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Our Ref: GAS:LW(526)  
(PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE)

Direct Line: 9926 0256

30 June 2004



Submission No: 134

Ms Gillian Gould  
Committee Secretary  
House of Representatives Standing Committee on  
Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Ms Gould

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

I refer to your letter dated 2 June 2004 inviting submissions in respect of the *Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures) Bill 2004*, (the "Bill").

The Business Law Committee of the Law Society of New South Wales has given this matter careful consideration. The Committee has reviewed the exposure draft of the Bill, the accompanying Explanatory Memorandum and a number of the submissions that have already been made to your Committee.

The Law Society of New South Wales supports the submission made by the Insolvency and Reconstruction Committee of the Law Council of Australia, (Submission number 98). The Society also supports the submission of the Insolvency Practitioners' Association of Australia, (Submission number 69), which considers the practical implications of the application of the Bill.

Of particular concern to the Society are the injustices and unintended outcomes that will arise from the combination of the following elements contained in the legislative scheme of the Bill:

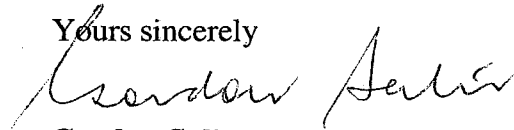
- The retrospective nature of the Bill as it applies to transfers and funding arrangements put in place for legitimate risk management and business structuring reasons.
- The unlimited time frames that apply;

- The burden of proof being on the bankrupt and the transferee to rebut the trustee's allegation of a "tainted purpose" or knowledge of a "tainted purpose"; and
- The uncertainty of the definition and application of various terms used in the Bill, which will have to rely upon the application of judicial interpretation and discretion.

Each element by itself will cause significant problems in the efficient operation of the bankruptcy system, but all four elements together in the one legislative scheme will be fatal to its operation.

Should you or your Committee wish to discuss this submission please contact Laraine Walker, Executive Member of the Business Law Committee on 9926 0256 or email: [lxw@lawsocnsw.asn.au](mailto:lxw@lawsocnsw.asn.au) .

Yours sincerely



**Gordon Salier**  
President