

18 August 2020

Christopher Scope  
Senior Legal Officer  
Commonwealth Attorney General's Department  
4 National Circuit  
BARTON ACT 2600

Email to: [bankruptcy@ag.gov.au](mailto:bankruptcy@ag.gov.au)

Dear Mr Scope

## **REVIEW OF THE BANKRUPTCY THRESHOLD (THE REVIEW)**

The Australian Finance Industry Association (AFIA) appreciates the opportunity to respond to the Review.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia including retail banks, finance companies and fintechs, which provide innovative consumer products and specialised finance to meet small to medium enterprises (SMEs) working capital, cashflow and investment needs. For more information about AFIA, please see **Attachment A**.

AFIA's role as an industry body is to drive industry leadership and represent members' views, facilitate self-regulation through industry codes, and to work with the Federal Government, financial regulators, and other stakeholders to promote a supportive environment for the financial services industry.

Our overarching response to this Review is that it is important that the policies that underpin Commonwealth bankruptcy law:

1. provide a fair and orderly process for dealing with the financial affairs of insolvent individuals;

2. provide a mechanism to enable both debtors and creditors to participate with the least possible delay and expense;
3. preserve the rights of creditors to facilitate the efficient recovery of property which is then applied to the payment of debts and liabilities of debtors; and
4. as far as possible, be practical and convenient and support the commercial and economic processes of the financial industry.

## OUR RESPONSE

### **Question 1: Should the bankruptcy threshold of \$5,000 be increased?**

Yes. AFIA's members support an increase to the bankruptcy threshold of \$5,000 with a periodic review period.

### **Question 2: If the bankruptcy threshold is increased, to what amount should it be increased and why?**

We acknowledge that the Commonwealth Government has provided a temporary increase to the bankruptcy threshold due to the COVID-19 pandemic from \$5,000 to \$20,000 and we commend the Government for making these temporary changes to provide immediate relief to people facing bankruptcy due to the economic impacts of the Coronavirus.

In our view, the current threshold of \$5,000 is too low and should be increased for the following reasons:

- for smaller debts, other options are available to both debtors and creditors: for debtors examples include a Part IX debt agreement or a Part X or Personal Insolvency Agreement (PIA) and for creditors examples include garnishees and writs for levy of property; and
- it recognises significant changes in personal debt levels over the past few years as well as the cost and complexity of bankruptcy proceedings (as compared with other available debt administration methods as noted above).

AFIA's members therefore support an increase to the bankruptcy threshold of up to \$10,000.

AFIA's members believe however, that a permanent increase to an amount higher than \$10,000 in the current environment will have an adverse effect on the risk appetite of lenders which may restrict the flow of credit into the economy. We discuss this concern further below.

**Question 3: Are there any approaches (e.g. administrative or legislative) to address the concerns that the threshold enables the excessive use of bankruptcy proceedings to recover relatively small debts?**

In our view, we do not consider there to be excessive use of bankruptcy proceedings to recover relatively small debts. There is a lack of evidence that proceedings are being misused for low levels of debt recovery<sup>1</sup>. We note that cost is one inhibitor to the commencement of proceedings for low debt amounts.

We also note recent changes to the Banking Code of Practice in relation to debts sold or assigned between credit providers which requires the assignee to notify the assignor (or original credit provider) of actual or intended bankruptcy proceedings. The intent of these amendments is to provide further protections to consumers whose debts are sold by allowing the original credit provider to retain control over the decision to commence proceedings.

**Question 4: What are the possible consequences (unintended or adverse) of increasing the bankruptcy threshold?**

We have a concern that customers may intentionally accrue debts less than any increased amount to the bankruptcy threshold ie a lot of small amount debts. This activity obviously will negatively impact both creditors and debtors. Our view is that there needs to be a mechanism that prevents customers from "gaming" any increased threshold.

In relation to lenders, we have a concern that the higher the threshold, the more risk averse lenders may become which in turn may restrict the flow of credit to consumers and into the economy, particularly in an environment where Government is seeking to incentivise lenders to continue to lend. An increase in bankruptcy thresholds may increase the risk profile of smaller commercial customers and may have a

---

<sup>1</sup>[https://www.aph.gov.au/parliamentary\\_business/committees/senate/legal\\_and\\_constitutional\\_affairs/completed\\_inquiries/2008-10/bankruptcy/report/c03](https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/2008-10/bankruptcy/report/c03)

negative cost impact or create additional barriers to smaller commercial borrowers obtaining finance on more favourable terms.

**Question 5: If the bankruptcy threshold is increased, should this occur immediately or should there be a delay before it takes effect?**

We recommend a transition period of 6-12 months to allow industry to adjust to the changes.

**CLOSING COMMENTS**

Thank you again for the opportunity to provide comment. We hope this has been helpful. Please do not hesitate to contact Naveen Ahluwalia on [naveen@afia.asn.au](mailto:naveen@afia.asn.au) if you would like to discuss our submission or if you require additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Karl Turner', with a long horizontal flourish above the name.

Karl Turner

**Executive Director, Policy and Risk Management**

## ATTACHMENT A: AFIA BACKGROUND

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance industry.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, which includes:

- Major, regional and mutual/community owned banks
- Providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers
- Providers of land finance, including residential and commercial mortgages and bridging finance
- equipment financiers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing
- Motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance
- Fleet leasing and car rental providers, and
- Providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- Consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services.
- Commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see [here](#).