



Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006

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Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006

Date introduced: 6 December 2006

House: Senate

Portfolio: Attorney-Generals

Commencement: Different provisions of the Bill commence on a variety of dates, including retrospectively in some cases. The most significant amendments (Schedule 1, Part 1) apply to superannuation contributions made on or after 28 July 2006¹

Purpose

This Bill amends the *Bankruptcy Act 1966* to:

- provide for the recovery of superannuation contributions made with the intention to defeat creditors
- provide for certain rural support grants to be exempt from the property available to pay the bankrupt's creditors, and
- make minor technical amendments to clarify or improve the operation of Commonwealth bankruptcy legislation.²

This Bill also amends the following Acts in pursuit of the above objectives:

- the *Payment Systems and Netting Act 1998*, and
- the *Proceeds of Crime Act 2002*.

Background

Cook v Benson

The background for this Bill was the High Court's decision in *Cook v Benson* (June 2003).³ The case revolved around the correct application of **section 120** of the *Bankruptcy Act 1966* (the Act). This particular section, in part, reads:

S.120 Undervalued transactions

Transfers that are void against trustee

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(1) A transfer of property by a person who later becomes a bankrupt (the *transferor*) to another person (the *transferee*) is void against the trustee in the transferor's bankruptcy if:

- (a) the transfer took place in the period beginning 5 years before the commencement of the bankruptcy and ending on the date of the bankruptcy; and
- (b) the transferee gave no consideration for the transfer or gave consideration of less value than the market value of the property.

The section goes on to list a number of exceptions to this particular provision.

In this section, if a person who later becomes a bankrupt undertakes a transaction within certain time periods, where they do not receive adequate consideration in return, the assets transferred as part of transaction are available to their trustee in bankruptcy. This section was introduced into the Act to deal with situations where a person facing bankruptcy transferred their assets to a third party (a relative or associate of the person who later goes bankrupt) in an attempt to defeat their creditors and did not receive adequate consideration in return.

The majority judgement in *Cook v Benson* held that Mr Benson's transfer of his pre bankruptcy superannuation benefits from one superannuation fund to three other superannuation funds were bona fide transactions for which he received adequate consideration in return. Thus the provisions of **section 120** of the Act did not apply to these particular transactions. Consequently, the trustee in bankruptcy was not able to access these particular contributions to the three superannuation funds.

The decision was widely interpreted as denying a trustee in bankruptcy access to contributions made to superannuation funds prior to bankruptcy.⁴

Policy development

On 16 December 2003 the Attorney-General and the Minister for Revenue and Assistant Treasurer issued a joint press release announcing amendments to the Act to ensure that certain superannuation contributions made prior to bankruptcy could be recovered by bankruptcy trustees and so remedy the problem created by *Cook v Benson*.⁵

On 6 September 2005 the government released a discussion paper on the treatment of superannuation contributions made prior to bankruptcy. Initially, it was proposed that only 'excessive superannuation contributions' would be able to be recovered by a trustee in bankruptcy. However, following a period of extensive consultations with both the superannuation industry and bankruptcy practitioners the government decided to revise its position.⁶

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The revised position proposed that the Act be amended so that contributions made to superannuation funds in an attempt to defeat potential creditors will be available to the trustee in bankruptcy for distribution. The Bill implements this proposal.

Basis of policy commitment

The amendments to the Act in this Bill were announced in a joint news release from the Attorney General, the Hon. Phillip Ruddock MP and the Minister for Revenue & Assistant Treasurer, the Hon. Peter Dutton MP on 27 July 2006.⁷

Position of significant interest groups/press commentary

Press Comment

There has been comparatively little press comment on the proposals in the Bill. One commentator has noted that the proposed changes strike a fair balance between the claims of creditors and the legitimate rights of debtors to provide for their retirement. This view was supported in one other press article.⁸

Industry and Commercial Organisations Comment

The following organisations have expressed their general support for the Bill:

- Australian and New Zealand Banking Group (ANZ)⁹
- the Association of Superannuation Funds of Australia (ASFA)¹⁰
- the Investment and Financial Services Association (ISFA)¹¹
- the Business Law Section of the Law Council of Australia¹²
- the Australian Finance Conference,¹³
- the Australian Society of Certificated Practising Accountants, and¹⁴
- the Institute of Chartered Accountants.¹⁵

The specific technical comments that these, and other organisations, have on the Bill will be referred to in the following Main Provisions section.

The comments made by the industry relate to the workability of the proposed amendments and their interaction with existing superannuation and family law. None of the organisation have opposed the Bill or recommended that it should be rejected as a whole.¹⁶

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Pros and cons

The legislation clearly deals with the difficulties highlighted by the High Court's decision in *Cook v Benson*. If the Bill is enacted it will be far more difficult for a person facing bankruptcy to shelter their assets inside the superannuation environment.

Further, the Bill's provisions make it clear that only contributions made to a superannuation fund(s) in an attempt to defeat creditors, are subject to these provisions. The bankrupt's legitimately accumulated superannuation benefits will not be available to the trustee in bankruptcy.

Other Issues

A note of caution has been sounded about the proposed amendments. While supporting the intent of the Bill, prominent lawyer, Mr Peter Bobin, questions how they will interact with the forthcoming changes to the superannuation system that allow significant contributions to a superannuation fund. He notes that up to \$1m can be contributed to a superannuation fund before 1 July 2007 and up to \$450 000 over a three year period after that.¹⁷ Mr Bobbin is concerned that such contributions would be seen as out of character with the bankrupt's normal pattern of superannuation contributions and therefore be available to their trustee in bankruptcy.¹⁸

Several commentators have noted that existing **paragraph 116(5)(b)** of the Act protects a bankrupt's superannuation benefits, up to the pension reasonable benefit limit (currently \$1 356 291). They note that the Tax Amendments (Simplified Superannuation) Bill 2006 currently before Parliament abolishes these reasonable benefit limits. They then question whether the same level of protection for a bankrupt's superannuation benefits will exist after the passage of this Bill and the Simplified Superannuation Bill.¹⁹

Items 1, 2 and 3 of Schedule 3 of the Superannuation Legislation Amendment (Simplification) Bill 2006 (currently before Parliament) repeal **paragraph 116(5)(b)** and related paragraphs of the Act. This particular amendment will solve this perceived problem.

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ALP/Australian Democrat/Greens/Family First policy position/commitments To date, the Australian Labor Party has not made a formal statement on this particular Bill. However, it has in the past expressed support for measures to assist trustees in bankruptcy in recovering a bankrupt's assets.²⁰

Any consequences of failure to pass

A significant potential consequence may be the entrenchment of the view that those facing bankruptcy will be able to protect assets that may otherwise be available to their trustee in bankruptcy, by transferring their assets into a superannuation fund.

Financial implications

There are no financial implications for the Commonwealth budget as a result of either passing, or failing to pass, this Bill.

Main provisions

Schedule 1 – Part 1

Item 6 inserts a new **Subdivision B** at the end of **Division 3** of **Part VI** of the Act. This new Subdivision deals with superannuation contributions and is the main provision of this Bill. There are two types of contributions dealt with in this new Subdivision:

- contribution(s) made by a person who later becomes a bankrupt, and
- contribution(s) made by a third party for the benefit of a person who later becomes a bankrupt.

New **section 128B** deals with the first type of contribution. **Subsection 128B(1)** states that a contribution to a superannuation fund by a person who later becomes bankrupt is accessible if:

- the contribution would probably have become part of the person's estate or would have been available to their creditors, and
- the main purpose in making the contribution was to prevent these funds being divided amongst their creditors or to hinder or delay the process of making this property available to these creditors (i.e. the contribution was designed to defeat creditors), and
- the contribution took place on or after 28 July 2006.

Subsections 128B(2), (3) and (4) provide guiding principles for determining whether the person's main purpose was to defeat creditors.

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Subsection 128B(2) provides that a court can infer that the bankrupt's main purpose in making the contribution was to defeat creditors if the bankrupt was, or was about to become insolvent when the contribution was made.

Comment

Becoming insolvent is not the same as entering bankruptcy. Often, a person will be insolvent well before formally entering bankruptcy. Thus a contribution to a superannuation fund may be available to a trustee in bankruptcy if it is made at some point before the person formally enters bankruptcy.

Subsection 128B(3) states that one of the matters to be taken into account in determining whether a contribution to a superannuation fund was made to defeat creditors is whether the contribution was out of character with a previous pattern of superannuation contributions.

Subsection 128B(4) provides that the ways in which a person's main purpose in making superannuation contributions was to defeat their creditors are not limited to the matters addressed in **subsections 128B(2)** and **(3)**.

While the Explanatory Memorandum does not further comment on what kind of superannuation contributions may be out of character, the Second Reading Speech notes one example where this may occur:

If the bankrupt had no history of making substantial superannuation contributions but made such contributions shortly before becoming bankrupt, this may indicate that the contributions were made to defeat creditors.²¹

As **subsection 128B(4)** does not limit the matters taken into account in determining whether a superannuation contribution was made with the intention to defeat a person's creditors the reach of this section is particularly broad.

Industry comment – s. 128B

As a general point, Superannuation Australia is concerned that the assessment of whether a particular contribution was made with the express intent to defeat creditors will be very difficult where:

- a business, that later goes bankrupt, is in a very poor situation but from which it may reasonably be argued it had prospects of recovery, or
- where the person, who later becomes bankrupt, is advised by third parties to make the contributions in the above situation as a normal part of preparation for retirement.²²

This is a minor comment and the resolution of this particular matter will most likely be decided on a case by case basis. Generally, industry strongly supported the intent behind this particular section.

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New **section 128C** of the Act allows contributions that are made by third parties to a superannuation fund to be recoverable by the trustee in bankruptcy where:

- contributions are made for the benefit of a person who later becomes bankrupt, and
- the person who later goes bankrupt is a party to a scheme under which these contributions were made, and
- the contributions would probably have become part of the bankrupt's estate to which creditors would have had access, and
- the main purpose of these arrangements was to defeat their creditors, or to delay the payment of these monies to the creditors, and
- these contributions occurred on or after 28 July 2006.

The Second Reading Speech gives an example of such circumstances:

In addition, they will apply to contributions made by a third party for the bankrupt's benefit where the bankrupt was complicit in an arrangement with that third party to defeat creditors. This may occur, for example, where the bankrupt had entered into a salary sacrifice arrangement with his or her employer to build up superannuation assets in the lead up to bankruptcy instead of other assets which would have been available to pay creditors....²³

Under **subsection 128C(2)** there are limits on the contributions that may be recovered by the trustee in bankruptcy. This limit is where the person dies and the spouse, and/or the bankrupt's children, are the beneficiary of the superannuation payment.²⁴

Comment

Under general superannuation and employment law there are other circumstances where the contributions to a superannuation fund are made by employers or third parties for purposes other than defeating their creditors. An employer may make such contributions in satisfaction of meeting the provisions of a long standing employment contract for the person or to meet the requirements of the Superannuation Guarantee regime.²⁵ Thus, contributions made under normal employment arrangements are unlikely to be subject to this particular section.

Subsections 128C(3) and (4) also provide guiding principles for determining whether the person's main purpose was to defeat creditors in these circumstances. **Subsection 128C(6)** provides that the above subsections do not limit the ways in which an intention to defeat creditors by contributions made on behalf of a bankrupt can be proved.

New **section 128D** of the Act provides that action under **sections 128B or 128C** discussed above can commence at any time after the commencement of **Part 2 of Schedule 1** of this Bill. This is a very broad power. A trustee in bankruptcy can commence action to recover such contributions at any time during a person's period of bankruptcy.

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Items 7 and 8 amend **sections 149A & 149D** of the Act. These amendments extend the grounds for a trustee to object to the discharge of a bankrupt to include the occurrence of contributions to superannuation funds recoverable under new **sections 128B and 128C**.

Schedule 1 - Part 2

Item 16 amends **subsection 116(1)** of the Act to ensure that monies paid from a bankrupt's superannuation accounts under new **sections 128B and 128C** are available to the bankrupt's creditors.

Items 19 and 20 insert additional paragraphs into new **sections 128B and 128C** discussed above. The effect of these additional paragraphs is that any tax, fee or charge payable on amounts recovered under the provisions of these sections are refunded, by the trustee in bankruptcy, to the superannuation trustee who made the payment.

Comment

The amounts to be recovered under these sections are the gross amounts contributed to the superannuation funds. If the contribution were by way of salary sacrifice a 15 per cent tax would have been applied to that contribution and may well have been paid long before recovery action had started. Likewise, if the contribution was an excessive contribution that is, one in excess of the relevant allowable limit a tax of 46.5 per cent may have been applied and paid. The trustee of the relevant superannuation fund is liable for these amounts. Further, amounts may have been deducted from these contributions by way of fees and charges. The trustee in bankruptcy must pay the superannuation fund trustee any of these amounts that have been taken out of the contributions recovered under new **sections 128B and 128C**, in compliance with a notice under **section 139ZQ** (see below).

Industry Comment – Items 19 and 20

There has been substantial industry comment in relation to **Items 19 and 20**, specifically:

- the refund of taxes, fees or charges applies to action taken in response to notices given under **section 139ZQ** of the Act. However, similar notices can be given under new **section 139ZU** of the Act (see below). **Items 19 and 20** should also allow for the trustee in bankruptcy to refund taxes, fees or charges deducted from contributions recovered in compliance with a new **section 139ZU** notice.²⁶
- several industry organisations have noted that only the superannuation trustee will possess the necessary information to accurately calculate the amount deducted. They submit that it would be far simpler if these provisions required the superannuation trustee to pay the net amount back to the trustee in bankruptcy,²⁷ and
- one industry organisation has noted that it is possible that, under the proposed wording of these provisions, a superannuation fund trust could claim amounts for fees and charges already deducted from the amounts repaid.²⁸

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In its response to questions on notice raised in the public hearings of Senate Standing Committee on Legal and Constitutional Affairs on this Bill, the Insolvency and Trustee Service of Australia noted that a net amount, leaving aside fees and charges already deducted by the superannuation trustee, will be accepted by the trustee in bankruptcy or the Official Receiver as an amount complying with a notice under **section 139ZQ** of the Act.²⁹

Comment

The provisions are designed to allow the trustee in bankruptcy to receive the gross amount contributed to a superannuation fund in an effort to defeat a person's creditors. It is this gross amount that is the property that, under the proposed provisions, is properly available to the creditors. It is only fair that the creditors have access to these gross amounts. However, the requirement that the trustee in bankruptcy repay the superannuation fund trustee the amounts otherwise deducted must come from some source, most likely that source will be the amounts recovered from the superannuation funds, or other amounts recovered in respect of the particular bankruptcy being dealt with. Thus, it is likely that the creditors will have far less than the gross amounts recovered under these provisions for distribution, irrespective of whether the superannuation trustees return the gross or net amounts of superannuation contributions recoverable under **section 128B** and **128C** of the Act.

A further difficulty with the proposal for the superannuation trustees to only return the net amount of benefits arises where a Self Managed Superannuation Fund (SMSF) is involved. One of the requirements for an SMSF is that all members (limited to 4) must be trustees of the fund. Thus, a SMSF trustee will also be the bankrupt who made questionable contributions to that fund.

If a SMSF trustee is only required to return the net amount of superannuation contributions to which a notice under **sections 139ZQ** or **139ZU** applies they are in a position to determine the amount of fees, taxes or charges, to be deducted from this amount. It is not beyond the bounds of possibility that such trustees may decide that an inordinate amount of such fees, taxes or charges be deducted from any amount returned to a trustee in bankruptcy. The requirement to return the gross amount of the contributions to which **sections 128B** or **128C** apply avoids this problem.³⁰

Item 21 inserts new **section 128E** into the Act. This section allows the Official Receiver to issue an order to prevent a bankrupt from dealing with their superannuation fund where the Official Receiver has reasonable grounds to believe that contributions have been made to which new **sections 128B** or **128C** apply. The Official Receiver may give such an order to a superannuation fund trustee if they are also the bankrupt's trustee, or on the application of the bankrupt's registered trustee.

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There are exceptions to these orders. Of particular interest is the exception in **paragraph 128E(2)(f)** which allows a benefit frozen under the provisions of this section to be split pursuant to an order under the provisions of the *Family Law Act 1975*.

Industry comment – section 128E

One industry participant is concerned that the ability of a superannuation trustee to give effect to a family law payment split, while an order under **section 128E** is in force, would be used as a way to hide superannuation assets from a trustee in bankruptcy.³¹ The Investment and Financial Services Association argues that the restrictions on a bankrupt's ability to deal with the superannuation benefit should also be attached to any amounts that are transferred to another fund as a family law payment split.³²

The Investment and Trustee Service Australia have advised that a split made under the provisions of the *Family Law Act 1975*, while an order under new **section 128E** was in force, would be ineffective, as long as the bankruptcy trustee proves the intent of the split was to defeat creditors.³³

New **section 128F** of the Act deals with the revocation of the superannuation account freezing order issued under **section 128E** discussed above. An order under this latter section is revoked when:

- the superannuation fund complies with a **section 139ZQ** notice
- the superannuation fund complies with a new **section 139ZU** notice
- if neither of these orders has been issued, 180 days after a freezing order was issued under **section 128E**
- if an application for a notice under **sections 139ZQ** or **139ZU** has revoked or set aside by the court, or
- at the initiative of the Official Receiver where they are also the trustee in bankruptcy, or
- by the Official Receiver at the request of the bankrupt's registered trustee or by the bankrupt themselves.

New **section 128H** specifies that the Official Receiver's consent is required for the cashing, debiting, rollover, transfer or forfeiture of a superannuation benefit at the request of the bankrupt, while a superannuation account freezing notice is in force. The Official Receiver must consult with the bankrupt's trustee in all such cases.

Comment – section 128H

It may be the case that those going through bankruptcy will be experiencing severe financial hardship. In such circumstances current Superannuation Regulations allow the withdrawal of up to \$10 000 to alleviate this hardship. Where such withdrawals occur it is

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not clear whether these withdrawn benefits would be available to the trustee in bankruptcy for distribution to creditors.

Item 23 inserts a definition of the term ‘costs’ into **section 128N** of the Act. These costs in relation to a superannuation fund include transaction costs, government charges, taxes and duties and management charges. It does not include withdrawals to pay insurance premiums for policies connected with the account when a freezing notice is in force.

Industry comment - section 128N

Industry groups have recommended that the definition of costs to be inserted into **section 128N** of the Act include costs associated with insurance premiums.³⁴

The Insolvency and Trustee Service Australia has noted that insurance premiums may be in many cases a discretionary item of expenditure, even when such premiums are paid through a superannuation fund. Nevertheless, it has undertaken to further consider this issue in the context of framing regulations relating to this section.³⁵

Comment

Often, the most cost effective way for a person to purchase and maintain life insurance cover is through their superannuation fund.

Item 34 inserts new **section 139ZU** into the Act. This section allows a notice to be issued to trustees of a superannuation fund where:

- amounts recoverable under **sections 128B** or **128C** have been contributed to two or more superannuation funds, and
- one of those superannuation funds does not contain the total amount to be recovered, or
- the member has transferred amounts to which **sections 128B** or **128C** apply to a third superannuation fund.

A notice under existing **section 139ZQ** can only be issued to one superannuation fund. A notice under this new section allows a notice for payment to be issued to other superannuation funds for the repayment of amounts to which **sections 128B** or **128C** apply.

Schedule 2

Item 5 repeals **paragraphs 116(2)(k) to (md)** of the Act and substitutes new provisions. The effect of these provisions is that amounts paid under Commonwealth, State or Territory rural support schemes are not property available to a bankrupt’s trustee or property divisible by the bankrupt’s creditors.

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Concluding comments

Though industry and other parties have made substantial comment on this Bill, it would be a mistake to take this comment as grounds for rejecting the legislation. Rather, industry and other parties as a whole strongly support the Bill and their comments are offered to improve the workability of the final legislation.

Nothing in this Bill allows a trustee in bankruptcy to access any more of a bankrupt's superannuation assets than the contributions made for the purpose of defeating their creditors.

Endnotes

1. Senator the Hon. Christopher Ellison, Minister for Justice and Customs, Second reading speech: Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006', Senate, *Debates*, 6 December 2006, p. 1.
2. The Hon. Phillip Ruddock MP, Explanatory Memorandum to the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 6 December 2006, p. 1.
3. (2003) 214 CLR 370.
4. Insolvency and Trustee Service Australia (ITSA), *Effect of bankruptcy on superannuation contribution*, Consultation Paper, September 2005, p. 1.
5. The Hon. Phillip Ruddock MP, Attorney-General and Senator the Hon. Helen Coonan, 'Government Moves to Close Super Loophole', *Joint Media Release*, c120/03, 16 December 2003.
6. The Hon. Phillip Ruddock MP, Attorney-General, the Hon. Mal Brough MP, then Minister for Revenue and Assistant Treasurer, 'Reforms Target Bankruptcy – Super Contributions', *News Release*, 162/2005, 6 September 2005 and ITSA, *ibid*.
7. The Hon. Phillip Ruddock MP, Attorney-General, the Hon. Peter Dutton MP, Minister for Revenue and Assistant Treasurer, 'Government Closes Superannuation Loophole in Bankruptcy' *New Release*, 138/2006, 27 July 2006.
8. John Wasilive, 'New laws limit rorts by bankrupt', *Australian Financial Review*, 16 August 2006, p. 33, and Elizabeth Colman, 'Bankrupts face super scrutiny', *The Australian*, 28 July 2006, p. 21.
9. ANZ, Submission Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 19 January 2007.
10. ASFA, Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 19 January 2007, p. 2.

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11. ISFA, Submission Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 22 January 2006.
12. Law Council of Australia, Submission Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 19 January 2007.
13. Australian Finance Conference, Submission Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 19 January 2007.
14. CPA Australia, Submission Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 19 January 2007.
15. The Institute of Chartered Accountants in Australia, Submission Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 19 January 2007.
16. These other organisations are, the Taxation Institute of Australia, AXA Life Insurance Australia and Superannuation Australia (a fully owned subsidiary of Taxpayers Australia).
17. For additional details on these contributions see Leslie Nielson, 'Taxation Amendment (Simplified Superannuation) Bill 2006', *Bills Digest*, no. 65, Parliamentary Library, Canberra 2006–2007.
18. Michael Laurence, 'Your Money: nowhere to hide' *Bulletin with Newsweek*, 24 January 2007.
19. Law Council, op. cit., p. 3 and The Institute of Chartered Accountants in Australia, op. cit., p. 1.
20. Ms Nicola Roxan MP, 'Government Baulks on High Flyers Yet Again', *Media Statement*, 8 February 2005 and 'Government Avoidance of Anti-avoidance Laws Beyond a Joke', *Media Statement*, 8 August 2005.
21. Senator the Hon. Christopher Ellison, op. cit., p. 2.
22. Superannuation Australia, Submission Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 19 January 2007.
23. Senator the Hon. Christopher Ellison, op. cit., p. 2.
24. The Hon. Phillip Ruddock MP, Explanatory Memorandum to the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 6 December 2006, p. 6.
25. That is, avoiding the imposition of the Superannuation Guarantee Charge under the provisions for the *Superannuation Guarantee (Administration) Act 1992*.
26. Taxation Institute of Australia, Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, 12 January 2006, p. 3.
27. ASFA op. cit., p.3, AXA, op. cit., p.3 and ISFA, op. cit., p. 5.

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28. ASFA, *op. cit.*, p. 3.
29. Treasury/ITSA, 'Response to Questions on Notice raised at the public hearings of the Senate Standing Committee on Legal and Constitutional Affairs', 23 January 2006, p. 3.
30. To retain these amounts under their control a SMSF trustee would have to either re-credit the amounts not passed on to the trustee in bankruptcy to their account, or make use of the forfeiture provisions. This latter course is difficult because of the effect of **s.302** of the Act that states that such forfeiture actions are void if they are carried out with the intent to defeat creditors. The requirement to return the gross amount of the contributions to which new **sections 128B** and **128C** apply sidesteps these potential complications.
31. ANZ, *op. cit.*
32. Treasury/IFSA, *op. cit.*, p. 4.
33. Treasury/ITSA, *ibid.*, p.1.
34. AXA, *ibid.*, p. 2, ASFA, *ibid.*, p. 4.
35. Treasury/ITSA, *ibid.*, p. 2.

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