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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

INQUIRY INTO THE BANKRUPTCY LEGISLATION AMENDMENT (SUPERANNUATION CONTRIBUTIONS) BILL 2006

The Financial Planning Association of Australia Limited (FPA)¹ is grateful for the opportunity to make a submission as part of the Inquiry into the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill (the Bill). The FPA strongly supports the Bill's objective of allowing bankruptcy trustees to recover superannuation contributions made prior to bankruptcy with the intention of defeating creditors.

In December 2005, the FPA commented on the Effect of Bankruptcy on Superannuation Contributions Consultation Paper issued by the Insolvency and Trustee Service Australia (ITSA). A number of concerns raised by the FPA at that time have been addressed in the Bill. However, the FPA considers that several issues remain to be settled if the effective operation of the legislation is to be achieved smoothly.

Superannuation savings up to the pension Retirement Benefit Limit (RBL) are currently protected from the reach of creditors under section 116 of the Bankruptcy Act, with only amounts above the superannuation RBL being available for redistribution. We understand that Treasury is considering this issue in light of the Government's decision to remove RBLs from 1 July 2007 as part of its Simpler Super reforms. It would be clearly more efficient if the outcome of this consideration was incorporated into the Bill before it became law.

¹ With approximately 12,000 members organised through a network of 31 Chapters across Australia and an office located in each capital city, the FPA represents qualified, professional financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than \$630 billion.

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Other issues which to the FPA seem to require attention are:

- Should funds be withdrawn for creditors, the taxation impact should be considered in terms of concessional tax applicable to superannuation compared to the relevant marginal tax rates.
- There is a possible need for tracking which contribution type is made each year and the order in which those contributions are protected.
- How the proposals will apply to superannuation splitting in circumstances where a divorce is in process, separation has occurred, but a splitting order has not yet been made at the point of bankruptcy.
- A bankruptcy trustee can delay the payment of a death benefit for up to 6 months. Although section 128H allows a member to apply for a release, there is nothing which enables a dependant or executor to do so. This may cause undue hardship for the dependents.
- There may need to be a provision to enable fund administrators to charge the bankruptcy trustee a fee for calculating the considerable data going back up to 5 years.
- The repercussions for other fund members to drawing unplanned cash from a small superannuation fund without liquid assets.

If you would like to discuss any of the issues raised in this letter, please contact our Policy and Government Relations Manager, John Anning (tel: 02 9220 4513; email john.anning@fpa.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joanne Bloch', with a long horizontal flourish extending to the right.

Joanne Bloch
Chief Executive Officer