

18 JUN 2004

**Wilson, Frances (REPS)**

Submission No: 84

**From:** ken.cappie-wood@ubs.com  
**Sent:** Friday, 18 June 2004 5:08 PM  
**To:** Committee, LACA (REPS)  
**Subject:** Bankruptcy Legislation Amendment

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**SUBMISSION OF THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS (STEP)  
to the proposed BANKRUPTCY LEGISLATION AMENDMENT  
(ANTI-AVOIDANCE and other measures) BILL 2004 (the Bill)**

STEP is primarily concerned that the operation of current legislation which provides protection of assets such as:

- Superannuation
- the proceeds of Life Insurance policies of a deceased person is preserved. STEP submits that those assets should be charged only to the extent of debts due for the funeral and testamentary expenses of a deceased person.

STEP further submits that the Bill:

- removes the existing capital protections available to businessmen to preserve gains properly made for their family. Such existing safeguards provide important protection to Australia's aging workforce
- overlooks provision in existing legislation which is sufficient to empower a vigilant trustee to recover assets or set aside transactions intended to defeat or delay claims by creditors
- excuses creditors including the Australian Tax Office (**ATO**) for the breach of their obligations to exercise normal commercial prudence in their operations
- overlooks:
  - the fact that creditors deal with business entities on a commercial basis and where necessary take the appropriate guarantees from operators. Therefore in the absence of fraud or misrepresentation legislation should not provide additional security
  - the objectives of retirement incomes policy which encourages families to

accumulate capital to fund their retirement and avoid reliance on Social Security.

## PROPOSALS

Impose a positive duty on the ATO to properly monitor the filing of income tax returns by self employed persons and high risk professionals.

That the Bill be withdrawn or in the alternative amended to ensure that:

- the proceeds of all policies of insurance or the proceeds of Superannuation of deceased persons continue to be exempt from claims by creditors
- the family home be made exempt to claims by creditors

Consideration be given to the introduction of a special statutory asset protection trust for estate planning purposes enabling the creation and registration of a statutory trust into which assets can be fed after certification that the transferor is able to pay all known debts (including child and spousal maintenance) as and when they fall due and that all income tax has been paid and returns lodged.

Please contact Michelle Johnson, Chairperson STEP Sydney, on (02) 9330 8184 should you have any questions on the above.

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