



22 JUN 2004
William Gould

Submission No:90.....

Senator Bronwyn Bishop
Chairman
House of Representatives Standing Committee on
Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Senator

BANKRUPTCY LEGISLATION AMENDMENT (ANTI AVOIDANCE & OTHER MEASURES) BILL 2004

I wish to register my deepest concern that the legislative changes referred to above could be enacted in a form represented by the recent Exposure Draft.

I am 51 years of age, in an engineering consulting business and I have always taken a prudent and conservative approach to the conduct of both my business career and my personal financial position.

Your proposed legislative changes effectively lift the corporate veil. Clause 49 of the Exposure Draft EM states "*.....while asset protection arrangements are not uncommon the Government considers that they should not continue....*"

There is absolutely no doubt that the corner stone of the private enterprise system is the survival of the availability of limited liability.

My understanding of the law that was to be considered, is that it was to be based on the joint task force report "Use of Bankruptcy & Family Law to Avoid Tax"

The draft of the proposed legislation makes no mention of tax avoidance and has the effect of being retrospective legislation that attacks the related assets of every person who becomes bankrupt for whatever reason.

The Attorney General has apparently stated that professionals should have insurance cover and thus the legislation should not affect them. I would remind you of four issues:

1. Not everyone is a professional person; the proposed law covers any person who becomes a bankrupt including all those in business taking risks the same as every other business person





2. Insurance is not always available, and even if it is, there is no guarantee it will cover the risks encountered or be available. There is also the issue of HIH Insurance that failed not so long ago and left people with exposures.
3. Insurance cover would be ineffective because litigants could successfully sue directors personally.
4. Most people who go bankrupt do not do so to avoid tax – those persons are in a minority.

It is clear that no consideration has been given to the following consequences of this legislation.

- A person in business who has a "no fault bankruptcy" such as due to a bad debt or inability to insure is being penalised for trying to protect their assets for their family.
- Single people who got no relief from any seizure orders as they have no other parties to consider for hardship.
- "Long tail" litigation could be uninsurable for doctors and other essential professional persons who may get sued long after an insolvency event happens and any assets held would be at risk. For example a doctor who is sued 10 plus years after a negligence takes place.
- With recent case law on liabilities for non-executive directors of companies, non-resident directors' indirect assets would be at risk. This is likely to cause a reduction of investment in this country.
- Professionals and business people who take risks are likely to reduce their exposure to risk and this will have a direct impact on people wanting to go into business and employ people. This will have a direct impact on employment and GDP over time.
- Banks and other lenders will be forced to take further security to counteract the effect of the legislation, which will reduce returns to unsecured creditors, thus defeating the alleged objective of the proposed legislation.
- People close to retirement who lose access to assets held in related entities will become a burden on the social security system and medical system, as they will never recover financially or mentally from losing everything.

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My feeling is that every avenue possible should be pursued to prosecute people within existing legislation. A new law should not be created that affects 99.999% of the population in an adverse manner when only 0.001% are targeted.

Should this legislation go through my partners and I will be forced to shut our business and the 18 people we employ will lose their jobs. This will be repeated all over the country. The future of small business and the country in fact would be at risk.

We feel very angry about this proposal and its short sightedness. Whilst the integrity of the tax system needs to be upheld, it will be done at a far greater cost should this proposal go through.

I would be pleased to discuss this matter further with you or one of your officers should that be appropriate. My phone number is 08 9382 8008 or 0418 945 475.

Yours sincerely
BPA ENGINEERING PTY LTD



STEVE DJULBIC
Director

cc. /

The Hon Phillip Ruddock MP
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