28 September 2023

The Hon Mark Dreyfus KC MP
Attorney-General
House of Representatives
Australian Parliament House

Via email: bankruptcy@ag.gov.au

Dear Attorney-General

Personal Insolvency Consultation

COBA thanks the Attorney-General's Department for the opportunity to participate in the Personal Insolvency Consultation to reform the personal insolvency system.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has around $160 billion in assets and 5 million customers. Customer owned banking institutions account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market. Our sector's share of ADI housing lending is around 6 per cent and our share of ADI personal lending is around 5 per cent.[1]

COBA member banks have a wide range of business models and service many different demographics including those originating from employee groups (e.g., essential workers) or specific regional areas. The customer owned banking sector has a long history of sound lending practices and putting our customers first.

Supporting vulnerable consumers

COBA welcomes measures recognising the need to support vulnerable consumers experiencing extreme financial hardship, and, where viable alternatives are available, protecting consumers from the risks and consequences of bankruptcy. We also consider the opportunity to obtain objective professional advice critical for consumers to adequately assess and understand their options.

COBA is aware that there are a wide range of circumstances that may lead consumers to bankruptcy or debt agreements (including illness and domestic violence). The consequences of these legal processes may be severe to the consumer's future financial, personal, and professional prospects, including the ability to access safe housing. We are particularly concerned that some vulnerable consumers may be forced into bankruptcy for a relatively minor non-financial services debt (where the National Credit Code does not apply) and related recovery costs, where other options may have been more efficient and beneficial to both creditors and consumers.

We are also concerned about consumers who are routinely encouraged to enter into bankruptcy or debt agreements by third-party unlicensed or unskilled advisers who charge a fee for their service where there may be other better alternatives available to the consumer. Consumers often may not understand the consequences of bankruptcy or debt agreements or feel that they have no other avenue to pursue.

[1] APRA's Monthly Authorised Deposit-taking Institution Statistics, July 2023: Monthly Authorised Deposit-taking Institution Statistics.

Suite 403, Level 4, 151 Castlereagh Street,
Sydney NSW 2000

Suite 4C, 16 National Circuit,
Barton ACT 2600

Customerownedbanking.asn.au

Debt agreements as an ‘act of bankruptcy’

COBA’s response to question 14 is based on the understanding that if paragraphs 40(1)(ha) and (1)(hb) of the *Bankruptcy Act 1966* are repealed, debt agreements will no longer be recorded on the National Personal Insolvency Index (NPII).

COBA generally supports allowing consumers to have a ‘fresh start’ out of the debt cycle. However, we recommend that there be some mechanism to maintain visibility of over debt agreements. Having visibility will enable credit providers to still assess the customer risk appropriately, while helping reduce the likelihood of consumers falling into a cycle of repeated debt arrangements.

It is unclear whether a record of the debt agreement will appear on the consumer’s credit report, if it is no longer recorded on the NPII or whether there are any implications of the proposal on comprehensive credit reporting. Once agreements are completed, it appears that future prospective credit providers may not have any visibility of these agreements. New credit providers being unaware of previous agreements may also create an overall increase in debt agreements. A reduction in visibility and possible increase in volumes may result in greater losses for creditors from these arrangements and importantly, may not lead to the best consumer outcomes. It may have the unintended consequence of debtors repeatedly finding themselves in the same position, increasing their financial hardship and vulnerability.

If you wish to discuss this submission, please contact Ilana Madjar (imadjar@coba.asn.au).

Yours sincerely

MICHAEL LAWRENCE
Chief Executive Officer