



Submission No: ...109...

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BY: Gillian Gould

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The Hon Bronwyn Bishop MP
Chair
House of Representatives Standing Committee
on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Mrs Bishop

I am writing to you about the *Bankruptcy Legislation Amendment (Anti-avoidance and other Measures) Bill 2004* (the Bill). The National Farmers Federation (NFF) has some important concerns with the Bill as currently drafted.

NFF acknowledges that there are significant community concerns with individuals going bankrupt leaving debts unpaid, particularly if the bankruptcy is deliberate to avoid those debts. In fact, in many cases, bankrupt individuals have owed money to small businesses, so some farmers could benefit from the tightening of bankruptcy laws.

However, NFF considers that the proposed Bill goes too far in giving powers to bankruptcy trustees. In particular, we are concerned that trustees will be granted the ability to 'recover' assets from family members on a far broader basis than is currently the case. As a result, the Bill may discourage risk taking, innovation and (for farmers) the seeking of off-farm income.

Many farm businesses operate as sole traders, partnerships or through trusts and so could be easily and unfairly caught by the proposed measures. However, NFF is not only concerned about the direct effect on farm businesses, but also the impact on professional services in the bush.

NFF has not considered the Bill in detail but we do have some general concerns that we understand have also been raised by other industry groups. These concerns include:

- It has not been shown that existing bankruptcy and taxation powers are inadequate to deal with the specific cases raised over deliberate bankruptcy to avoid debts.
- No evidence has been provided to show that the significant changes proposed are warranted given the potential negative consequences.
- It is debatable that the Bill will have no significant financial impact, as asserted in the Explanatory Memorandum to the Bill.
- The Bill reverses the onus of proof in some cases (for example, Section 139AFA (2)). It has not been shown that reversing the onus is necessary – the proposal will greatly increase costs and uncertainty for bankrupt estates.

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- The Bill implies that the sole reasons for the protection of family assets is to avoid taxation or legitimate claims of creditors. NFF asserts that this assumption is incorrect.
- It is unclear why the trustee should be able to recover assets that were transferred at market value.
- The Bill operates retrospectively on arrangements put in place before the date of the Bill's enactment.
- The Bill gives significant powers to courts, increasing uncertainty.
- The Bill has been primarily drafted to address legitimate concerns about individuals going bankrupt on purpose. However, the Bill makes little reference to the bankrupt's motives or awareness of impending bankruptcy.
- There are concerns that the Bill will increase costs or reduce coverage of professional insurance.
- The Bill will increase the discrepancy between companies and individuals – the protection of individuals in bankruptcy will be further reduced compared to companies, which have limited liability.

Therefore, NFF submits that the Bill should be substantially revised to:

- ensure it meets its original goals of removing the incentive for deliberate bankruptcy to avoid debts; and
- no longer cause the 'collateral damage' to legitimate business activities.

If you wish to discuss this matter further, please contact Michael Potter, Policy Manager, Economics, at NFF.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Charles Burke', is written in a cursive style.

CHARLES BURKE
Vice President
Chair, Farm Business & Economics Committee