

Review of Australia's Future Tax System

Thank you for the opportunity to respond to the review of Australia's Future Tax System.

Consumer Credit Legal Centre (NSW) Inc ("CCLC") is an independent, community-based consumer advice, advocacy and education service specialising in personal credit, debt and banking law and practice. CCLC operates the Credit & Debt Hotline, which is the first port of call for NSW consumers experiencing financial difficulties. We provide legal advice, financial counselling, information and strategies, and referral to face-to-face financial counselling services, and limited direct financial counselling. CCLC took over 13,000 calls for advice or assistance during the 2007/2008 Financial Year.

A significant part of CCLC's work is in advocating for improvements to advance the interests of consumers, by influencing developments in law, industry practice, dispute resolution processes, government enforcement action, and access to advice and assistance. CCLC also provides extensive web-based resources, other education resources, workshops, presentations and media comment.

Our Submissions

We do not intend to respond to all of the matters raised as part of the review. We do wish to comment on debt collection of tax and financial hardship for individual tax payers. CCLC considers that the Australian Taxation Office (ATO) must have a comprehensive hardship policy in place to ensure that taxpayers are treated fairly.

CCLC also understands that the ATO outsources the collection of debts to debt collectors.

CCLC regularly receives calls from individuals with difficulties with dealing with the ATO. CCLC has also represented clients when seeking a waiver of tax on the grounds of severe financial hardship. CCLC has represented clients who have been rejected in their application and applied to the Administrative Appeals Tribunal for a review of that decision.

In the last few years the number of individuals contacting CCLC who have problems with tax debts has increased. It is expected that individuals with tax debts will increase significantly if the current economic crisis translates into a recession.

CCLC contends that it is essential that as part of this review the debt collection practices and hardship policies of the ATO are reviewed to ensure they are fair and not leading to unintended effects.

In our view, the ATO needs to do the following:

- 1) Publish a comprehensive hardship policy
- 2) Ensure that all debts outsourced to debt collectors require the debt collector to do the following:
 - a) Comply with the ASIC/ACCC Debt collection guidelines
 - b) To be a member of an ASIC approved external dispute resolution scheme
 - c) To comply with the ATO's hardship policy
- 3) Have strict guidelines in place to only make individual debtors bankrupt who have other significant assets on top of the family home.

- 1) A comprehensive hardship policy

The ATO does have information about hardship on its website and a policy on a remission of the General Interest Rate Charge (GIC). That information is very general in nature. It asks the caller to call the Tax Line.

This does not constitute a detailed and comprehensive hardship policy. It is possible (and probably likely) that the ATO does have a policy internally but this has not been published. It is essential that a version for the public is available and it meets the following criteria:

- a) Easily available
- b) Sets out how to apply in writing and what information is required
- c) the criteria for getting hardship (this should be flexible)
- d) a procedure for informing the individual about the outcome of their application in writing
- e) a procedure for having the decision reviewed if the request for hardship is rejected.
- f) a process to ensure all debt collection ceases while the hardship request is being reviewed.

An underlying principle should be that repayment arrangement should be accepted if the individual can reasonably demonstrate that the tax debt would be repaid over a reasonable time.

The GIC policy needs to be incorporated into the hardship policy.

2) Effective regulation of debt collectors

It is essential that all debts outsourced to debt collectors require the debt collector to do the following:

- a) Comply with the ASIC/ACCC Debt collection guidelines

Arguably these guidelines apply to all debt collectors pursuant to the ASIC Act and the Trade Practices Act. However, for the sake of clarity the ATO should ensure that all debt collectors it uses must agree to comply with the Guidelines.

- b) To be a member of an ASIC approved external dispute resolution scheme

At least two major debt collectors are members of an ASIC approved EDR scheme being Collection House and Credit Corp. It is essential that consumers/debtors dealing with debt collectors can complain to an EDR scheme about the conduct of a debt collector.

- c) To comply with the ATO's hardship policy

The debt collector must comply with and be knowledgeable about the ATO hardship policy.

3) Have strict guidelines in place to only make individual debtors bankrupt who have other significant assets on top of the family home.

CCLC has also found recently that the ATO has been seeking to make a number of individuals bankrupt in relation to tax debts. Individuals who ring CCLC in those circumstances are often highly distressed as bankruptcy can mean the loss of the family home.

Individuals facing bankruptcy proceedings are often forced to go to predatory lenders to try and save the family home. This may mean the ATO is paid but with the individual still losing their home at great cost because of the high cost lending.

The ATO as a matter of "overall social and economic wellbeing" (Objective

4) should only use bankruptcy proceedings as a last resort for individuals whose family home is their only significant asset. A policy needs to be enacted to cover this. It is also obvious that in the current economic crisis forcing people out of their homes has a negative effect on house prices and the economy generally.

If you have any questions please do not hesitate to contact the writer on 02 82041350.

Yours faithfully,

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