
The Parliament of the Commonwealth of Australia

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

House of Representatives
Standing Committee on Legal and Constitutional Affairs

July 2004
Canberra

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ISBN 0 642 78483 3



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Membership of the Committee

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Members Hon Julie Bishop MP
(until 07/11/03)

Hon Alexander Somlyay MP
(from 07/11/03)

Hon Alan Cadman MP

Hon Duncan Kerr MP

Mr Daryl Melham MP
(until 11/08/03)

Mr Robert McClelland MP
(from 11/08/03)

Ms Sophie Panopoulos MP

Hon Con Sciacca MP

Mr Patrick Secker MP

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Terms of reference

The Committee will inquire into the provisions of the draft Bill. Specifically, the Committee will consider whether these provisions adequately address the problems identified in the Taskforce report, namely:

- (a) high income earners using bankruptcy to avoid paying debts that they can afford to pay, while continuing to enjoy a lifestyle made possible through the build up of assets in the names of third parties
- (b) the uncertainty arising from the interaction between family law and bankruptcy
- (c) the inadequacy of the current income contributions scheme in circumstances where a bankrupt chooses not to comply, and
- (d) the use of financial agreements to defeat the claims of creditors.



List of abbreviations

ABA	Australian Bankers' Association
ACEA	Association of Consulting Engineers Australia
AICD	Australian Institute of Company Directors
AFCCRA	Australian Financial Counselling and Credit Reform Association
AGD	Attorney-General's Department
AMA	Australian Medical Association
ATO	Australian Taxation Office
BLAAAMB 2004	Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures) Bill 2004
CPA Australia	Certified Practising Accountants Australia
The FLS of the LCA	The Family Law Section of the Law Council of Australia
ICAA	Institute of Chartered Accountants in Australia
The IRC of the LCA	The Insolvency and Reconstruction Committee of the Law Council of Australia
IPAA	The Insolvency Practitioners Association of Australia
ITSA	Insolvency and Trustee Service Australia

IWIRC	The International Women's Insolvency and Reconstruction Committee Australian Network (Qld) Inc
LCA	Law of Council of Australia
NIA	The National Institute of Accountants
NNWLS	The National Network of Women's Legal Services



List of recommendations

2 Overview of the Proposed Bill

Recommendation 1 (paragraph 2.14)

The Committee recommends that financial agreements revert to the pre-2000 amendments to the *Family Law Act 1975* and be subject to confirmation by the court which shall take into account bankruptcy ramifications.

3 Recovery of Property Amendments: Proposed New Division 4A of Part VI of the Bankruptcy Act

Recommendation 2 (paragraph 3.46)

The Committee recommends that:

- the amendments contained in Schedule 1 of the draft Bankruptcy Legislation Amendment (Anti-Avoidance and other Measures) Bill 2004 be abandoned; and
- Insolvency and Trustee Service Australia and the Attorney-General's Department undertake fresh consultation with the Bankruptcy Reform Consultative Forum with a view to strengthening the current clawback provisions in the Act (sections 120 and 121 in particular).

Recommendation 3 (paragraph 3.47)

The Committee recommends that subsection 16(4) of the *Income Tax Assessment Act 1936* and section 3C of the *Taxation Administration Act 1953* be amended to:

- authorise the Commissioner of Taxation to provide publicly available information to prescribed industry or professional organisations; and
- authorise the Commissioner of Taxation to utilise publicly available information for the purposes of the role of Chief Executive of the Australian Tax Office.

4 Bankruptcy and Family Law Amendments

Recommendation 4 (paragraph 4.22)

The Committee recommends that the amendments proposed in Schedule 2 of the draft Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures) Bill 2004 be implemented.

5 Supervised Account Regime

Recommendation 5 (paragraph 5.17)

The Committee recommends that the amendments proposed in Schedule 3 of the draft Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures) Bill 2004 be implemented.

6 Financial Agreements

Recommendation 6 (paragraph 6.15)

The Committee recommends that the amendments proposed in Schedules 4 and 5 of the draft Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures) Bill 2004 be implemented.

