

## FINANCIAL COUNSELLING VICTORIA

### Submission:

**Commonwealth Attorney General's Department  
Bankruptcy Regulations 2021 Exposure Draft Consultation**

**20 January 2021**

### Introduction

Thank you for the opportunity to make a submission on the draft regulations.

Financial Counselling Victoria (FCVic) is the peak body and professional association for financial counsellors in Victoria. FCVic provides resources and support to financial counsellors and their agencies that assist vulnerable Victorians experiencing financial difficulty. We work with government, banks, utilities, debt collection and other stakeholders to improve approaches to financial difficulty for vulnerable consumers.

FCVic has established a Bankruptcy Working Group (BWG), involving members with particular interest and expertise in bankruptcy issues encountered in their practice as financial counsellors. The BWG has discussed and considered the exposure draft, and FCVic has drawn on their expertise in making this submission.

FCVic strongly supports the joint consumer groups submission on the Bankruptcy Regulations exposure draft authored by Financial Legal Rights Centre, Consumer Action Law Centre and Financial Counselling Australia.

### Positive inclusions

We welcome the inclusion of s12 and s19 in the draft regulations.

### Comments on s27 – household property that is not available for payment of debts

As the consumer groups joint submission points out, the notion that many ordinary household goods outside of a limited list can be used for debt payment is highly problematic. We agree with the proposition that the draft regulations should instead provide for a small list of goods of particular high value that are defined as available for payment of debts, with the default being to protect most goods. However, if a household list in the exclusionary form is deemed as necessary, modifications to make the proposed list appropriate for current social and economic circumstances are needed, consistent with the following points:

1. Landline and mobile phones are essential services. Particularly in regional and bushfire affected areas, potentially both phone services are nowadays required for basic communication. With NBN the provider of landline services, a loss of power will also result in loss of landline phone services, making mobile phone back up essential for access to communications, although with blackspot issues, landlines remain important too. Landlines may be characterised as a basic household service, but mobile telephony is simultaneously an essential household and personal service. Access to mobile telephony is essential for access to basic banking, purchasing, access to government services, recording entry into premises for COVID-19 purposes, and so forth.

2. Goods such as personal computers and mobile phones purchased on a plan. The sale of these items by the bankruptcy trustee may lead to the capitalisation of a debt post bankruptcy which would adversely affect the bankrupt person. In addition to this, as the consumer groups submission points out, one personal computer, lap top/ ipad/ etc does not adequately cover the basic work/study requirements of a household in 2021. Education and work has substantially moved online, and provision is needed for each person in a household to access internet and computing services.
3. The regulations need to clarify the trustee cannot seize assets or belongings of children and/or family members and will not be part of the debt collection practice of the trustee; excluded from the bankruptcy items of the person being made bankrupt.<sup>1</sup>
4. Provision should be made for including an additional chest freezer or similar appliance; freezers on most combined fridges are too small for a large family.
5. Include Electronic Equipment - stereo or similar device.
6. Include one fixed or mobile solar and battery operated generator. When bankruptcy regulations were initially developed a primary backup energy source was a generator however as technology has developed other backup energy tools have become available and should be protected.
7. Include personal medical equipment required to maintain health and wellbeing, other essential items for a family- reliable car, educational equipment.

### Comments regarding Section 29 Tools of trade

FCVic supports the consumer groups submission on this issue, which states:

*The Regulations should prescribe all tools being used by the bankrupt in earning income that are of a reasonable value based on the requirements of the work or profession. This principles based solution should be extended to motor vehicles as well, especially if that vehicle is being used for earning income.*

We note that this principles based approach would enable the inclusion of equipment often essential to earning income and currently excluded, such as trailers, vans, electronic items (including mobile phones) and electrical equipment.

Failing the adoption of a principles based approach, FCVic argues the tools of trade threshold should be substantially increased to \$20,000, paying due regard to the impacts of COVID-19 on small businesses, and the resources required to maintain or restart that business or a new business.

### Comments regarding Section 30 Motor Vehicles

FCVic supports the consumer groups submission that the threshold amount should be raised to \$15,000 and indexed, followed by a practice statement.

Red Book costs a reliable safe car, which can tow a trailer, 6-10 years old, at \$19,000-\$27,000. The valuation of a car at this level is still modest however a reliable car is an essential tool for

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<sup>1</sup> It would be useful for AFSA to provide a practice statement giving certainty and guidance in this matter to family members of the person going bankrupt.

maintaining employment and basic social engagement, particularly for those in outer suburbs and regional areas.

### Comments on other sections/discussion paper questions

**Section 31:** Should be retained, on the rare occasion that it provides clarity and protection to the recipient of the transferred property.

**Section 34(2)(a):** FCVic agrees individual superannuation contributions should be counted as income. However, the Regulations should note that all employer paid Superannuation contributions are considered a protected amount 9%-15%, where this is consistent across all employees within an organisation, as this is a workplace equity issue.

**Section 36:** The maximum dependent income provision is insufficient, and should be increased to \$10,000 based on current part time work practices of young people within households.

**Question 9:** *Do you foresee any issues or potential unintended consequences with replacing the reference to 'attached' judgments and final orders with 'accompanying' judgments and final orders?* We do not see this as an issue. However we note the changes requires a practice statement that explains the protections for the consumer if the documents are not provided, "attached" or "accompanied" in a timely manner. Processes and procedures need to be clearly stated, so clients are not disadvantaged.

**Question 10:** *Are any other changes needed to the Bankruptcy Notice form?* The form should encourage the applicant to seek advice from a financial counsellor prior to applying for bankruptcy.

### Additional Comments

#### Part IX Agreements

Financial Counsellors are increasingly seeing Part IX debt agreements which are unregulated as they fall outside of the scope of regulations which offer consumer protection. We estimate that approximately 75% of debt agreements fail to meet the criteria triggering consumer protections. There should be a review of the trigger levels for debt agreement regulatory protections to ensure adequate consumer protection is in place for a larger proportion of the people entering into Part IX debt agreements.

#### Indexation

There are a number of provisions in the Act which use indexation to maintain their currency. In the context of the current extended low inflationary period, it may be necessary to review the indices used to maintain provision levels, to ensure they are relevant and that indexation is not failing to work as intended.

Also, in the last 2 years, due to the policy of rounding, there has been no indexation on the lower thresholds applying to tools and dependant income. Where rounding is not applied in a financial year, FCVic proposes that indexation be considered for the period from the previous uplift or consideration be given to applying a minimum \$50 uplift when 2 periods have occurred with no indexation.

#### NPII Listings

FCVic supports the consumer groups submission regarding removal of the permanent NPII Listings. This is of particular importance for victim/survivors of family violence not to be burdened by debt

incurred by perpetrators, including people in vulnerable migrant and refugee communities who experience elder abuse.

### Bankruptcy threshold

FCVic supports the consumer groups submission that the Bankruptcy threshold be increased to \$20,000.

Families should not be put at risk of losing the family home, because a creditor can pursue bankruptcy for relatively small debts, loaded up with administrative and legal charges, such as unpaid school fees.



Sandy Ross  
Executive Officer  
Financial Counselling Victoria