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Ms Jackie Morris  
Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Ms Morris

**Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006**

ANZ appreciates the opportunity to comment on the proposed legislation relating to the recovery of superannuation contributions made before bankruptcy.

ANZ supports the proposed legislation to address the current anomaly which allows debtors to shield assets from creditors through superannuation. The measures outlined in the proposed legislation will achieve a more appropriate balance between the interests of creditors and of the bankrupt in retirement. ANZ supports the proposed exemption of certain government administered rural support grants from the property divisible under bankruptcy.

In November 2005, ANZ provided a submission to ITSA identifying some practical issues which needed to be addressed in the enabling legislation. While these issues have been broadly covered in the proposed legislation, we have further comments on the approach taken to address these issues.

*Treatment of contributions tax and other deductions*

Proposed Sections 128B(5A) and 128C(7A) cater for the deduction of contributions tax and other deductions by requiring that if:

- a contribution is to be clawed back but an amount of contributions tax or a fee or charge in respect of the contribution was debited from the contribution;
- the trustee of the superannuation fund pays the amount of the contribution clawback specified in compliance with the notice under Section 139ZQ; and
- the amount of the contribution clawback paid exceeds the amount of the contribution tax or the fee or charge debited;

the bankruptcy trustee must pay to the trustee of the superannuation fund the amount of the contribution tax or other fee or charge debited. ANZ suggests that it would be simpler and avoid double handling of payments if the contribution was adjusted for the relevant contribution tax, fee or charge when the right to "claw back" a portion of the contribution was established and the trustee of the superannuation fund paid the net amount to the bankruptcy trustee.

*Interaction with Family Law Act and contribution splitting*

The proposed legislation appears to deal with the possibility of spouses being able to "hide" funds from the bankruptcy trustee via contribution splitting by way of the mechanism of "superannuation account-freezing notices". Before such a notice applies, it seems that a bankrupt person (or a person about to become bankrupt) could seek to split contributions with his or her spouse under Division 6.7 of the *Superannuation Industry (Supervision) Regulations 1994* and thereby protect the funds from subsequent bankruptcy proceedings.

Similarly, the trustee of a superannuation fund may still give effect to a Family Law split notwithstanding that a "superannuation account-freezing notice" has been issued.

ANZ remains concerned that the proposed provisions to protect from recovery those superannuation interests established for a spouse under a Family Law superannuation-splitting arrangements or contribution splitting facilities, may provide too much scope for the bankrupt to "hide" funds from the bankruptcy trustee. At the very least, ANZ recommends the Family Law split exemption not be available where the bankrupt's payment to a spouse's superannuation interest demonstrates an intention to defeat creditors.

Please contact Megan Currie, Manager Superannuation Governance and Projects on 03 9658 2902 if you would like to discuss these matter further.

Yours sincerely

Kevin Kelly  
Head of Superannuation