

7 JUN 2004

*Gillian Gould*

Submission No: 91

18 June 2004

The Hon. Bronwyn Bishop MP  
Chairman  
House of Representatives Standing Committee on Legal and Constitutional Affairs  
Parliament House  
Canberra ACT 2600

Dear Ms Bishop

**BANKRUPTCY LEGISLATION AMENDMENT (ANTI AVOIDANCE & OTHER MEASURES) BILL 2004**

I wish to register my concern that the legislative changes referred to above could be enacted in a form represented by the recent Exposure Draft.

I am 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.

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.
- 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.
- 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.
- 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.
- People close to retirement who lose access to assets held in related entities will become a burden on the social security system and medical system.

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

- Allow people who legally have assets in related entities and who become bankrupt, to retain assets that have not been deliberately diverted JUST PRIOR to bankruptcy to avoid their tax or other responsibilities.
- Modify the legislation to specifically make it applicable to tax avoidance

~~Why should people gamble with their family's future every time they take a business risk?~~

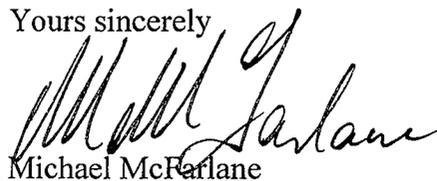
In future if a negligence claim arises or is threatened, the plaintiff's advisers will know that as well as pursuing my insurance cover they can now threaten to seek assets held by my family created more than 10 to 20 years ago as a result of prudent and conservative planning.

The public should be encouraged to be self sufficient in retirement and not to depend on Government Social Security in retirement years. Your proposals 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 NSW Barristers) is to introduce more targeted legislation rather than using a sledge hammer approach.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Michael McFarlane". The signature is written in black ink and is positioned above the printed name.

Michael McFarlane