



**Australian Financial Counselling & Credit Reform Association Incorporated**

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ABN: 67 073 167 361

**Chairperson: Jan Pentland**

**Secretary: Joanne Lowth**

20 January 2005

Mr Terry Gallagher  
Inspector-General in Bankruptcy  
Insolvency and Trustee Service of Australia  
GPO Box 821  
Canberra ACT 2601

& by email to [Dipen.Mitra@itsa.gov.au](mailto:Dipen.Mitra@itsa.gov.au)

Dear Terry,

**Comments in relation to ITSA Cost Recovery Review – Briefing Paper No 2**

We refer to our submission to ITSA's cost recovery review sent to the Commonwealth Attorney-General on 24 November 2004. We also refer to the above Paper, released on 15 December 2004.

As you are aware, AFCCRA's Chairperson Jan Pentland is currently on leave. I have undertaken to coordinate AFCCRA's response in Jan's absence. That has not been easy, largely because of the timing involved. Process comments in a discussion of this type are often overlooked because of the nature of the issue. Nevertheless, the production of a second briefing paper in the week before Christmas and requiring response before the end of the January in the New Year, undermines any claim to proper consultation. You are likely as a result to receive fewer comments than in the first round of consultation. That should not be read as acceptance of the varied proposal. If anything the frustration of the financial counselling community with the proposal itself and the manner of its communication has increased and intensified.

In response to the submissions ITSA received in the first round of consultation in this Review, Briefing Paper No 2 puts an alternate proposal for exemption of a class of debtors from requirement to pay a filing fee for the lodgment of a Debtors' Petition. The class suggested for exemption is consumers holding pension concession or health care cards.

AFCCRA has already expressed its strong objections to the filing fee proposal. In our view, a variation of the proposal to introduce the suggested exemption would not deal at all with the lack of logic in the concept, or the fundamental unfairness that would result if a filing fee were to be introduced. ITSA has not presented as an option a course that might see any fee deferred, provable or included in the realisation fee.

There are significant numbers of consumers who seek information and assistance from financial counsellors in relation to bankruptcy, who would not qualify for the exemption and for whom any filing fee would be unaffordable. Indeed many who experience a sudden change of circumstances, bringing about their financial calamity, present to financial counselling agencies before they have qualified to access Centrelink or other Government support services. For these consumers an exemption of the type proposed would only increase their exclusion and disadvantage. Not only could they not access the exemption, the fee they face could be much higher and further from practical reach.

The insurmountable problem in our view is the idea that an entry fee to bankruptcy, or in applying for a Part IX agreement, can be made to work fairly. It cannot. We use fairly in this context not simply to describe the impact on presenting debtors themselves. The proposed filing fee would act as a form of preferential payment standing outside the bankruptcy disadvantaging creditors as well. Extrapolating this comment further to the discussion of “taxpayer funding” included in the paper, the entire community benefits from an effective, safe, fair system of bankruptcy. Equally the entire community would share the escalation in costs, economic and social, if that system were to be undermined.

We are therefore immovably opposed to the introduction of any entry filing fee. Having had a number of communications within and outside our sector, including with government and industry stakeholders, this forthright opposition appears unanimous.

Yours faithfully,

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Cc: Commonwealth Attorney-General