

29 July 2024

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

Via portal: consultations.ag.gov.au

Dear Attorney-General

Personal Insolvency Consultation – Minimal Asset Procedure

COBA welcomes the opportunity to comment on the Attorney-General's Department's (AGD) consultation on reforms to Australia's insolvency laws to create a Minimal Asset Procedure (MAP) for debtors with minimal assets.

COBA represents Australia's customer owned banks (mutual banks, credit unions and building societies). Collectively, our sector has over \$175 billion in assets and is the fifth largest holder of household deposits. Customer owned banking institutions account for around two-thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs).

Key points

COBA supports the creation of the MAP as there is a genuine need for an alternative to traditional bankruptcy procedures among certain cohorts of debtors.

We broadly support the proposed design and scope of the MAP; however, we have some comments about some of its core elements.

COBA welcomes measures recognising the need to support vulnerable consumers experiencing extreme financial hardship. We support the creation of the MAP as we believe that there exists a genuine need for an alternative to traditional bankruptcy procedures among certain cohorts of debtors (for example, young people in financial distress). However, we are concerned that in some circumstances the MAP could be misused by some debtors or debt-management firms as a mechanism for 'debt shopping' and this would need to be guarded against.

Additionally, we have some concerns that with declining financial literacy among some Australians that the MAP could be used by some debtors as a quick and easy way to clear debt without learning the consequences and responsibilities associated with obtaining credit. This is particularly relevant to younger people who may be using non-traditional forms of credit. We are concerned that these debtors may find themselves in severe hardship even after using the MAP by repeating the same behaviour. If this comes to pass, then there is the risk that some debtors who use the MAP will still need to utilise the existing bankruptcy provisions in the future leading to further consumer detriment.

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

Suite 4C, 16 National Circuit,
Barton ACT 2600

Design and scope

While COBA supports the concept of the MAP we wish to make some comments on several aspects of the design of the scheme.

Debt threshold and excluded debt

COBA members expressed mixed views on the proposed debt threshold as some expressed comfort with the proposal while others were concerned the threshold could be too high.

COBA is broadly supportive of adopting similar excluded debts as the New Zealand model.

Asset and income threshold

COBA supports the asset threshold and the debtor being subject to an income test. We note that the proposed asset threshold for MAP may be slightly different to what is currently in the Act and could also be on the low side due to inflation in recent years. We suggest that the appropriateness of the asset threshold for both the MAP and the other bankruptcy provisions could be examined more holistically in future.

We support using the existing model in the *Bankruptcy Act 1966* as a starting point for establishing an income threshold for eligibility. We suggest that AGD should also consider the relevance of whether a debtor is solely or partially deriving their income from welfare payments as part of assessing the threshold. Consideration could also be given to providing that a person whose sole income is from welfare payments, such as JobSeeker, should be automatically eligible.

Creditors

We believe that the creditor's interests in the MAP needs be balanced with the benefit provided to the debtor by ensuring that the creditor is no worse off under MAP than they would be under the existing bankruptcy provisions. This would include requiring the debtor to have a demonstrated inability to repay the debt and has no realisable assets. However, we do note that the faster process proposed should be beneficial to both the debtor and the creditor.

Economic circumstances as a factor

COBA members consider the economic circumstances of the time when they are making their lending decisions. They generally do not base it on what could possibly happen to the economy in the future except to the extent required by regulators, for example, APRA's mortgage serviceability buffer. As such, while a consideration to current economic circumstances may be appropriate, we would be cautious on including any further requirement to consider future economic conditions.

Impacts on debtors and creditors

Debtors

COBA supports the safeguards proposed for the MAP, including it being a one-time only offering available to debtors. Additionally, we support the MAP lasting for 12 months and it being followed by a four-year post-discharge period of listing on the National Personal Insolvency Index.

Creditors

COBA notes several potential impacts for creditors. The first is that the MAP does not appear to utilise a trustee as exists in the current bankruptcy agreements. A role of the trustee is to monitor for potential dividend to creditors and for changes in the debtor's circumstances that may allow for potential recovery of assets. The removal of this role could see creditors missing out on a means of recovering assets and this would need to be balanced under the principle we highlighted above that creditors should not be worse off under the MAP when compared to the current bankruptcy provisions.

As noted above, we are concerned with declining financial literacy among cohorts of Australians and how this could see the potential misuse of MAP or misunderstanding of how it works. This means we could see a greater burden placed on our members to provide increased support to debtors compared to the current system. Additionally, the creation of the MAP will likely see lenders wanting key

information from potential customers on why they used the MAP and any relevant history that preceded the use of the MAP. AGD could give consideration on how this information should be handled including any additional safeguards on its use.

We look forward to engaging further with AGD on this issue and thank you for taking our views into account. Please do not hesitate to contact Ilana Madjar, Policy Manager (imadjar@coba.asn.au) if you have any questions.

Yours sincerely

A handwritten signature in black ink, consisting of the letters 'M' and 'N' in a stylized, cursive font, with a horizontal line underneath.

MARK NGUYEN
Chief of Policy