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5 July 2004

Bankruptcy Submission No: 123

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Gillian Gould

The Secretary
House of Representatives Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Sir

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

As a registered trustee my submission is that the provisions contained in the draft Bill if enacted should also have retrospective application to Part X arrangements current on or after commencement of the Act containing the provisions.

Pursuant to section 231(2) of the *Bankruptcy Act 1966* ("the Act") Division 4A of Part VI of the Act, "Orders in relation to Property of Entity controlled by Bankrupt" (ie sections 139A to 139H), apply in relation to a deed of assignment as if:

- (a) a creditor's petition had been presented against the debtor by whom the deed was executed on the day on which the special resolution requiring the execution of the deed was passed;
- (b) a sequestration order had been made against him or her on that petition on the day on which he or she executed the deed; and
- (c) the trustee of the deed were the trustee in his or her bankruptcy.

Item 155 of Part 1 Schedule 1 of the *Bankruptcy Legislation Amendment Act 2004* ("BLAA") inserts a new section 231 into the Act. Section 231(3) provides that Division 4A of Part VI of the Act, "Orders in relation to Property of Entity controlled by Bankrupt" (ie sections 139A to 139H), will apply in relation to a personal insolvency agreement after the provisions commence as if:

- (a) a creditor's petition had been presented against the debtor by whom the agreement was executed on the day on which the special resolution requiring the execution of the agreement was passed; and
- (b) a sequestration order had been made against him or her on that petition on the day on which he or she executed the agreement; and
- (c) the trustee of the agreement were the trustee in his or her bankruptcy.

To ensure the new provisions apply to both existing and future Part X arrangements a consequential amendment will be required to the existing section 231(2) of the Act and the new section 231(3) contained in the BLAA to ensure the proposed section 139HA applies to both the current and the new Part X arrangements.

Yours faithfully


DAVID J KERR
Registered Trustee