1 Margaret St
Sydney NSW 2000

GPO Box 4720
Sydney NSW 2001

TEL (02) 8299 9000
FAX (02) 8299 9607

Association of Building Societies and Credit Unions

Abacus
Australian Mutuals

23 September 2009

Bankruptcy Policy Branch
Civil Law Division
Attorney-General's Department
Central Office
3-5 National Circuit
BARTON ACT 2600
By email: bankruptcy@ag.gov.au

Dear Sir/Madam

Bankruptcy Legislation Amendment Bill 2009 – Exposure Draft

Abacus appreciates the opportunity to respond to the Government's proposed amendments to bankruptcy laws.

Abacus – Australian Mutuals is the industry body for credit unions, mutual building societies and friendly societies. Collectively, Abacus member institutions have more than $70 billion in assets and serve more than 6 million members.

Our members have a strong reputation as responsible lenders and regularly help our customers manage their way through financial difficulties. This aligns with our strong mutuality principles; that is, our members are also our owners, thereby ensuring the focus is on member benefits rather than profits.

We support government efforts to provide people in financial distress with more options to avoid bankruptcy, such as allowing more people to enter into voluntary debt agreements. This is one of the clear themes under the proposed bankruptcy reforms.

Whilst acknowledging that debt agreements may be preferable to bankruptcy, Abacus and its members emphasise that the primary objective should be to help consumers avoid bankruptcy and debt agreements all together.

This starts with responsible lending practices on the part of lenders and should be supported by sensible approaches to borrowers facing hardship. It should also be supported by appropriate laws, such as the new consumer credit protection regime, that help reduce the number of people entering into debt they cannot afford to repay.

For those consumers in financial distress, we agree that all available options to resolve their problems should be open, provided the right controls are in place that ensure consumers are protected from being forced down one particular path over another. This applies equally to both bankruptcies under Part X and debt agreements under Part IX of the Bankruptcy Act.

Our comments on the proposed bankruptcy amendments are provided below. However Abacus also sees significant scope for improvements to the way debt agreements and their administrators are regulated, particularly around disclosure, fees and process.

We will be putting forward suggestions on these improvements separately to this submission and would be pleased to discuss them with you in due course.

Supported amendments
Abacus supports the following proposals under the Bill:

- strengthened penalties for offences such as fraud; and,
- the removal of bankruptcy districts.

We agree that the increased penalties area necessary deterrent to debtors looking for a quick way of avoiding paying their debts.

We also agree that the concept of bankruptcy districts is now outdated and unnecessary.

Abacus also supports increasing the income, asset and debt thresholds, provided that other reforms are considered that encourage consumers to make informed decisions about all the available options (other than merely debt agreements or bankruptcy) to help them manage their financial situation.

Increase in the stay period for creditor petitions
Abacus supports this amendment in principle, however believes government should introduce a short cooling off period that applies to all parties.

Abacus suggests the introduction a 7-day cooling off period that applies to all parties under Parts IV, VI IX and X of the Act.

On many occasions, credit unions and mutual building societies receive bankruptcy notifications and debt agreement proposals without any warning from debtors, some of whom believe their only options are to enter into a debt agreement or file for bankruptcy.

As you would no doubt be aware, there are other options that allow for better outcomes for consumers and lenders, including:

1. Getting independent advice from a financial counselors in the community, who can help assess the full extent of the financial problems, assist with preparing a realistic budget and recommending a course of action.
2. Talking to their creditors about their circumstances to see if an agreement can be reached to resolve the financial difficulty without reverting to formal mechanisms (with much more serious ramifications) such as debt agreements and bankruptcy.

We are concerned that debt administrators, who are unlicensed to provide any form of financial advice, are rapidly replacing financial counselors in the community as the first point of call during financial troubles.

This compromises the value of independent advice as administrators have a clear commercial incentive to recommend a debt agreement over a less serious course of action.

Debt agreements serve a worthwhile purpose where they prevent unnecessary bankruptcy however it's important to note that such agreements are an act of bankruptcy that come with long-term consequences.

The introduction of a cooling-off period is an important way of ensuring that:

- consumers are fully aware of their options and have an opportunity to seek independent advice on the best course of action;
- consumers have fully explored all other options with their lender; and,
- there is a sufficient period of time lessens the chances of a consumer making a rash decision to file for bankruptcy or enter into a debt agreement.

Amendments we do not support
Abacus does not support the following proposals under the Bill:

Increasing the minimum creditor petition debt threshold to $10,000
Abacus accepts that an increase is necessary but believes $5,000 is a more appropriate threshold.

Credit unions and building societies rarely petition for bankruptcy on small amounts however their experience shows that retaining the ability to do so ensures customers make every effort to work through their financial difficulties.

An increase in the threshold to $10,000 will increase the level of defaults with no recourse to the lender to recover funds other than through the seizure of assets.

Increasing the threshold also creates a scenario where a single debtor can accrue multiple debts of less than $10,000 across a number of creditors yet remain immune to petitions for bankruptcy.

Multiple credit card and personal loan debts are common, particularly given the prevalence of credit card balance transfers from one lender to another. A single debtor could feasibly have three credit card debts of $8,000 each plus a personal loan of $8,000 with four creditors – a $32,000 debt and in some circumstances, reasonable grounds for bankruptcy should all other options be exhausted.

Increasing the threshold to $5,000 rather than $10,000 will minimise this problem. Alternatively, should the threshold increase to $10,000, Abacus recommends the inclusion of an aggregation measure that allows any creditor to petition for bankruptcy on a debt less than $10,000 should the aggregate debts across all creditors exceed the threshold.

Minimum Trustee remuneration levels
Abacus does not support the proposal to remove creditor approval of trustee remunerations below certain levels. Such prescription is likely to simply encourage Trustees to charge a minimum of $5,000 for every bankruptcy.

The trustee remuneration must be appropriate for the circumstance and creditors, who have a direct interest, should be entitled to question remuneration levels in circumstances where they are clearly inappropriate.

Thank you again for the opportunity to comment on the proposed reforms. As referred to earlier in this submission, Abacus will be writing separately about the need for more reform of the operation of debt agreements, reforms that can improve the operation of those agreements for both consumers and lenders.

Please contact Daniel Newlan for further information in relation to this submission.

Yours sincerely,

Mark Degotardi
Head of Public Affairs