



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

29th July 2024

Bankruptcy Team
c/o Attorney-General's Department
Commercial and Copyright Law Branch
Submitted via email to: bankruptcy@ag.gov.au

Dear Sir/Madam,

Minimal Asset Procedure – Discussion Paper (July 2024)

The Australian Collectors & Debt Buyers Association appreciates the opportunity to provide the attached Submission in response to the Minimal Asset Procedure discussion paper.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely

Jacob Maiore
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Email: ceo@acdba.com



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DEBT BUYERS ASSOCIATION

**Submission in Response to
Minimal Asset Procedure – Discussion Paper (July
2024)**

Introduction

Australian Collectors & Debt Buyers Association (“**ACDBA**”) welcomes this opportunity to comment on the ‘Minimal Asset Procedure – Discussion Paper’ dated April 2024.

ACDBA was established in 2009 for the benefit of companies who collect, buy and/or sell debt. Our members (refer Appendix 1) represent the majority of the collection market in Australia.

ACDBA members do not issue loans directly, rather they acquire defaulted loan portfolios from banks and other financial institutions. As assignees of credit contracts, our members frequently interact with the Bankruptcy framework.

Response

1. Are you supportive of the Minimal Asset Procedure within Australia?

The ACDBA would generally oppose the introduction of the Minimal Asset Procedure (“**MAP**”) due to significant concerns about the potential for increased fraud, diminished recovery rates for creditors, and the broader economic impact. We acknowledge the intent behind the proposal to streamline insolvency processes for individuals with minimal assets. However, after careful consideration, we find that the potential risks and negative impacts on creditors and the broader financial market outweigh the intended benefits. Our position is that the MAP could undermine the stability of the credit system by encouraging strategic defaults, potentially inflating the risk profile for creditors and leading to a contraction in lending.

2. Other jurisdictions have enacted a Minimal Asset Procedure to assist debtors who have no reasonable way to repay their debts. Where these debtors become bankrupt, it would result in non-commercial estates which do not return dividends to creditors. Do you believe a cohort exists for a Minimal Asset Procedure in Australia? Please expand on your response.

While there is undoubtedly a segment of debtors who would qualify for such a procedure under the proposed criteria, the risk of misuse and the administrative burden of stringent eligibility checks could lead to inefficiencies and potential exploitation of the system. While recognising a potential cohort for the Minimal Asset Procedure, ACDBA remains concerned about the practicality and economic viability of implementing MAP. The requirement for thorough eligibility verification involves extensive checks for fraud and financial authenticity, which can equate to the same level of administrative effort as managing traditional bankruptcy cases. This similarity in workload does not alleviate the trustee's burden but rather maintains it, making the MAP non-commercial in nature due to the minimal assets typically involved and the lack of substantial recovery for creditors.

3. The department recommends a maximum debt threshold of \$50,000 for the Minimal Asset Procedure. Do you agree with this threshold? Please expand on your response. The department has included a table of other jurisdictions’ thresholds below to assist

If the MAP is to be adopted, the proposed \$50,000 debt threshold is considered too high and may encourage misuse of the MAP, allowing debtors with significant debt levels to prematurely discharge their obligations without sufficient scrutiny. A lower threshold should be considered to limit the MAP's scope to truly indigent debtors.

4. *The department proposes an asset threshold of \$10,000 with exceptions for tools of trade and a vehicle. Do you agree with this asset threshold? Please expand on your response.*

The asset threshold, while intended to restrict eligibility, still poses a risk of being exploited. Realistic valuations and stricter criteria for asset disclosure should be implemented to ensure that only those genuinely without significant assets can access the procedure.

5. *What should a person's maximum income be prior to accessing the Minimal Asset Procedure?*

We advocate for setting the income threshold for MAP eligibility at a level that accurately identifies long-term low-income earners who are truly unable to meet their debt obligations. This threshold should consider historical income data to avoid temporary low-income situations being used to qualify for MAP. Aligning this threshold closely with established benchmarks for long-term financial hardship, rather than merely the poverty line, ensures that MAP access is granted judiciously, focusing on individuals for whom traditional debt resolution processes are not feasible.

6. *How should a person's ability to repay be assessed for eligibility to access the Minimal Asset Procedure?*

The ability to repay should be assessed based on a comprehensive review of the debtor's financial activities over the last five years. This long-term view will provide a more accurate picture of the debtor's financial behaviour, preventing the manipulation of short-term financial status just to qualify for MAP.

7. *Should any debts be excluded from the Minimal Asset Procedure in Australia? Table 1 below compares other jurisdictions which exclude certain debts from being cleared, where they would otherwise be cleared by a bankruptcy.*

ACDBA supports the exclusion of certain types of debts from being discharged under the MAP to uphold both legal and moral obligations. Specifically, debts arising from fraud, spousal maintenance, child support, and court fines should remain non-dischargeable. Furthermore, MAP should not serve as an alternative to the judicial process for resolving disputes or obligations determined by courts. Such complex matters should be dealt with by Registered Trustees via the current processes, ensuring that MAP cannot be used to circumvent court decisions is essential for maintaining the integrity of the legal system and ensuring that the procedure upholds its intended purpose without being misused.

In keeping with our commitment to maintaining the integrity of the financial system, we further advocate that any listing on the National Personal Insolvency Index (NPII) for individuals undergoing MAP should align with credit reporting standards, lasting the full five years that correlate with default listings on the Credit Reporting Bodies. This alignment ensures that the MAP does not provide a 'blind spot' within credit risk assessments, leading to irresponsible lending or other unintended consequences.

8. *What exceptions/exemptions do you believe should be applied for debtors when assessing someone's suitability for the Minimal Asset Procedure? For example, when assessing a debtor's income where someone is receiving welfare payments, should the debtor be exempt from the income test?*

When assessing income for MAP eligibility, necessary living expenses should be considered, but no broad exemptions should be granted. All income sources, including welfare payments, should be assessed to ensure that only those truly without means are eligible for MAP. It is our belief that fulsome and complete information is required for such a process to work correctly, if at all. We would not support any exemptions being considered.

9. *To what extent would the Minimal Asset Procedure displace alternatives to bankruptcy currently available in the Australian personal insolvency system? Please explain.*

The introduction of MAP could potentially displace some of the existing insolvency options. To prevent this, MAP should be positioned as a last-resort measure, clearly distinct from other processes like debt agreements or personal insolvency agreements, which provide for partial repayment plans.

10. *If the Minimal Asset Procedure was enacted in Australia, where would this best fit within the current personal insolvency options?*

MAP should be integrated into the existing insolvency framework as a standalone option, distinctly separate from bankruptcy. It should be specifically designed for cases where no other insolvency options are viable due to the unique circumstances.

11. *Do you believe if there are any economic circumstances that signal a need for the Minimal Asset Procedure? Please expand on your response*

While acknowledging the potential rise in personal insolvency rates, ACDBA is concerned about the broader economic implications of introducing the Minimal Asset Procedure (MAP). Specifically, we are wary of the reluctance it may cause among creditors to extend unsecured small credit to consumers who have this expedited insolvency process available to them. The availability of MAP could lead to a tightening of credit conditions, as lenders recalibrate their risk assessments to account for the increased likelihood of debt discharge without repayment. This could inadvertently restrict access to credit for consumers and stifle economic activity. A detailed economic analysis is necessary to assess whether MAP fills a persistent gap in the insolvency framework or merely reacts to short-term economic challenges, ensuring that its introduction does not lead to unintended negative consequences in the lending market.

Conclusion

While the Australian Collectors & Debt Buyers Association (ACDBA) recognises the intentions behind the Minimal Asset Procedure to provide relief for debtors with minimal assets, we hold significant reservations about its potential implementation within Australia's current insolvency framework. Our concerns are primarily focused on the increased risk of fraud, the likely reduction in recovery rates for creditors, and the broader economic impact, particularly the potential tightening of credit availability. We advocate for a thorough and cautious approach, suggesting that any decisions on the implementation of MAP be backed by rigorous economic analysis and a clear demonstration of its necessity and benefits over existing insolvency options.

ACDBA remains committed to engaging constructively in further discussions and reviews to ensure that any adjustments to our insolvency laws protect the interests of all stakeholders, including both debtors and creditors.

Thank you for the opportunity to contribute to this important review. We are available to discuss any aspect of this submission further.

Contact

For any enquiry in relation to this Submission, please contact:

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Appendix 1

Members of Australian Collectors & Debt Buyers Association

- Axxess Recoveries & Collections Pty Ltd
- CCC Financial Solutions Pty Ltd
- Charter Mercantile Pty Ltd
- Complete Credit Solutions Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Lyndon Peak Pty Ltd t/as Access Mercantile Services
- PF Australia Pty Ltd
- PRA Australia Pty Ltd
- Recoveries Corporation Holdings Pty Ltd
- Standard8 Advisory Pty Ltd
- Strategic Collections Pty Ltd

Affiliate Members of Australian Collectors & Debt Buyers Association

- Acceleon Pty Ltd
- CreditSoft Solutions Pty Ltd
- Experian Australia Pty Ltd
- TaleFin Australia Pty Ltd
- TCN
- Collect!