

Bankruptcy
Submission No:*31*.....

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17 JUN 2004

BY: *Gillian Gould*

Secretary,
House of Representatives Standing Committee on Legal Affairs,
R1-109,
Parliament House,
Canberra.
A.C.T. 2600.

Dear M/s Gould,

Re: Proposed Amendments to the Bankruptcy Act.

I enclose in duplicate my submission on the above matter.

Yours truly,

His Honour John F. B. Howse.

Submission in respect of the proposed amendments to the Bankruptcy Act.

As I understand the proposed amendments to the Bankruptcy Act they involve, inter alia, that transactions between spouses can be open to attack irrespective of when they occurred. In other words a transaction between spouses which, say for arguments sake, occurred as long ago as forty or fifty years may be liable to be set aside or can become otherwise open to attack in order to make the property involved, or part of it available to creditors.

The fact that the proposed legislation, if put into effect, will be given retrospective operation at all makes it, with all due respect, draconian legislation. The fact that there is to be no limit upon the period of time during which transactions may be reviewed makes the proposed legislation even more draconian. Indeed, in the fifty years or so that I have practised law in different capacities I have never encountered legislation as draconian as what is being proposed.

My respectful submission is that there should be some period of time, say ten or perhaps fifteen years after which transactions between spouses should not be open to attack or review for bankruptcy purposes in any circumstances, and after which neither party to a transaction should have to justify his or her position. Surely it should be proper for a prudent husband to make appropriate provision for his spouse and/or children without there being a risk that in the unfortunate event of him becoming bankrupt more than ten or fifteen years later that provision will then be liable to be set aside or reviewed.

If the legislation in its present proposed form is put into effect it will mean that there will be no way in which a prudent spouse can at any time realistically make adequate provision for his or her spouse.

His Honour John F.B. Howse.