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Bankruptcy
Submission No:7.....

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BY: *Gillian Gould*

4 June 2004

Senator Bronwyn Bishop
Chairperson
House of Representatives Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Senator,

Bankruptcy Legislation Amendment

I wish to register my concern with the proposed legislative changes.

I am 47 years of age, in business as a chartered accountant and I have always taken a prudent and conservative approach to the conduct of both my business career and my personal financial position.

Your proposed legislative changes effectively lift the corporate veil. Clause 49 of the Exposure Draft EM states "*.....while asset protection arrangements are not uncommon the Government considers that they should not continue ...*"

There is absolutely no doubt that the corner stone of the private enterprise system is the survival of the availability of limited liability.

My understanding of the law that was being considered, was that it was to be based on the joint task force report "Use of Bankruptcy & Family Law to Avoid Tax "

The draft of the proposed legislation makes no mention of tax avoidance and has the effect of being retrospective legislation that attacks the related assets of every person who becomes bankrupt for whatever reason.

The Attorney-General has apparently stated that professionals should have insurance cover and thus the legislation should not affect them. I would remind you of three issues

1. Not everyone is a professional person; the proposed law covers any person who becomes a bankrupt including all those in business taking risks the same as every other business person.
2. Insurance is not always available, and even if it is, there is no guarantee it will cover the risks encountered or be available. There is also the issue of HIH Insurance that failed not so long ago and left people with exposures.
3. Most people who go bankrupt do not do so to avoid tax - those persons are in a minority.

It is clear that no consideration has been given to the following consequences of this legislation.

- A person in business who has a "no fault bankruptcy" such as due to a bad debt or inability to insure is being penalised for trying to protect their assets for their family.
- Single people would get no relief from any seizure orders as they have no other parties to consider for hardship.
- "Long tail" litigation could be uninsurable for doctors and other essential professional persons who may get sued long after an insolvency event happens and any assets held would be at risk. For example a doctor who is sued 10 plus years after a negligence takes place.
- With recent case law on liabilities for non-executive directors of companies, non-resident directors' indirect assets would be at risk. This is likely to cause a reduction of investment in this country.
- Professionals and business people who take risks are likely to reduce their exposure to risk and this will have a direct impact on people wanting to go into business and employ people. This will have a direct impact on employment and GDP over time.
- Banks and other lenders will be forced to take further security to counteract the effect of the legislation, which will reduce returns to unsecured creditors, thus defeating the alleged objective of the proposed legislation.

I support legislation that stops tax avoidance through bankruptcy however it needs safeguards.

In future if a negligence claim arises or is threatened, the plaintiff's advisers will know that as well as pursuing my insurance cover they can now threaten to seek assets held by my family created years ago as a result of prudent and conservative planning.

My intention has always been to be self sufficient in my retirement and not to depend on Government Social Security in my retirement years. Your proposals now put this at risk.

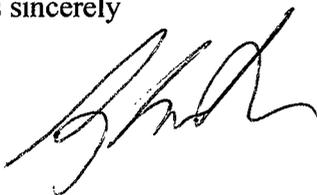
This legislation does not just apply to professionals; it applies equally to any contractor conducting their business through a corporate entity.

The simple solution to the mischief of those who brought about this change the cynical fat NSW Barristers is to preclude them from practising their profession and pursue them for tax fraud, rather than to target those who have caused no mischief. Why has this not been addressed? In addition the Tax Office needs to be more vigilant in pursuing debt recovery.

I intend to raise the profile of this issue in the public arena to highlight the inappropriateness of this legislation.

I would be pleased to discuss this matter further with you or one of your officers should that be appropriate.

Yours sincerely

A handwritten signature in black ink, appearing to be 'G. H. D.', written in a cursive style.