



Submission No: ..... 99

23 June 2004

The Secretary  
Ms Gillian Gould  
House of Representatives Standing Committee on Legal and Constitutional Affairs  
Parliament House  
Canberra ACT 2600  
Email: laca.reps@aph.gov.au

Dear Ms Gould

**Inquiry into the Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures) Bill 2004**

We refer to the invitation for submissions to the Committee in relation to the proposed changes to the Bankruptcy Act.

The Australian Venture Capital Association is the peak organization representing the venture capital and private equity industry in Australia. We have approximately 50 investor managers with approximately \$8 billion of capital under management. There are approximately 850 companies across Australia in receipt of venture capital funding, according to the latest ABS estimates.

**Inappropriate integrity tool**

AVCAL objects to the use of the Bankruptcy Act to address abuse of the tax system by a small group of professionals. This is plainly the wrong tool. AVCAL submits that there has to be a better tool without the obvious unintended consequence.

**Unintended consequence**

The unintended consequence of these proposed reforms is that they will undermine the willingness of our members to take considered business risks.

Risk taking is an inherent part of the venture capital and private equity industry. Our members typically take board positions to help their companies grow.

Risk taking can generate exponential rewards. Consider the creation of ResMed which received venture capital funding at a critical stage of its development.

Given the onerous liability that attaches to a directorship, and the possibility that an insurance policy will not always cover the risks, it is common industry practice both in Australia and around the world for members to shelter private assets in family trusts. This is a perfectly justifiable position.



### **Why businesses fail**

Early stage businesses fail for many reasons unrelated to either dishonesty or negligence. Typically they fail because the technology does not work, or there has been insufficient take-up of the product in the market to sustain the business.

### **How much pain is enough?**

The venture capital managers and the directors of the companies that fail will all suffer financial loss. Surely that loss is enough without the need to extend the net to the families of these people.

### **Existing provisions already protect creditors**

The Corporations Law already covers situations in which directors allow companies to trade while insolvent. In our view, the current law provides appropriate protection for creditors.

### **Conclusion**

The proposed Bill will impact negatively on the creation of high growth, high risk, venture backed companies in Australia – companies like ResMed. Other policy tools should be used to achieve the objectives of the proposed legislation.

I would appreciate the opportunity to meet with the Parliamentary Committee to discuss our concerns. I can be contacted on (02) 9251 3888.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Andrew Green", with a long horizontal flourish at the end.

**ANDREW GREEN**  
Chief Executive