a 'declaration of intention' is an act of bankruptcy. If the debtor does not proceed with the bankruptcy, this very action is ammunition for a creditor to lodge a sequestration order.

This defeats the purpose of the declaration, which when combined with the increased stay period, is to give a debtor an opportuntity to seek advice. We agree with other consumer organisations that the first time a debtor lodges such a declaration it should not be classed as an act of bankruptcy.[5]

6 DEBT AGREEMENTS

It is proposed to increase the threshold for a debt agreeement by 20%. We do not support this change.

Financial counsellors continue to report problems with the debt agreement industry. A review of this industry is planned for 2010. In our view, any changes should be considered as part of that review.

[5] PILCH Homeless Persons' Legal Clinic, Lismore and District Financial Counselling Service.

The case studies below illustrate the type of issues financial counsellors are seeing in their casework. Problems include:

- Exorbitant fees in comparison to the debts;
- Arrangements that are doomed to fail, as they are not realistic in the first place;
- The 'doctoring' of income and expenditure statements by debt agreement companies so that there appears to be a surplus;
- Clients are not given information about other options that could be more suitable, such as hardship programs run by lenders or utilities.

Case Study 6 – A Centrelink beneficiary entered into a Part 9 arrangement at the behest of the company offering this service. The cost was $1,800 up front. The income and expenditure statement showed a surplus of $53 per week, sufficient to cover the costs of the debt agreement at $49 per week. However the statement was not accurate – running costs for the client's car were shown at $12 per week, a completely unrealistic figure. The client was not given any information about the possibility of accessing the hardship program of the lender.

Case Study 7 – There are cases where the signed income and expenditure statement prepared by the client, actually differs from that on the file of the debt administration company. The latter statement of course shows a larger surplus. The only explanation for the discrepancy is that the debt administration company has altered the statement. These matters have been referred to ITSA.

Case Study 8 – My client's only source of income was a Centrelink benefit. They had a two credit cards, with a total debt of $4,000. They entered into a Part IX agreement, paying $900 up front, with $1,200 to be paid over the course of the agreement. The individual could not keep up the payments and has since bankrupted.

7 OTHER ISSUES

For the sake of completeness and with an eye to future reform, listed below are other changes needed to the bankruptcy regime. We recognise however that the debate now is on the detail of the bill before the Parliament and for that reason, have not set out any detailed argument.

- The period of bankruptcy for first time consumer debtors should be 12 months, rather than the current three years.

- Debt agreements should not be recorded on the National Personal Insolvency Index.

- Entries on the National Personal Insolvency Index should remain for seven years and then be deleted.

- The threshold for a creditor's petition should be calculated based on the amount of the original debt, not the debt after the inclusion of collection costs or at judgment.

- The issue of trustee fees and their appropriateness needs to be addressed.

ATTACHMENT 1 – CASE STUDIES IN 'HOMES AT RISK'

The excerpt below is from the 2007 report, 'Homes at risk: using bankruptcy to collect small debts', Eastern Access Community Health. The report's author was Jan Pentland, the then Chair of AFCCRA.

THE RESEARCH

The focus of this project is an examination of cases from financial counsellors and community lawyers where a family home was at risk through a creditor's petition to bankrupt a debtor. Financial counsellors rarely deal with cases where a debtor becomes bankrupt on a creditor's petition. Their primary role in bankruptcy is with consumer bankrupts with no assets who become bankrupt on their own voluntary petition.

The minimal experience financial counsellors have with bankruptcy other than voluntary petitions occurs when a debtor who became bankrupt on a creditor's petition finds their way to a financial counselling service or a community legal service. Hence, while the number of cases outlined in this report is small, they merit attention beyond their number as indicators of issues to be considered by the bankruptcy regime.

The following cases highlight some of the problems which came to the attention of financial counsellors and community lawyers.

Case 1

A debtor became bankrupt on a creditor's petition. This action was taken by a debt collector acting for the creditor on a debt of less than $7,000. The debtor had been making agreed repayments but was unable to maintain them when he became unemployed. When the bankrupt and his family realised the risk to their family home, they vigorously opposed action to sell it. The appointed trustee accumulated fees of more than $70,000. A financial counsellor and community lawyer became involved. When alerted to the risk to its reputation, the creditor resolved the matter by paying the fees of the trustee and releasing the debtor from his liability. The creditor did not recover the original debt which led to the bankruptcy.

Case 2

A creditor's petition for a debt of less than $5,000 was issued to a disability pensioner. The petitioning creditor had bought the debt from a mainstream lender. There was $160,000 equity in the debtor's home. Action by a financial counsellor and community legal service stayed the bankruptcy proceedings

while the mainstream creditor was notified of the matter. When alerted to the risk to its reputation the creditor bought back the debt and released the debtor from his liability.

Case 3

An elderly woman and her husband fully owned their home. The couple's English was minimal. The husband owed $8,000 on a credit card. A debt collector acting for a mainstream creditor issued a creditor's petition despite a belated attempt to pay the debt. A trustee was appointed and accumulated $27,000 in fees. When the children became aware of the situation and the threat to the family home, they strongly advocated with the mainstream lender to settle the original debt, and the bankruptcy was annulled.

Case 4

When her husband died, an elderly migrant woman owed $7,000 to a funeral parlour. She fully owned her home but her only income was the aged pension. She did not understand the threat to her home when she was unable to pay the debt. The debt was referred to a debt collector and she became bankrupt on a creditor's petition. A trustee was appointed. Confused, the woman refused to fill in the Statement of Affairs and trustee's fees of $37,000 quickly accrued. Eventually the house was saved when family members became aware of the situation, paid the debt and the trustee's fees.

Case 5

A debtor became bankrupt on a creditor's petition for a debt of less than $5,000. A trustee was appointed. The debtor had $65,000 of equity in his home and arranged a $40,000 second mortgage to pay his debts. When he and his father met with the trustee for the first time, he offered to pay out all the debts and the trustee's fees to that date. The trustee told him 'it doesn't work that way'. The bankrupt's transaction account with a balance of $600 for living expenses was frozen. The bankrupt was extremely stressed by his situation and unable to work. The matter dragged on and the money from the second mortgage was used on medical and living expenses. With intervention from a financial counsellor who challenged the basis of the debt and how it had been managed, the creditor agreed to an annulment of the bankruptcy and released the debtor from his liability. Further, the creditor acknowledged its poor handling of the debt collection and paid the trustee's fees of $58,000.

Case 6

Following a car accident, the debtor owed $16,000. The solicitor acting for the owner of the other car issued a creditor's petition. The debtor became bankrupt and a trustee was appointed. There was $70,000 of equity in her home but payment of the debt and the trustee fees exceeded that amount. The house was sold. Her transaction account with a balance of $7 was frozen.

Case 7

A disabled woman owned her own home. She was served with a creditor's petition on a Judgment debt of less than $5,000. The debt had been sold by a mainstream lender and the assignee became the petitioning creditor. The debtor had made a repayment proposal to the creditor but this was not accepted. Action by a community legal service involving the mainstream lender and the assignee resulted in the bankruptcy petition being withdrawn, costs being waived and the original repayment offer being accepted.

Case 8

A disability pensioner with $100,000 equity in her home became bankrupt on a creditor's petition. She owed $2,000 to a single creditor, and disputed the debt. The appointed trustee claimed $45,000 in fees. The house was sold. The debtor received less than half of the original equity in her home after the debt and the trustee's fees were paid.

Case 9

A migrant woman owed $8,000 to a mainstream creditor. A debt collector acting for the creditor issued a creditor's petition and she became bankrupt. The family home where she was on title with her husband had $60,000 of equity. Her overall debts in the bankruptcy were $25,000. The husband refinanced the home, negotiated with the creditors and paid out the debts. The trustee claimed $18,000 in fees.

Case 10

A debtor owing $2,500 became bankrupt on his own voluntary petition after receiving poor advice from a friend. A trustee was appointed. The bankrupt negotiated with the creditor and paid the debt leaving the trustee's fees of $12,000 to be paid. The trustee claimed an equitable interest in a property which had been owned solely by the wife prior to and since the marriage. When the claim was queried, the trustee said that there would be a substantial escalation of costs if the wife queried the trustee's claim. The wife

agreed to pay the trustee to prevent any further escalation of his fees despite being confident that her husband was not entitled to equity in her house. A community lawyer who became involved was instructed by the wife not to pursue the matter due to the risk of fees escalating.

Case 11

After a successful workcover claim, a woman was to receive $75,000 within days. She advised the creditor who was owed $16,000 and an undertaking was given that debt collection action would be put on hold. However, a creditor's petition was issued, she became bankrupt and a trustee was appointed. The debts were quickly paid, and the bankruptcy annulled but $12,000 in trustee's fees accumulated.

Case 12

A mainstream lender sold a credit card debt to a debt collector. The debtor received a '*Notice of intention to commence Bankruptcy proceedings'* when she became unemployed and could not maintain her repayment arrangement. The assignee told the financial counsellor acting for the debtor that its common practice where a debtor is on title of a property is to issue a creditor's petition. Intervention by the financial counsellor persuaded the assignee to consider an alternative to a creditor's petition.

Case 13

A debtor's business failed and a business creditor was owed $29,000. Most of the debt ($25,000) was paid but the solicitor acting for the creditor issued a creditor's petition on the remaining $4,000 debt. The total debts owed in the bankruptcy were less than $20,000. Trustee's fees of more than $100,000 accrued and the bankrupt's family home was sold. The bankrupt explored several avenues to challenge the trustee's fees including employing his own solicitor. This added to his own and the trustee's fees which were then paid from the sale of his home. The bankrupt expressed the belief that the solicitor continued with the creditor's petition due to his relationship with the trustee. When the petitioning creditor was contacted about the outcome of the bankruptcy he was dismayed that the bankrupt had lost his home due to the $4,000 debt.