

**Wilson, Frances (REPS)**

**From:** David Gold [dgold@pobox.com]  
**Sent:** Monday, 21 June 2004 4:48 PM  
**To:** Committee, LACA (REPS)  
**Subject:** Bankruptcy Legislation Amendment

Submission No: .....96.....

Dear Sir/Madam

**Bankruptcy Legislation Amendment (anti-avoidance and other measures) Bill 2004 ("the Bill")**

I am advised that some years ago a small group of Sydney barristers adopted a practice of not lodging tax returns and re-directed their assets to associates. When found out by the Australian Taxation Office they went bankrupt, avoided their taxation liabilities and continued to practice. The relevant bankruptcy law was deficient in overcoming this strategy.

I agree that such deliberate practices should not be able to continue.

On the other hand prudent business people (including company directors) progressively provide for the security of their family where they are in businesses or professions that expose them to business failure or claims (eg. claims under guarantees or in relation to defamation, negligence or occupational health and safety responsibilities) that might mean that a catastrophic financial event might befall them. Ordinarily at the time prudent business people make such provision they are solvent and they are not aware of any event that might bring about such a catastrophe. Current bankruptcy law protects such transactions from being overturned.

This Bill is an exposure draft of legislation intended to be introduced into Federal Parliament to rectifying the bankruptcy law in order to overcome situations such as those highlighted by the barristers.

However the provisions are far broader than that. The Bill has the following broad effects:

It retrospectively unwinds any strategies that individuals have put in place to protect their family from adverse financial circumstances. If a catastrophe were to arise today simple protection actions taken over a decade ago can be unwound eg. having the family home owned by a spouse or other form of entity; and

A bankrupt is assumed guilty of asset diversion unless they can prove otherwise.

I protest in the strongest form against provisions that are far broader than are needed to be to overcome the mischief justifying their introduction. Prudent business and professional people should not be tarred with the same sanctions of those who seek to circumvent the law.

I would be happy to discuss this further with you at your convenience.

Kind regards

David Gold