

Bankruptcy Act 1966



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About this compilation

This compilation

This is a compilation of the *Bankruptcy Act 1966* that shows the text of the law as amended and in force on 25 March 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The date of amendments made up to, but not commenced at, the compilation date is underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in the compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to Bankruptcy

—Preliminary

Short title

This Act may be cited as the *Bankruptcy Act 1966*.

Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

Repeal

- (1) The Acts specified in Schedule 1 are repealed.
- (2) Notwithstanding the repeal of the *Bankruptcy Act 1958* or the *Bankruptcy Act 1959* effected by subsection (1) of this section
 - (a) the provisions of section 7 of the *Bankruptcy Act 1958*, amended by the *Bankruptcy Act 1959*, continue to apply to a purported extension of time or a purported fixing of a time within which those provisions applied immediately before the commencement of this Act; and
 - (b) the provisions of section 5 of the *Bankruptcy Act 1959* continue to apply to a seal or stamp to which those provisions applied immediately before the commencement of this Act as if those Acts had not been repealed.

Insolvency Practice Schedule

Schedule 2 has effect.

A—Interpretation

Interpretation

- (1) In this Act, unless the contrary intention appears:

ADI (authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or

- (b) the Reserve Bank of Australia; or
- (c) any other bank approved in writing for the purposes of definition:
 - (i) by the Treasurer; or
 - (ii) by a person authorised in writing by the Treasurer to give approvals for the purposes of this definition.

administrator, in relation to a debt agreement, means the person

- (a) authorised by the agreement to deal with property under the agreement; or
- (b) who becomes the replacement administrator under section 185ZB; or
- (c) appointed by an Official Receiver under section 185ZC.

affidavit includes affirmation and statutory declaration.

approved form: a document is in the **approved form** if it is in accordance with section 6D.

associated entity, in relation to a person, means:

- (a) an entity (other than a company) that is, or has been, associated with the person; or
- (b) a company that is, or has been, associated with the person at a time when the company is, or was, as the case may be, a private company.

Australia, when used in a geographical sense, does not include Norfolk Island.

authorised employee means an APS employee whose duties include either or both of the following:

- (a) supporting the Inspector-General in the performance of his or her functions, or in the exercise of his or her powers, under this Act;
- (b) supporting the Official Receivers in the performance of their functions, or in the exercise of their powers, under this Act.

available act of bankruptcy, in relation to a debtor, means an act of bankruptcy available for a petition against the debtor at the time of the presentation of the petition on which, or by virtue of the presentation of which, the debtor becomes a bankrupt.

bank means an ADI or any other bank.

bankrupt means a person:

- (a) against whose estate a sequestration order has been made; or
- (b) who has become a bankrupt by virtue of the presentation of a debtor's petition.

bankruptcy, in relation to jurisdiction or proceedings, means jurisdiction or proceedings under or by virtue of this Act.

books includes any account, deed, paper, writing or document, and any record of information however compiled, recorded or stored, whether in writing, on microfilm, by electronic process or otherwise.

breach of duty means malfeasance, misfeasance, negligence, wilful default or breach of trust.

business day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

child: without limiting who is a child of a person for the purposes

of this Act, each of the following is the **child** of a person:

- (a) an adopted child, stepchild or exnuptial child of the person;
- (b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

close relative, in relation to a person, means a spouse, de facto partner, parent, child, brother, sister, half-brother or half-sister, of the person.

Commonwealth proceeds of crime authority means a proceeding of crime authority within the meaning of the *Proceeds of Crime Act 2002*.

Note: Under that Act, the proceeds of crime authority is either the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definition of **proceeds of crime authority** in section 338 of that Act). Responsibility can be transferred between those authorities (see section 315B of that Act).

company means a corporation, other than a corporation that is incorporated within Australia or an external Territory and is:

- (a) a public authority; or
- (b) an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory of the Commonwealth.

company officer, in relation to a corporation, includes:

- (a) a director or secretary of the corporation;
- (b) a receiver and manager of property of the corporation appointed under a power contained in an instrument;
- (ba) an administrator, within the meaning of the *Corporation Act 2001*, of the corporation;
- (bb) an administrator of a deed of company arrangement executed by the corporation under Part 5.3A of that Act;
- (d) a liquidator of the corporation appointed in a voluntary winding up of the corporation; and
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons;

but does not include:

- (f) a receiver who is not also a manager;
- (g) a receiver and manager appointed by a court; or
- (h) a liquidator appointed by a court.

confiscation order has the same meaning as in the *Proceeds of Crime Act 2002*.

constable means a member or special member of the Australian Federal Police or a member of the Police Force of a State or Territory.

corporation includes any body corporate.

corresponding law has the same meaning as in the *Proceeds of Crime Act 2002*.

court of summary jurisdiction includes a court of a Territory sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Territory.

creditor, in relation to a liability under a maintenance order, includes the Child Support Registrar referred to in the *Child Support (Registration and Collection) Act 1988*.

creditor's petition means a petition presented by a creditor or 2 or more creditors jointly.

debt includes liability.

debt agreement means an agreement under section 185H resulting from the acceptance of a debt agreement proposal.

debt agreement proposal means a written proposal referred to in subsection 185C(1).

debtor's petition means a petition presented by a debtor against himself or herself and includes a petition presented against a partnership in pursuance of section 56A and a petition presented by joint debtors against themselves in pursuance of section 57.

declaration of intention means a declaration that has been presented under section 54A and accepted under section 54C.

declared debtor means a debtor who has presented under section 54A a declaration of intention.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

default period means:

- (a) if a period longer than 21 days is prescribed—the prescribed period; or
- (b) otherwise—21 days.

director, in relation to a corporation, includes:

- (a) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, that position;
- (b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; and
- (c) if the corporation has a committee of management, council or other governing body:
 - (i) a member of that committee of management, council or other governing body;
 - (ii) any person occupying or acting in the position of member of that committee of management, council or other governing body, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act, in the position; and
 - (iii) any person in accordance with whose directions or instructions the members of that committee of management, council or other governing body are accustomed to act.

eligible judge means a judge of the Court declared by the Minister to be an eligible judge under subsection 129A(2).

end means:

- (a) in relation to a bankruptcy—the discharge of the bankrupt from the bankruptcy or the annulment of the bankruptcy;
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV—the time when the composition or scheme, as the case may be, ceases to be in effect; or
- (ba) in relation to a personal insolvency agreement—the time when all the obligations that the agreement created have been discharged; or

accountancy, or

(c) in relation to an administration under Part XI—the end of the administration.

enforcement process, in relation to a frozen debt, means, in case of a judgment debt:

- (a) process of a court issued to enforce in any manner payment of the judgment debt; or
- (b) without limiting the generality of paragraph (a), process of a court for attaching, in order to meet the judgment debt, all or other money payable or owing, or to become payable or owing, to the declared debtor.

entity means a natural person, company, partnership or trust

examinable affairs, in relation to a person, means:

- (a) the person's dealings, transactions, property and affairs and
- (b) the financial affairs of an associated entity of the person so far as they are, or appear to be, relevant to the person or any of his or her conduct, dealings, transactions, property or affairs.

examinable period has the meaning given by section 139CA.

examinable person, in relation to a person (in this definition called the **relevant person**), means:

- (a) if the relevant person is a debtor and property of the debtor is known or suspected to be in the possession of a person—that person;
- (b) if the relevant person has become a bankrupt and any property of the bankrupt is known or suspected to be in the possession of a person—that person;
- (c) in any case—a person who is believed to be indebted to the relevant person;
- (d) if a person, including:
 - (i) a person who is an associated entity of the relevant person; or
 - (ii) a person with whom an associated entity of the relevant person is or has been associated; ormay be able to give information about the relevant person or any of the relevant person's examinable affairs—that person; or
- (e) if books (including books of an associated entity of the relevant person):
 - (i) are in the possession of a person, including a person of a kind referred to in subparagraph (d)(i) or (ii); and
 - (ii) may relate to the relevant person or any of the relevant person's examinable affairs;that person.

Family Court Judge means a Judge of the Family Court (including the Chief Justice, the Deputy Chief Justice or a Senior Judge).

Federal Circuit Court means the Federal Circuit Court of Australia.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

forfeiture order means a forfeiture order made under a procedure of crime law.

frozen debt means a debt that:

- (a) is owed by a declared debtor; and
- (b) would, if the debtor had become a bankrupt when the declaration of intention was accepted under section 54C, provable in the bankruptcy;

but does not include a debt in respect of the debtor's liability under a maintenance agreement or maintenance order (whenever entered into or made).

goods includes all chattels personal.

industrial instrument means:

- (a) a law of the Commonwealth, a State or a Territory regulating conditions of employment; or
- (b) an award, determination or agreement made under such law.

Insolvency Practice Rules means the rules made by the Minister under section 105-1 of Schedule 2.

Inspector-General means the Inspector-General in Bankruptcy and includes a person acting as the Inspector-General.

interstate confiscation order means an interstate forfeiture order or an interstate pecuniary penalty order.

interstate forfeiture order has the same meaning as in the *Proceeds of Crime Act 2002*.

interstate pecuniary penalty order has the same meaning as in the *Proceeds of Crime Act 2002*.

in the possession of includes in the custody of or under the control of.

magistrate means:

- (a) a person who holds office as a Magistrate of a State, being a person in respect of whom an arrangement under subsection 17B(1) applies;
- (b) a person who holds office as a Judge of the Local Court of the Northern Territory, being a person in respect of whom an arrangement under subsection 17B(2) applies; or
- (c) a person who holds office as a Magistrate of a Territory of the Commonwealth.

maintenance agreement means:

- (a) a maintenance agreement (within the meaning of the *Family Law Act 1975*) that has been registered in, or approved by, a court in Australia or an external Territory; or
- (b) any other agreement with respect to the maintenance of a person that has been registered in, or approved by, a court in Australia or an external Territory;

but does not include a financial agreement, or Part VIIIAB financial agreement, within the meaning of the *Family Law Act 1975*.

maintenance order means:

- (a) an order relating to the maintenance of a person, including an order relating to the payment of arrears of maintenance that is made or registered under a law of the Commonwealth or of a State or Territory of the Commonwealth; or
- (b) an assessment made under the *Child Support (Assessment) Act 1989*.

modifications includes additions, omissions and substitutions.

National Personal Insolvency Index means the Index of the name established under the regulations.

net value, in relation to property, means:

- (a) if the property is unencumbered—the value of the property;
- (b) if the property is encumbered and the unencumbered value of the property exceeds the amount or value of the encumbrances—the amount of the excess; or
- (c) in any other case—a nil amount.

net worth, in relation to an entity, in relation to a time, means:

- (a) if the entity is a trust and the total value of the trust property as at that time exceeds the total of the amounts trustee's liabilities as at that time (other than liabilities constituted by the rights of persons as beneficiaries under the trust)—the amount of the excess;
- (b) if the entity is not a trust and the total value of the entity's assets as at that time exceeds the total of the amounts of the entity's liabilities as at that time—the amount of the excess;
- (c) in any other case—a nil amount.

oath includes affirmation and statutory declaration.

offence against this Act includes an offence against section 137.2 of the *Criminal Code*, being an offence that relates to this Act.

officer means an officer of the Court or of the Commonwealth.

Official Receiver includes a person acting as an Official Receiver.

Official Trustee means the Official Trustee in Bankruptcy.

operations, in relation to an entity, means all of the following:

- (a) the business, trading, transactions and dealings of the entity:
 - (i) whether alone or jointly with another entity or other entities; and
 - (ii) whether or not as agent, bailee or trustee;
- (b) the profits, income and receipts of the entity;
- (c) the losses, outgoings and expenditure of the entity.

parent: a person is the **parent** of anyone who is the person's child.

pecuniary penalty order means:

- (a) a pecuniary penalty order made under a proceeds of crime law; or
- (b) a literary proceeds order within the meaning of the *Proceeds of Crime Act 2002*; or
- (c) an unexplained wealth order within the meaning of the *Proceeds of Crime Act 2002*.

personal insolvency agreement means a personal insolvency agreement executed under Part X.

Note: Section 188A sets out requirements for personal insolvency agreements.

personal services, in relation to a bankrupt, means services of a physical, intellectual or other kind supplied by the bankrupt or herself:

- (a) whether or not in a capacity as employee; and
- (b) whether or not the supply of the services by the bankrupt discharged the obligations of an entity to supply services.

petition means a petition under this Act.

petition means a petition under this Act.

PPSA grantor or debtor (short for Personal Property Security Act grantor or debtor), in relation to a PPSA security interest, means a grantor or debtor within the meaning of the *Personal Property Securities Act 2009*.

PPSA secured party (short for Personal Property Securities Act secured party), in relation to a PPSA security interest, means a secured party within the meaning of the *Personal Property Securities Act 2009*.

PPSA security agreement (short for Personal Property Security Act security agreement), in relation to a PPSA security interest, means a security agreement within the meaning of the *Personal Property Securities Act 2009*.

PPSA security interest (short for Personal Property Security Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

- (a) section 8 (interests to which the Act does not apply);
- (b) section 12 (meaning of **security interest**);
- (c) Chapter 9 (transitional provisions).

Note 2: For the meaning of **transitional security interest**, see section 3 of the *Personal Property Securities Act 2009*.

premises includes:

- (a) any land;
- (b) any structure, building, aircraft, vehicle, vessel or place (whether built on or not); and
- (c) any part of such a structure, building, aircraft, vehicle, vessel or place.

private company, in relation to a particular time, means a company other than a company that, as at that time:

- (a) has been admitted to the official list of a prescribed financial market (as defined by section 9 of the *Corporations Act 2001*); and
- (b) has not been removed from that official list.

proceeding means proceeding under this Act.

proceeds, in relation to enforcement process in respect of a debt, means:

- (a) the proceeds of selling property under the enforcement process;
- (b) money taken under the enforcement process;
- (c) money received as a result of attachment under the enforcement process; or
- (d) money paid to avoid the taking or sale of property under the enforcement process to avoid attachment under the enforcement process.

proceeds of crime law means:

- (a) the *Proceeds of Crime Act 2002*; or
- (b) the *Proceeds of Crime Act 1987*; or
- (c) a corresponding law.

proceeds of crime order means:

- (a) a restraining order; or
- (b) a forfeiture order; or

- (c) a pecuniary penalty order.

proclaimed law means a law specified for the time being in a Proclamation in force under section 253B.

professional advice means financial, business or legal advice given by a person in the performance of the functions attaching to the person's professional capacity.

property means real or personal property of every description whether situate in Australia or elsewhere, and includes any estate, interest or profit, whether present or future, vested or contingent arising out of or incident to any such real or personal property.

provable debt means a debt or liability that is, under this Act provable in bankruptcy.

provider, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

registered trustee has the same meaning as in section 5-5 of Schedule 2.

Register of Trustees has the same meaning as in section 15-1 of Schedule 2.

Registrar means:

- (a) the Chief Executive Officer and Principal Registrar, a Registrar, a District Registrar or a Deputy District Registrar of the Federal Court; or
- (b) the Chief Executive Officer and Principal Registrar or a Registrar of the Federal Circuit Court.

related entity, in relation to a person, means any of the following:

- (a) a relative of the person;
- (b) a body corporate of which the person, or a relative of the person, is a director;
- (c) a body corporate that is related to the body corporate referred to in paragraph (b);
- (d) a director, or a relative of a director, of a body corporate referred to in paragraph (b) or (c);
- (e) a beneficiary under a trust of which the person, or a relative of the person, is a trustee;
- (f) a relative of such a beneficiary;
- (g) a relative of the spouse, or de facto partner, of such a beneficiary;
- (h) a trustee of a trust under which the person, or a relative of the person, is a beneficiary;
- (i) a member of a partnership of which the person, or a relative of the person, is a member;

For the purposes of paragraph (c) of this definition, the question whether a body corporate is related to another body corporate is to be determined in the same manner as that question is determined for the purposes of the *Corporations Act 2001*.

relative, in relation to a person, means:

- (a) the spouse of the person; or
- (b) a parent or remoter lineal ancestor of the person or of the person's spouse; or
- (c) a child or remoter lineal descendant of the person or of the person's spouse; or
- (d) a brother or sister of the person or of the person's spouse.

or

(e) an uncle, aunt, nephew or niece of the person or of the person's spouse; or

(f) the spouse of a person specified in paragraph (b), (c), (d) or (e).

For the purposes of this definition, **spouse** includes de facto partner.

Note: **Parent** and **child** are defined by this subsection.

resolution: a **resolution** is passed by creditors of a regulated debtor's estate:

(a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k) of Schedule 2; or

(b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b) of Schedule 2.

restraining order means a restraining order made under a proceeds of crime law.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA holder has the same meaning as in the *Retirement Savings Accounts Act 1997*.

rural support scheme means a program or scheme that:

(a) is administered by or on behalf of the Commonwealth, State or a Territory; and

(b) relates to:

(i) agriculture or the cultivation of land; or

(ii) the maintenance of animals for commercial purposes; or

(iii) horticulture; or

(iv) any other primary industry activity.

secured creditor, in relation to a debtor, means:

(a) in the case of a debt secured by a PPSA security interest—the PPSA secured party in relation to the interest, if the interest:

(i) arose as security for the debt; and

(ii) is perfected (within the meaning of the *Personal Property Securities Act 2009*); or

(b) in the case of any other debt—a person holding a mortgage charge or lien on property of the debtor as a security for a debt due to him or her from the debtor.

sheriff includes any person charged with the execution of a writ or other process.

special resolution: a **special resolution** is passed by creditors of a regulated debtor's estate:

(a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k) of Schedule 2; or

(b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b) of Schedule 2.

state of affairs, in relation to an entity, means all of the following:

(a) the property and assets of the entity:

(i) whether held alone or jointly with another person or other persons; and

(ii) whether or not held as agent, bailee or trustee;

(b) the liabilities of the entity.

(b) the liabilities of the entity.

- (i) whether actual or contingent;
- (ii) whether owed alone or jointly with another person or other persons; and
- (iii) whether or not owed as trustee.

statutory minimum means:

- (a) if an amount greater than \$5,000 is prescribed—the prescribed amount; or
- (b) otherwise—\$5,000.

statutory period means:

- (a) if a period longer than 21 days is prescribed—the prescribed period; or
- (b) otherwise—21 days.

stay period, in relation to a declaration of intention presented by a debtor, means the period beginning on the day on which the declaration was accepted under section 54C and ending when

- (a) the default period, beginning on that day, ends; or
- (b) a creditor's petition or a debtor's petition is presented against the debtor; or
- (c) the debtor signs an authority under section 188; or
- (d) a sequestration order is made against the debtor;

whichever happens first.

stay under a proclaimed law, in relation to a person or the estate of a deceased person, means a stay, by or under a proclaimed law, of proceedings or of execution in relation to all or any of the debts of that person or of that estate, as the case may be.

stepchild: without limiting who is a stepchild of a person for the purposes of this Act, someone is the **stepchild** of a person if he or she would be the person's stepchild except that the person is not legally married to the person's de facto partner.

Territory, except in the expression "Territory of the Commonwealth", means the Australian Capital Territory or the Northern Territory of Australia.

Territory of the Commonwealth means a Territory referred to in section 122 of the Constitution, other than Norfolk Island.

the commencement of the bankruptcy, in relation to a bankrupt, means the time at which his or her bankruptcy is, by virtue of section 115, to be deemed to have commenced.

the Court means a Court having jurisdiction in bankruptcy under this Act.

the date of the bankruptcy, in relation to a bankrupt, means the date on which a sequestration order was made against his or her estate or, if he or she became a bankrupt by virtue of the presentation of a debtor's petition, the date on which he or she became a bankrupt by force of section 55, 56E or 57, as the case requires.

the Family Court means the Family Court of Australia.

the Federal Court means the Federal Court of Australia.

the Official Receiver means any Official Receiver.

the property of the bankrupt, in relation to a bankrupt, means

- (a) except in subsections 58(3) and (4):
- (i) the property divisible among the bankrupt's creditors

- (i) the property divisible among the bankrupt's creditors; and
 - (ii) any rights and powers in relation to that property would have been exercisable by the bankrupt if he or she had not become a bankrupt; and
- (b) in subsections 58(3) and (4):
- (i) the property, rights and powers referred to in paragraph (a) of this definition; and
 - (ii) any other property of the bankrupt.

the trustee means:

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV—the trustee of the composition or scheme of arrangement; or
- (c) in relation to a personal insolvency agreement—the trustee of the agreement; or
- (d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI—the trustee of the estate; or
- (e) in relation to a trust:
 - (i) if only one person is a trustee of the trust—that person; or
 - (ii) if 2 or more persons are trustees of the trust—any one or more of those persons;
 in his, her or its capacity as a trustee, or in their respective capacities as trustees, as the case may be, of the trust.

this Act includes the regulations and the Insolvency Practice Rules.

time fixed, for compliance with a bankruptcy notice, means the period specified in the notice (as required by subsection 41(2A)).

- (1A) A reference in this Act to books of an associated entity of a person does not limit the generality of any other reference in this Act to books.
- (1B) A reference in this Act to an entity includes, in the case of a reference to the trustee of the trust.
- (1C) Paragraph (b) of the definition of **examinable affairs** in subsection (1) does not limit the generality of a reference in this Act to a person's conduct, dealings, transactions, property or affairs.
- (2) A person is **solvent** if, and only if, the person is able to pay the person's debts, as and when they become due and payable.
- (3) A person who is not solvent is **insolvent**.
- (4) Unless the contrary intention appears, a reference in this Act to the trustee of the estate of a bankrupt, or to the trustee of a personal insolvency agreement, shall:
 - (a) in relation to an estate or a personal insolvency agreement in respect of which there are 2 or more joint trustees—be read as a reference to all the trustees; or
 - (b) in relation to an estate or a personal insolvency agreement in respect of which there are 2 or more joint and several trustees—be read as a reference to all of the trustees or to one or more of the trustees.

(6) For the purposes of this Act, the members of a person's family are taken to include the following (without limitation):

- (a) a de facto partner of the person;
- (b) someone who is the child of the person, or of whom the person is the child, because of the definition of **child** in this section;
- (c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a member of the person's family.

acting in accordance with a person's directions or instructions

For the purposes of this Act, a person shall not be regarded as acting in accordance with whose directions or instructions the directors of a body corporate are accustomed to act merely because the directors act on advice given by the person in the proper performance of the functions attaching to the person's professional capacity or to the person's business relationship with the directors or with the body corporate.

associated entities: companies

(1) For the purposes of this Act, a company is associated with a person if the person:

- (a) is a company officer of the company or otherwise is concerned, or takes part, in the company's management;
- (b) is able to control, or to influence materially, the company's activities or internal affairs; or
- (c) is a member of the company; or
- (d) is in a position to cast, or to control the casting of, a vote at a general meeting of the company; or
- (e) has power to dispose of, or to exercise control over the disposal of, a share in the company; or
- (f) is financially interested in the company's success or failure or apparent success or failure; or
- (g) is owed a debt by the company; or
- (h) is employed, or is engaged under a contract for services by the company; or
- (j) acts as agent for the company in any transaction or dealing with the company; or
- (k) gives professional advice to the company.

(2) For the purposes of this Act, a company is also associated with a person if the company:

- (a) holds property jointly with the person; or
- (b) is dealing with the person's property as an agent for the person; or
- (c) is a trustee of a trust under which the person is capable of benefiting; or
- (d) acquires or disposes of property as a result of dealing with the person.

(3) The circumstances set out in subsections (1) and (2) are the circumstances in which a company is associated with a person for the purposes of this Act.

associated entities: natural persons

(1) For the purposes of this Act, a natural person (in this section called the **associate**) is associated with another person if the

person:

- (a) holds property jointly with the associate; or
 - (b) is a trustee of a trust under which the associate is capable of benefiting; or
 - (ba) can benefit under a trust of which the associate is a trustee or
 - (c) is employed, or is engaged under a contract for service with the associate; or
 - (d) acts as agent for the associate in any transaction or dealing; or
 - (da) is a principal for whom the associate acts as an agent;
 - (e) is an attorney of the associate under a power of attorney; or
 - (f) has appointed the associate as the other person's attorney under a power of attorney; or
 - (g) gives professional advice to the associate; or
 - (h) is given professional advice by the associate.
- (2) A natural person (the **associate**) is also associated with another person if the associate has acquired or disposed of property as a result of dealing with the other person.
- (3) The circumstances set out in subsections (1) and (2) are the circumstances in which a natural person is associated with another person for the purposes of this Act.

Associated entities: partnerships

For the purposes of this Act, a partnership is associated with a person if, and only if, the person:

- (a) is a partner in the partnership;
- (b) is able to control, or to influence materially, the partnership's activities or internal affairs;
- (c) is financially interested in the partnership's success or failure or apparent success or failure;
- (d) is a creditor of the partnership;
- (e) is employed, or is engaged under a contract for service with the partnership;
- (f) acts as agent for the partnership in any transaction or dealing; or
- (g) gives professional advice to the partnership.

Associated entities: trusts

For the purposes of this Act, a trust is associated with a person if, and only if, the person:

- (a) is the settlor, or one of the settlors, of the trust;
- (b) has power under the terms of the trust to appoint or remove a trustee of the trust or to vary, or cause to be varied, any of the terms of the trust;
- (c) is a trustee of the trust;
- (d) is able to control, or to influence materially, the activities of the trustee of the trust;
- (e) if a trustee of the trust is a company—is a company officer of the company or otherwise is concerned, or takes part, in the company's management;
- (f) is capable of benefiting under the trust;
- (g) is a creditor of the trustee of the trust;
- (h) is employed, or is engaged under a contract for service with the trustee of the trust;

- (j) acts as agent for the trustee of the trust in any transaction or dealing; or
- (k) gives professional advice to the trustee of the trust.

Controlling an entity in relation to a matter

- (1) Subject to this section, a person shall be taken, for the purposes of this Act, to control an entity at a particular time in relation to a matter if, and only if:
 - (a) no act, omission or decision inconsistent with the person's directions, instructions or wishes was; and
 - (b) having regard to all the circumstances, it may reasonably be expected that no such act, omission or decision would have been;
 done or made at that time, in relation to the matter, by or on behalf of the entity.
- (2) A person shall not be taken to control an entity at a particular time in relation to a matter merely because:
 - (a) no act, omission or decision inconsistent with advice given by the person in the proper performance of the functions attaching to his or her professional capacity, or to his or her business relationship with the entity, was; and
 - (b) having regard to all the circumstances, it may reasonably be expected that no such act, omission or decision would have been;
 done or made at that time, in relation to that matter, by or on behalf of the entity.
- (3) A reference in subsection (1) or (2), in relation to a matter, to an act, omission or decision is a reference to an act, omission or decision that, having regard to the nature of that matter, is of substantial importance.
- (4) A person shall not be taken to control a company at a particular time in relation to a matter if the company is not a private company at that time.

Financial affairs of a company

For the purposes of this Act, a company's financial affairs include:

- (a) the company's promotion, formation, membership, constitution, operations and state of affairs;
- (b) the management and proceedings of the company;
- (c) any act or thing done (including any contract made and transaction entered into) by or on behalf of the company, or in relation to the company or its business or property, at any time when:
 - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the company;
 - (ia) the company is under administration within the meaning of the *Corporations Act 2001*;
 - (ib) a deed of company arrangement that the company executed under Part 5.3A of that Act has not yet terminated;
 - (iii) a compromise or arrangement made between the company and another person or other persons is being administered; or
 - (iv) the company is being wound up;
 and, without limiting the generality of the foregoing, a

- and, without limiting the generality of the foregoing, a
- conduct of such a receiver or such a receiver and manage an administrator (within the meaning of that Act) of the company, of an administrator of such a deed, of any person administering such a compromise or arrangement or of a liquidator or provisional liquidator of the company;
 - (d) the ownership of shares in, and debentures of, the company;
 - (e) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the company or to dispose of, or to exercise control over the disposal of, such shares;
 - (f) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, or debentures of, the company; and
 - (g) matters concerned with ascertaining the persons with whom the company is or has been associated.

Financial affairs of a natural person

For the purposes of this Act, the financial affairs of a natural person include:

- (a) the person's operations and state of affairs;
- (b) any act or thing done (including any contract made and transaction entered into) by or on behalf of the person, or in relation to the person or his or her business or property, at any time when:
 - (i) the person was, under this Act or the law of an external Territory, a bankrupt in respect of a bankruptcy from which the person had not been discharged;
 - (ii) the person had, under the law of an external Territory or the law of a country other than Australia, the status of an undischarged bankrupt;
 - (iii) the property of the person was subject to control under Division 2 of Part X by reason of an authority given by a person under section 188; or
 - (iv) a personal insolvency agreement under Part X or under the corresponding provisions of a law of an external Territory or a country other than Australia was in effect in relation to the person or the person's property;
- (c) without limiting the generality of paragraph (b), any conduct of the trustee of such a bankrupt estate or of such a person under an insolvency agreement or a person acting under such an authority; and
- (d) matters concerned with ascertaining the persons with whom the person is or has been associated.

Financial affairs of a partnership

For the purposes of this Act, the financial affairs of a partnership include:

- (a) the partnership's promotion, formation, membership, control, operations and state of affairs;
- (b) the management and proceedings of the partnership;
- (c) any act or thing done (including any contract made and transaction entered into) on behalf of the partnership, or in relation to the partnership, at a time when the partnership is being wound up; and
- (d) matters concerned with ascertaining the persons with whom the partnership is or has been associated.

Financial affairs of a trust

For the purposes of this Act, the financial affairs of a trust include:

- (a) the creation of the trust;
- (b) matters arising under, or otherwise relating to, the terms of the trust;
- (c) the appointment and removal of a trustee of the trust;
- (d) the business, trading, transactions and dealings of the trustee of the trust;
- (e) the profits, income and receipts of the trustee of the trust;
- (f) the losses, outgoings and expenditure of the trustee of the trust;
- (g) the trust property, including transactions and dealings with the trust property and the income arising from, the trust property;
- (h) the liabilities of the trustee of the trust;
- (j) the management of the trust;
- (k) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the trustee of the trust, or to or in relation to the trust, at a time when the trust is being wound up;
- (m) matters concerned with ascertaining the persons with whom the trust is or has been associated; and
- (n) matters concerned with ascertaining the rights of the beneficiaries under the trust and any payments, or distributions of property, that the beneficiaries have received or are entitled to receive, under the terms of the trust.

Meaning of intent to defraud creditors

A reference in this Act to an intent to defraud the creditors of a person or to defeat or delay the creditors of a person shall be taken as including an intent to defraud, or to defeat or delay, any one or more of those creditors.

Statement of affairs for purposes other than Part XI

- (1) This section has effect for the purposes of the following provisions of this Act, namely, subsections 54(1) and (2) and subsection 54A(2), paragraphs 55(2)(b), 56B(3)(a) and (b), 56D(1)(a) and (b), 57(2)(a) and (b) and sections 77CA and 185D and Part X.
- (2) A reference in a provision of this Act referred to in subsection (1) to a statement of affairs is a reference to a statement that:
 - (a) is in an approved form; and
 - (b) includes a statement identifying any creditor who is a related entity of the debtor or bankrupt; and
 - (c) contains a declaration that, so far as the debtor or bankrupt is aware, the particulars set out in the statement are correct.
- (3) If the trustee has reasonable grounds to suspect that:
 - (a) any particulars set out in a statement of affairs that was filed by a person are false or misleading in a material respect; or
 - (b) any material particulars have been omitted from that statement;

the trustee may, by written notice given to the person, require the person, within a specified period of not less than 14 days, to provide such information or to produce such books as are specified in the notice.

in the notice for the purpose of enabling the trustee to decide whether the particulars set out in the statement are correct.

- (4) For the purposes of the application of subsection (3) to a statement of affairs that is required to be given under Part X, reference in that subsection to the **trustee** is a reference to whichever of the following is applicable:
- (a) the controlling trustee within the meaning of that Part;
 - (b) the trustee of the personal insolvency agreement concerned.

Division of statement of affairs under Part XI and statement of administration of estate of deceased person

- (2) A reference in paragraph 246(1)(a) or subsection 247(1) to a statement of a deceased person's affairs and of administration of the deceased person's estate is a reference to a statement, in approved form, of those affairs and of that administration.
- (3) If the trustee administering the estate of a deceased person under Part XI has reasonable grounds to suspect that:
- (a) any particulars set out in a statement of affairs that was filed by a person under subsection 246(1) or 247(1) are false or misleading in a material respect; or
 - (b) any material particulars have been omitted from that statement;

the trustee may give the person a written notice requiring the person to provide specified information or books within a specified period of at least 14 days to enable the trustee to decide whether the particulars set out in the statement are correct.

Interpretive provisions relating to proceeds of crime orders

When property is covered by a restraining order or a forfeiture order

- (1) For the purposes of this Act, property is covered by a restraining order or a forfeiture order during the period:
- (a) starting when the order comes into force in relation to the property; and
 - (b) ending when the earliest of the following occurs:
 - (i) the order ceases to be in force;
 - (ii) a court excludes the property from the order;
 - (iii) if the order is a restraining order—a court excludes the property from forfeiture that would or may result from a conviction for an offence.

Satisfaction of pecuniary penalty orders

- (2) Without limiting the circumstances in which a pecuniary penalty order ceases to be in force, a pecuniary penalty order ceases to be in force if it is satisfied.

When applications for proceeds of crime orders are finally determined

- (3) For the purposes of this Act, an application for a proceeds of crime order is taken to be finally determined when:
- (a) the application is withdrawn; or
 - (b) if the application is successful—the resulting proceeds of crime order comes into force; or
 - (c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

Approved forms

- (1) A document that this Act requires to be in an approved form must:
 - (a) be in the form approved by the Inspector-General for the document; and
 - (b) include the information, statements, explanations or other matters required by the form; and
 - (c) be accompanied by any other material required by the form.
- (2) A reference in this Act to a document in the approved form, includes a reference to any other material included with or accompanying the document as required by the relevant form.
- (3) If:
 - (a) this Act requires a document to be in an approved form
 - (b) a provision of this Act specifies, or provides for the Insolvency Practice Rules to specify, information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;that other provision is not taken to exclude or limit the operation of subsection (1) in relation to the approved form (and so the approved form may also require information etc. to be included in the form or material to accompany the form).
- (4) The Insolvency Practice Rules may make provision for and in relation to:
 - (a) methods of verifying any information required by or in approved forms; and
 - (b) the manner in which, the persons by whom, and the directions or requirements in accordance with which, approved forms are required or permitted to be signed, prepared, or completed.

B—Application of Act

Application of Act

- (1) This Act extends to debtors being persons who are not Australian citizens and persons who have privilege of Parliament.
- (1A) This Act applies to debtors whether or not they have attained the age of 18 years.
- (2) A sequestration order shall not be made against, nor a debt petition presented by:
 - (a) a corporation; or
 - (b) a partnership or association registered under a law of the Commonwealth, of a State, or of a Territory of the Commonwealth, that provides for the winding up of a partnership or association registered under that law.
- (3) This Act applies, with any modifications prescribed by the regulations, in relation to limited partnerships as if they were ordinary partnerships and, upon all the general partners of a limited partnership becoming bankrupt, the assets of the limited partnership shall vest in the trustee.

Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

binds the Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

of States and Territories not affected by Act

- (1) This Act does not affect a law of a State or Territory relating to matters not dealt with expressly or by necessary implication in this Act.

does not extend to Norfolk Island

This Act does not extend to Norfolk Island.

I—Administration

Division 1—General

Delegation by Minister or Secretary

- (1) The Minister may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him or her, delegate to an officer all or any of the Minister's powers under this Act, other than the powers under subsections 185C(4B), 186F(4) and 186G(2B), the power under subsection 105-1(1) of Schedule 1 and this power of delegation.
- (2) A power delegated under subsection (1) shall, when exercised by a delegate, be deemed to have been exercised by the Minister.
- (3) A delegation under subsection (1) does not prevent the exercise of a power by the Minister.
- (4) The Secretary may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him or her, delegate to an officer all or any of the Secretary's powers under this Act, other than this power of delegation.
- (5) A power delegated under subsection (4) shall, when exercised by a delegate, be deemed to have been exercised by the Secretary.
- (6) A delegation under subsection (4) does not prevent the exercise of a power by the Secretary.
- (7) In this section:
- exercise*** includes perform.
- power*** includes a function.
- Secretary*** means the Secretary of the Department.

Inspector-General in Bankruptcy

- (1) For the purposes of this Act, there shall be an Inspector-General in Bankruptcy.
- (2) The Inspector-General has:
- (a) the general administration of this Act; and
 - (b) the other powers and other functions conferred or imposed on him or her by this Act.

- (3) The Inspector-General may exercise any of the powers (including the power under section 18), and perform any of the functions of an Official Receiver, in the same way as the Official Receiver.
- (4) The Inspector-General may by signed instrument delegate to an authorised employee all or any of the powers and functions of the Inspector-General under this Act.

Functions of Inspector-General

- (1) The Inspector-General:
 - (a) shall make such inquiries and investigations as the Minister directs; and
 - (b) may make such inquiries and investigations as the Inspector-General thinks fit with respect to the administration of, or the conduct of a trustee (including a controlling trustee) in relation to:
 - (i) a bankruptcy; or
 - (ii) a composition or scheme of arrangement under Division 6 of Part IV; or
 - (iii) a personal insolvency agreement; or
 - (iv) an administration under Part XI; or
 - (v) property in relation to which a direction has been given under subsection 50(1); or
 - (vi) property in relation to which the trustee is the controlling trustee under an authority given under section 188; and
 - (ba) may make such inquiries and investigations as the Inspector-General thinks fit with respect to so much of the conduct and examinable affairs of:
 - (i) a bankrupt; or
 - (ii) a bankrupt or debtor under a composition or scheme of arrangement under Division 6 of Part IV; or
 - (iia) a debtor under a debt agreement proposal or debt agreement under Part IX; or
 - (iib) a debtor whose property is subject to control under Division 2 of Part X; or
 - (iii) a debtor under a personal insolvency agreement; as is relevant to the bankruptcy, composition, scheme of arrangement, as the case may be; and
 - (bb) may make such inquiries and investigations as the Inspector-General thinks fit with respect to any conduct of an administrator that relates to a debt agreement; and
 - (bc) may make such inquiries and investigations as the Inspector-General thinks fit with respect to whether a person has committed an offence against this Act; and
 - (bd) may make such inquiries and investigations as the Inspector-General thinks fit with respect to any conduct of a registered debt agreement administrator (including conduct engaged in before a debt agreement proposal, specifying an administrator under paragraph 185C(2)(c), is given to the Official Receiver), except conduct covered by paragraph (b) or (bc); and
 - (c) shall from time to time obtain from Official Receivers and other officers and from registered trustees reports as to the operation of this Act; and
 - (d) must give the Minister, after the end of each financial year, a report on the operation of this Act during that financial year for presentation by the Minister to the Parliament.

(1A) Where the Inspector-General requests a registered trustee or administrator of a debt agreement, for the purposes of subsection (1), to provide a report as to the operation of this Act by the registered trustee or administrator, as the case may be, she or he must forthwith provide the report requested.

(1BA) The Inspector-General may make an inquiry or investigation under paragraph (1)(b), (ba), (bb) or (bc) at any time, whether before or after the end of the bankruptcy, composition, scheme of arrangement or administration concerned.

(1B) Where the Inspector-General makes an inquiry or investigation referred to in paragraph (1)(b), (ba), (bb) or (bc), the Inspector-General may give a copy of the report of the results of the inquiry or investigation to any person the Inspector-General thinks fit.

(1C) Without limiting the generality of paragraphs (1)(a) and (b), the Inspector-General may make inquiries and investigations under those paragraphs at the request of:

- (a) if the Inspector-General is satisfied that the request relates to an application, or proposed application, for a confiscation order—the Commonwealth proceeds of crime authority that is the responsible authority, or that is proposed to be the responsible authority, for the application or proposed application under the *Proceeds of Crime Act 2002*; or
- (b) if the Inspector-General is satisfied that the request relates to an application, or proposed application, for an interstate confiscation order—a person who is entitled, under a corresponding law, to apply for an order of that kind.

(1D) For the purposes of paragraph (1)(bb), any conduct engaged in by the administrator of a debt agreement:

- (a) in fulfilment, or purported fulfilment, of a duty of the administrator under this Act; or
- (b) in breach of a duty of the administrator under this Act; is taken to be conduct of the administrator that relates to a debt agreement, even if the conduct does not relate to a particular debt agreement.

(1E) For the purposes of paragraph (1)(bb), if a person signs a certificate under subsection 185C(2D) in relation to a debt agreement proposal, the person's conduct in relation to the certificate is taken to be conduct of an administrator that relates to a debt agreement.

(1F) For the purposes of paragraph (1)(bb), if a person:

- (a) gives a notification in compliance, or purported compliance, with subsection 185N(5); or
- (b) breaches subsection 185N(5);

the giving of the notification, or the breach, as the case may be, is taken to be the conduct of an administrator that relates to a debt agreement.

(2) For the purposes of discharging his or her functions under this Act, the Inspector-General may:

- (a) require the production of any books kept by an Official Receiver or by a trustee; and
- (b) require a trustee to answer an inquiry made to him or her in relation to any of the following matters in which the trustee or has been, engaged:

- (i) a bankruptcy;
 - (ii) the control of property under an authority given under section 188;
 - (iii) an administration under Part XI;
 - (iv) a personal insolvency agreement, scheme of arrangement or composition; and
 - (c) at any time investigate the books of a trustee; and
 - (d) require the production of any books kept by the administrator, or former administrator, of a debt agreement; and
 - (e) require the administrator, or former administrator, of a debt agreement to answer an inquiry made of the administrator, or former administrator, as the case may be, in relation to the administration of the debt agreement; and
 - (f) at any time investigate the books of the administrator, or former administrator, of a debt agreement.
- (2A) If the Inspector-General believes on reasonable grounds that a person has information that is relevant to an inquiry or investigation under paragraph (1)(bc), the Inspector-General may, by written notice given to the person, require the person to give the Inspector-General, within the period and in the manner specified in the notice, any such information.
- (2B) The period specified in a notice given under subsection (2A) must be at least 14 days after the notice is given.
- (2C) A person commits an offence if:
- (a) the person has been given a notice under subsection (2A); and
 - (b) the person fails to comply with the notice.
- Penalty: Imprisonment for 12 months.
- (2D) A notice under subsection (2A) must set out the effect of the following provisions:
- (a) subsection (2C);
 - (b) section 137.1 of the *Criminal Code* (about giving false or misleading information).
- (2E) Subsection (2A) does not limit the application of subsection (1)(bc) in relation to an inquiry or investigation under paragraph (1)(bc).
- (4) The Inspector-General may disclose information obtained by the Inspector-General in the course of exercising powers or performing functions under this Act to any of the following bodies, if the Inspector-General is satisfied that the information will enable or assist the body to exercise any of its powers or perform any of its functions:
- (a) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
 - (b) a prescribed professional disciplinary body.

Australian Financial Security Authority

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following group of persons is a listed entity:
 - (i) the Inspector-General;
 - (ii) persons engaged under the *Public Service Act 1997* to assist the Inspector-General; and
 - (b) the listed entity is to be known as the Australian Finan

- (b) the listed entity is to be known as the Australian Financial Security Authority; and
- (c) the Inspector-General is the accountable authority of the Australian Financial Security Authority; and
- (d) the persons referred to in paragraph (a) are officials of the Australian Financial Security Authority; and
- (e) the purposes of the Australian Financial Security Authority include the functions of the Inspector-General referred to in subsection 11(2) and section 12.

Official Receivers

- (1) There is to be such number of Official Receivers as the Minister thinks necessary.
- (3) Each Official Receiver has such powers and functions as are conferred or imposed on an Official Receiver by this Act.
- (4) An Official Receiver may by signed instrument delegate to an authorised employee all or any of the powers and functions of an Official Receiver under this Act.
- (5) The Court may review an act done by an Official Receiver.

Note: Section 303 explains who may apply to the Court for review of an Official Receiver's action.

Appointment of Inspector-General and Official Receivers

The Inspector-General and each Official Receiver shall be appointed by the Minister.

Acting Inspector-General and Acting Official Receivers

- (1) The Minister may appoint a person to act as Inspector-General:
 - (a) during a vacancy in the office of Inspector-General; or
 - (b) during any period, or during all periods, when the Inspector-General is absent from duty or from Australia or for any other reason, unable to perform the functions of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Interpretation Act 1901*.

- (2) The Inspector-General may appoint a person to act as Official Receiver:
 - (a) during a vacancy in the office of Official Receiver; or
 - (b) during any period, or during all periods, when the Official Receiver is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Interpretation Act 1901*.

Arrangements for services of State Magistrates and Northern Territory Local Court Judges

- (1) The Governor-General may arrange with the Governor of a State for the performance of the functions of a magistrate under this Act by all or any of the persons who from time to time hold office as Magistrates of the State.
- (2) The Governor-General may arrange with the Administrator of the Northern Territory for the performance of the functions of a magistrate under this Act by all or any of the persons who from time to time hold office as Judges of the Local Court of the

time to time hold office as judges of the Local Court of the Northern Territory.

Official Trustee in Bankruptcy

Corporate status of Official Trustee

- (1) The corporation sole known as the Official Trustee in Bankruptcy, that existed immediately before this subsection commenced, continues in existence as a body corporate with the same name.
- (2) The body corporate continued in existence by force of subsection (1):
 - (a) has perpetual succession;
 - (b) may acquire, hold and dispose of real and personal property; and
 - (c) may sue and be sued in its corporate name.

Extra function of Official Trustee

- (3) The functions of the Official Trustee include acting in accordance with an order of a court relating to the payment of a debt due by a person to the Commonwealth or a Commonwealth authority.

Example: Such an order may, for example, provide for the Official Trustee to

- (a) take custody of, control and own property as security for payment of such a debt; and
- (b) sell the property; and
- (c) apply the proceeds of the sale wholly or partly towards the payment of the debt.

Note: Other provisions of this Act and other laws of the Commonwealth provide for other functions on the Official Trustee.

Official Trustee's seals

- (4) The Official Trustee shall have such seals as the Minister directs by writing under his or her hand.
- (5) The designs of the seals of the Official Trustee shall be as determined by the Minister by writing under his or her hand.
- (7) All courts (whether exercising federal jurisdiction or not), and all persons acting judicially, shall take judicial notice of the mark of such a seal affixed on a document and shall, in the absence of evidence to the contrary, presume that it was duly affixed.

Official Receiver acting for Official Trustee

- (8) The Official Receiver may exercise the powers, and perform the functions, of the Official Trustee.
- (8AA) In exercising powers or performing functions under subsection (8), an Official Receiver must act in the name of, and on behalf of, the Official Trustee.
- (8A) All acts and things done in the name of, or on behalf of, the Official Trustee by any Official Receiver, shall be deemed to have been done by the Official Trustee.

Inspector-General acting for Official Trustee

- (8B) The Inspector-General may exercise any of the powers, and perform any of the functions, of the Official Trustee that are not related to any of the following matters:
 - (a) a bankruptcy;
 - (b) control of a debtor's property under section 50;
 - (c) a scheme of arrangement or composition under Division 2

Part IV;

(d) a matter relating to a debt agreement proposal;

(e) Part X administration;

(f) administration under Part XI.

(8C) In exercising powers or performing functions under subsection (8B), the Inspector-General must act in the name of, or on behalf of, the Official Trustee.

(8D) Anything done by the Inspector-General in the name of, or on behalf of, the Official Trustee is taken to have been done by the Official Trustee.

(8E) In subsection (8B):

matter relating to a debt agreement proposal includes:

(a) a debt agreement; and

(b) an activity required or permitted by a debt agreement.

Part X administration means:

(a) an activity that a controlling trustee may or must carry out after consenting to exercise powers given by an authority under section 188 (including control of a debtor's property under Division 2 of Part X); or

(b) a personal insolvency agreement.

State of mind of Official Trustee

(9) Where, under a provision of this Act, the exercise of a power or the performance of a function by the Official Trustee is dependent upon the opinion, belief or state of mind of the Official Trustee in relation to a matter:

(a) the power may be exercised or the function performed by a person who may exercise the power or perform the function under subsection (8) or (8B), in the name of, or on behalf of, the Official Trustee upon the opinion, belief or state of mind of that person in relation to that matter of the person exercising the power or performing the function; and

(b) any act or thing done in accordance with this subsection shall be deemed to have been done by the Official Trustee.

(10) Where the Official Trustee is one of the trustees of a person's insolvency agreement, composition or scheme of arrangement, the power the exercise of which, or a function the performance of which, is dependent upon the opinion, belief or state of mind of those trustees in relation to a matter may be exercised or performed by those trustees as if the opinion, belief or state of mind in relation to that matter of:

(a) an Official Receiver who; or

(b) another person who with the authority of an Official Receiver;

acts in the name of, or on behalf of, the Official Trustee in the exercise of the power or the performance of the function were the opinion, belief or state of mind in relation to the matter of the Official Trustee.

General interpretation provisions

(11) A reference in a law of the Commonwealth to the Official Receiver of the estate of a bankrupt shall, in relation to the vesting, holding or disposal of property, be read as including a reference to the Official Trustee.

(12) A reference in a law of the Commonwealth to the Official

Receiver in Bankruptcy shall be read as including a reference to the Official Trustee.

Public Governance, Performance and Accountability Act 2013 does not apply to the Official Trustee

Despite paragraph 10(1)(d) of the *Public Governance, Performance and Accountability Act 2013*, the Official Trustee is not a Commonwealth entity for the purposes of that Act.

Liability of the Official Trustee

- (1) The Official Trustee is subject to the same personal liability in respect of an act done, or omitted to be done, by it as:
 - (a) the trustee of the estate of a bankrupt; or
 - (b) the trustee of the estate of a deceased debtor; or
 - (c) the trustee of a composition or scheme of arrangement accepted under Division 6 of Part IV; or
 - (d) the controlling trustee in relation to a debtor whose property is subject to control under Division 2 of Part X; or
 - (e) the trustee of a personal insolvency agreement;as an individual would be subject if the individual had done, or omitted to do, that act as such a trustee.
- (2) The Commonwealth is by force of this subsection liable to indemnify the Official Trustee against any personal liability, including any personal liability as to costs, incurred by it:
 - (a) by reason of subsection (1); or
 - (b) for any act done, or omitted to be done, by it in carrying out, or purporting to carry out, a direction given, or an order made, by the Court under section 50; or
 - (c) for any act done, or omitted to be done, by the Official Trustee:
 - (i) under Part IX; or
 - (ii) under the authority contained in a debt agreement under which the Official Trustee is authorised to deal with the property of the person who is a party (as debtor) to the agreement.
- (3) Nothing in subsection (2) affects any right that the Official Trustee has, apart from that subsection, to be reimbursed in respect of any personal liability referred to in that subsection or any other indemnity given to the Official Trustee in respect of such liability.
- (4) Where the Commonwealth makes a payment in accordance with the indemnity referred to in subsection (2), the Commonwealth has the same right to reimbursement in respect of the payment (including reimbursement under another indemnity given to the Official Trustee) as the Official Trustee would have if the Official Trustee had made the payment.

Duties etc. of trustee

- (1) The duties of the trustee of the estate of a bankrupt include the following:
 - (a) notifying the bankrupt's creditors of the bankruptcy;
 - (b) determining whether the estate includes property that is to be realised to pay a dividend to creditors;
 - (c) reporting to creditors within 3 months of the date of the bankruptcy on the likelihood of creditors receiving a dividend before the end of the bankruptcy;

- (e) determining whether the bankrupt has made a transfer of property that is void against the trustee;
 - (f) taking appropriate steps to recover property for the benefit of the estate;
 - (g) taking whatever action is practicable to try to ensure that the bankrupt discharges all of the bankrupt's duties under this Act;
 - (h) considering whether the bankrupt has committed an offence against this Act;
 - (i) referring to the Inspector-General or to relevant law enforcement authorities any evidence of an offence by the bankrupt against this Act;
 - (j) administering the estate as efficiently as possible by avoiding unnecessary expense;
 - (k) exercising powers and performing functions in a commercially sound way;
 - (l) the duties imposed on the trustee under Schedule 2.
- (2) Where a person who became a bankrupt on a creditor's petition is unable to prepare a proper statement of affairs, the trustee may employ, at the expense of the estate, a qualified person to assist in the preparation of the statement.

Power of investigation of bankrupt's affairs

- (1) The trustee of the estate of a bankrupt may investigate:
- (a) the bankrupt's conduct and examinable affairs; and
 - (b) books, accounts and records kept by the bankrupt;
- so far as they relate to the bankruptcy.

Liability of Inspector-General, Official Receivers etc.

- (1) The Commonwealth shall indemnify a person to whom this section applies against any liability incurred by him or her:
- (a) for any act done negligently, or negligently omitted to be done, by him or her in the course of the performance of his or her duties under this Act; and
 - (b) for any act done by him or her in good faith in the performance of his or her duties under this Act.
- (2) The Commonwealth has the same liability for acts of, or omissions by, a person to whom this section applies in the course of the performance or purported performance of his or her duties under this Act as a master has for acts of, or omissions by, his or her servants.
- (3) A reference in this section to a person to whom this section applies shall be read as a reference to the Inspector-General, a Registrar, an Official Receiver, an officer performing any of the functions or duties, or exercising any of the powers, of an Official Receiver or an officer or other person assisting a Registrar or Official Receiver in the performance of his or her functions or duties or the exercise of his or her powers.

Duties of trustee to give Official Receiver information etc.

- (1) The trustee of the estate of a bankrupt must give the Official Receiver such information, access to and facilities for inspecting the bankrupt's books and generally such assistance as is necessary for enabling the Official Receiver to perform his or her duties.
- (2) This section does not apply to the Official Trustee.

Division 2—Common Investment Fund

Interpretation

In this Division, unless the contrary intention appears:

Common Fund means the Common Investment Fund established in pursuance of section 20B.

Equalization Account means the Common Investment Fund Equalization Account continued in existence by section 20G.

The Common Investment Fund

- (1) The Official Trustee shall open and maintain an account to be known as the Common Investment Fund.
- (2) All moneys (other than moneys to which subsection (8) applies) received by the Official Trustee after the commencement of this section shall be paid into the Common Fund.
- (3) All moneys (other than moneys to which subsection (8) applies) held by the Official Trustee at the commencement of this section, including moneys that, at that time, are held on deposit with a bank under subsection 172(1), and all investments made under that subsection and held by the Official Trustee at that time, shall form part of the Common Fund.
- (4) The Official Trustee shall open and maintain, with an ADI or ADIs, such accounts for the purposes of the Common Fund as are necessary for the purposes of the Common Fund.
- (6) The payment of moneys into an account referred to in subsection (4) shall be deemed to be the payment of those moneys into the Common Fund.
- (7) Any payment that the Official Trustee is authorized, required or permitted, by or under a provision of this Act, to make out of moneys standing to the credit of the estate of a bankrupt or a deceased debtor shall be made out of moneys in the Common Fund.
- (7A) Any payment that the Official Trustee is authorised, required or permitted to make under:
 - (a) a debt agreement; or
 - (b) a personal insolvency agreement;is to be made out of money in the Common Fund.
- (8) This subsection applies to moneys held or received by the Official Trustee:
 - (aa) acting in accordance with an order of a court relating to the payment of a debt due by a person to the Commonwealth or a Commonwealth authority; or
 - (a) under a direction given, or order made, under section 508;
 - (c) as the controlling trustee in relation to a debtor whose property is subject to control under Division 2 of Part X.

Investment of money in Common Fund

- (1) The moneys in the Common Fund not immediately required for the purposes of this Act may be invested by the Official Trustee:
 - (a) in public securities; or
 - (b) in a loan the repayment of which is guaranteed by the Commonwealth, a State or a Territory; or
 - (c) in a loan to a municipal corporation or other local government body in Australia; or

- (d) in a loan to, or on deposit with, an ADI; or
- (e) in bank bills accepted or endorsed by an ADI.

(4) The Official Trustee:

- (a) shall endeavour to ensure that the moneys in the Common Fund lodged in accounts at call with an ADI or ADIs are, as far as practicable, at all times sufficient to meet the payment under this Act are to be made out of moneys in the Common Fund; and
- (b) will ensure that moneys in the Common Fund that, in the opinion of the Official Trustee, are not required to be kept in accounts at call with an ADI or ADIs in accordance with paragraph (a) are, as far as practicable, invested in accordance with subsection (1).

(6) Interest derived from the investment of moneys in the Common Fund is not subject to taxation under a law of the Commonwealth, a State or a Territory of the Commonwealth.

(7) The Common Fund is not subject to taxation under a law of the Commonwealth, or to taxation under a law of a State or Territory of the Commonwealth to which the Commonwealth is not subject to taxation; and the Official Trustee is not otherwise subject to taxation under a law in respect of anything done in the exercise of powers conferred on it by subsection (1).

(8) In this section, **public securities** means:

- (a) bonds, debentures, stock and other securities issued under an Act;
- (b) bonds, debentures, stock and other securities issued by
 - (i) a State;
 - (ii) a Territory;
 - (iii) a municipal corporation or other local governing body; or
 - (iv) a public authority constituted by or under a law of a State or Territory of the Commonwealth;
- (c) securities issued in respect of a loan to a body (whether incorporated or not) whose principal business is the supply of water, gas or electricity, or the distribution, by a system of reticulation, in Australia or in a Territory of the Commonwealth, of water, gas or electricity; and
- (d) other securities specified in the regulations as public securities for the purposes of this section;

but does not include:

- (e) securities referred to in paragraph (a) or (b) that are issued in respect of a loan raised outside Australia and the Territories of the Commonwealth unless the securities are public securities for the purposes of the *Income Tax Assessment Act 1936*; or
- (f) securities issued after 12 April 1976 by an ADI.

Borrowing for the Common Fund

(1) Where the Official Trustee is of the opinion:

- (a) that moneys in the Common Fund deposited in accounts at call with an ADI or ADIs are likely to be insufficient to meet payments that under this Act are to be made out of moneys in the Common Fund; and
- (b) that it would be undesirable to convert into money investments made under section 20D for the purpose of

enabling those payments to be so made;
the Official Trustee may apply to the Finance Minister to borrow from the Commonwealth under this section moneys not exceeding such amount as is specified in the instrument.

- (2) The Finance Minister may, on behalf of the Commonwealth, lend to the Official Trustee, on such terms and conditions as he or she determines, moneys that the Official Trustee has applied under subsection (1) to borrow.
- (3) Moneys borrowed by the Official Trustee from the Commonwealth under this section shall be paid into the Common Fund.
- (4) Interest is not payable on moneys lent to the Official Trustee from the Commonwealth under this section.
- (5) Moneys lent to the Official Trustee by the Commonwealth under this section shall be paid out of moneys available under an appropriation made by the Parliament.

moneys in Common Fund not held on account of particular estates etc.

- (1) No moneys in the Common Fund shall be held, or be deemed to be held, on account of any particular estate or fund.
- (2) Investments made from moneys in the Common Fund shall not be made, and shall not be deemed for any purpose to be made, on account of any particular estate or fund.
- (3) Any capital appreciation or depreciation in the value of investments made from moneys in the Common Fund shall not increase or decrease the amount payable under this Act in respect of any estate or fund.
- (4) The making of a capital profit or capital loss on the realization of investments made from moneys in the Common Fund shall not increase or decrease the amount payable under this Act in respect of any estate or fund.
- (5) Interest derived from the investment of moneys in the Common Fund shall not increase the amount payable under this Act in respect of any estate or fund.
- (6) The Official Trustee shall cause accounts to be kept showing the amount in the Common Fund from time to time standing to the credit of each estate or fund in respect of which moneys have been paid into the Common Fund.
- (7) Moneys received or held by the Official Trustee as trustee of an estate or fund do not cease to be moneys in hand for the purposes of this Act by reason only that those moneys have been paid into the Common Fund.

- (8) In this section:

estate means the estate of a bankrupt or of a deceased debtor;

fund means a fund of moneys referred to in paragraph 20J(1)(c).

Common Investment Fund Equalization Account

- (1) There is continued in existence the Common Investment Fund Equalization Account.

Note: The Account was established by subsection 5(3) of the *Financial Management Legislation Amendment Act 1999*.

- (2) The Account is a special account for the purposes of the *Public Finance, Governance, Performance and Accountability Act 2013*.

Credits to and debits from the Equalization Account

- (1) Interest derived from the investment of money in the Common Fund must be paid to the Commonwealth.
- (2) An amount equal to the amount of any capital profit made upon the realization of an investment made from money in the Common Fund must be paid out of the Common Fund to the Commonwealth.
- (3) Whenever a payment is made to the Commonwealth under subsection (1) or (2), an equal amount must be credited to the Equalization Account.
- (4) An amount equal to:
 - (a) the amount of any capital loss incurred upon the realization of an investment made from money in the Common Fund;
 - (b) each amount of interest that:
 - (i) forms part of the estate of a bankrupt or of a deceased debtor by virtue of subsection 20J(2) or (3); or
 - (ii) forms part of a fund referred to in paragraph 20J(3) by virtue of subsection 20J(2) or (3A); or
 - (iii) is payable to a person by virtue of subsection 20J(3);is to be debited from the Equalization Account and paid into the Common Fund.
- (5) The Inspector-General must, at such times as the Inspector-General considers appropriate and, in any event, at least once every 6 months, determine whether any amounts standing to the credit of the Equalization Account are not required for the purposes of subsection (4). If the Inspector-General determines that any amounts are not so required, the Inspector-General may direct that the amounts not so required, or any part of those amounts, be debited from the Equalization Account.
- (6) Whenever an amount required by subsection (4) to be debited from the Equalization Account exceeds the amount standing to the credit of the Equalization Account, an amount equal to the excess must be credited to the Equalization Account.

Interest on moneys in Common Fund payable only in certain circumstances

- (1) Where the Official Trustee is:
 - (a) the trustee of the estate of a bankrupt or of a deceased debtor; or
 - (b) the trustee of a fund of moneys held or received by the Official Trustee in respect of a particular debtor or bankrupt for the reason of being:
 - (i) the trustee of a composition, or of a scheme of arrangement, accepted under Division 6 of Part IV; or
 - (ii) the trustee of a personal insolvency agreement;the estate or the fund is not entitled, except as provided by subsections (2), (3) and (3A), to interest on moneys held by the Official Trustee as trustee of the estate or fund, as the case may be.
- (2) Where moneys have been held, or are likely to be held, for a prescribed reason, or for one prescribed reason and then for another prescribed reason, by the Official Trustee as the trustee of the estate of a bankrupt or of a deceased debtor, or as trustee

fund referred to in paragraph (1)(b), for not less than one year longer than those moneys would have been held, or would be to be held, by the Official Trustee but for that reason or those reasons, the Inspector-General may direct, by writing under her hand, that interest on those moneys, at the rate prescribed by the regulations for the purposes of this section and in respect of such period as he or she determines, shall form part of that estate or fund, as the case may be.

(3) Where, on or after the date of commencement of this section, the subsection referred to as the **commencing date**), the Official Trustee receives an amount by way of interest on moneys (other than moneys of the kind referred to in paragraph (1)(b)), or on investments, that form part of the Common Fund by virtue of subsection 20B(3):

(a) if the interest accrued in respect of a period that ended before the commencing date—the amount of the interest in that part of the estate in respect of which those moneys or investments were held immediately before the commencing date; or

(b) if the interest accrued in respect of a period that commenced before, but ended on or after, the commencing date—an amount that bears to the amount of that interest the same proportion as the number of days in the part of the period in respect of which the interest accrued that occurred before the commencing date bears to the number of days that period forms part of the estate in respect of which those moneys or investments were held immediately before the commencing date.

(3A) Where, on or after the date of commencement of this subsection (in this subsection referred to as the **commencing day**), the Official Trustee receives an amount by way of interest on moneys held or received by the Official Trustee by reason of being trustee of a fund referred to in paragraph (1)(b) (in this subsection referred to as the **appropriate fund**), being moneys that form part of the Common Fund:

(a) if the interest accrued in respect of a period that ended before the commencing day—the amount of the interest in that part of the appropriate fund; or

(b) if the interest accrued in respect of a period that commenced before, but ended on or after, the commencing day—an amount that bears to the amount of that interest the same proportion as the number of days in the part of the period in respect of which the interest accrued that occurred before the commencing day bears to the number of days in that period that period forms part of the appropriate fund.

(4) Where it is established that:

(a) moneys held by the Official Trustee as the trustee of the estate of a bankrupt or of a deceased debtor do not form part of the estate; or

(b) moneys held by the Official Trustee as part of a fund referred to in paragraph (1)(b) do not form part of the fund, the interest on those moneys is payable to the person to whom the moneys are payable, out of the Common Fund, at the rate prescribed by the regulations for the purposes of this section and in respect of the period during which those moneys are held by the Official Trustee.

(5) For the purposes of subsection (2), moneys shall be taken to

been held, or to be likely to be held, by the Official Trustee for a prescribed reason if the moneys have been held, or are likely to be held, as the case may be, by the Official Trustee:

- (a) by reason of the institution or defending of legal proceedings in good faith;
- (b) by reason that a person has, or has had, under consideration, in good faith, the institution or defending of legal proceedings; or
- (c) for any other reason declared by the regulations to be a prescribed reason for the purposes of this section.

II—Courts

Division 2—Jurisdiction and powers of courts in bankruptcy

Section 2—Bankruptcy courts

- (1) The Federal Court and the Federal Circuit Court have concurrent jurisdiction in bankruptcy, and that jurisdiction is exclusive of the jurisdiction of all courts other than:
 - (a) the jurisdiction of the High Court under section 75 of the Constitution; or
 - (b) the jurisdiction of the Family Court under section 35 of this Act.
- (2) To avoid doubt, subsection (1) does not:
 - (a) confer jurisdiction in a criminal matter; or
 - (b) exclude the jurisdiction of a court of a State or Territory under the *Judiciary Act 1903* in a criminal matter relating to this Act.

Section 3—Courts to help each other

- (1) All Courts having jurisdiction under this Act, the Judges of those Courts and the officers of or under the control of those Courts shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy.
- (2) In all matters of bankruptcy, the Court:
 - (a) shall act in aid of and be auxiliary to the courts of the external Territories, and of prescribed countries, that have jurisdiction in bankruptcy; and
 - (b) may act in aid of and be auxiliary to the courts of other countries that have jurisdiction in bankruptcy.
- (3) Where a letter of request from a court of an external Territory or of a country other than Australia, requesting aid in a matter of bankruptcy is filed in the Court, the Court may exercise such powers with respect to the matter as it could exercise if the matter had arisen within its own jurisdiction.
- (4) The Court may request a court of an external Territory, or of a country other than Australia, that has jurisdiction in bankruptcy to act in aid of and be auxiliary to it in any matter of bankruptcy.
- (5) In this section, **prescribed country** means:
 - (a) the United Kingdom, Canada and New Zealand;
 - (b) a country prescribed by the regulations for the purposes of this subsection; and
 - (c) a colony, overseas territory or protectorate of a country specified in paragraph (a) or of a country so prescribed.

General powers of Courts in bankruptcy

- (1) The Court:
 - (a) has full power to decide all questions, whether of law or fact, in any case of bankruptcy or any matter under Part I or XI coming within the cognizance of the Court; and
 - (b) may make such orders (including declaratory orders and orders granting injunctions or other equitable remedies) as the Court considers necessary for the purposes of carrying out or giving effect to this Act in any such case or matter.
- (2) The Court may direct such inquiries to be made and accounts to be taken for the purposes of any proceeding before the Court as the Court considers necessary and may, when directing an account to be taken, or subsequently, give special directions as to the manner in which the account is to be taken or vouched.
- (3) If in a proceeding before the Federal Court under this Act a question of fact arises that a party desires to have tried before a jury, the Federal Court may, if it thinks fit, direct the trial of that question to be had before a jury, and the trial may be had accordingly in the same manner as if it were the trial of an issue of fact in an action.
- (5) Where:
 - (a) a bankrupt, a debtor or any other person has failed to comply with an order or direction of a Registrar, or with a direction or requirement of an Official Receiver or trustee under this Act; or
 - (b) a trustee has failed to comply with an order, direction or requirement of a Registrar, or with a requirement or request of the Inspector-General, under this Act;the Court may, on the application of the Registrar, Official Receiver, trustee or Inspector-General, as the case requires:
 - (c) order the person who has failed to comply with the order, direction, requirement or request, as the case may be, to comply with it; or
 - (d) if it thinks fit, make an immediate order for the commitment to prison of that person.
- (6) The power conferred on the Court by subsection (5) is in addition to, and not in substitution for, any other right or remedy in respect of the failure to comply with the order, direction, requirement or request, as the case may be.

Exercise of jurisdiction

- (1) In exercising jurisdiction under this Act, the Court shall hear and determine the following matters in open Court:
 - (a) creditors' petitions;
 - (b) examinations under this Act;
 - (c) proceedings in connection with the consideration of an application for an annulment of a bankruptcy under section 153B;
 - (d) applications under:
 - (i) section 222 (as applied by section 76B); or
 - (ii) section 222C (as applied by section 76B);for an order setting aside or terminating a composition or scheme of arrangement under Division 6 of Part IV;
 - (e) applications to set aside or avoid a charge, charging or settlement, disposition, conveyance, transfer security or payment.

payment;

(ea) applications under section 139A;

(f) applications to declare for or against the title of the trust or to any property;

(g) applications for the committal of a person to prison or for the release from prison of a person committed to prison;

(i) applications for the trial of questions of fact with a jury or the trial of those questions;

(j) applications under Part X:

(i) for an order setting aside or terminating a person's insolvency agreement; or

(ii) for a sequestration order against the estate of a debtor;

(ja) applications for an order of annulment of the administration of the estate of a deceased person under Part XI; and

(k) summary trials under Part XIV.

(2) All other matters under this Act may, in the discretion of the Court, be heard in open Court or in Chambers.

Costs

The Court may, in any proceeding before it, including a proceeding dismissed for want of jurisdiction, make such order as to costs as it thinks fit.

Adjournment, amendment of process and extension and abridgment of times

(1) The Court may:

(a) upon such terms as it thinks fit, at any time adjourn any proceeding before it, either to a fixed date or generally;

(b) at any time allow the amendment of any written process, proceeding or notice under this Act; or

(c) extend before its expiration or, if this Act does not expire, provide to the contrary, after its expiration, any time limit in this Act, or any time fixed by the Court or the Registrar under this Act (other than the time fixed for compliance with a bankruptcy notice), for doing an act or thing or abridge any such time.

Extension of filing date for statement of affairs

(1) This section applies to a statement of affairs that was filed for the purposes of section 54, 55, 56B, 56F or 57 by a bankrupt, or by a person who later became a bankrupt.

(2) If the Court is satisfied that the person believed, on reasonable grounds, that the statement had already been filed at a time before it was actually filed, the Court may order that the statement is treated as having been filed at a time before it was actually filed.

(3) The Court cannot make an order that would result in the person being discharged from bankruptcy earlier than 30 days after the order is made.

(4) In this section:

filed includes presented, lodged or given.

Examinations and commissions for examination of witnesses

The Court may, for the purposes of any proceeding before it:

(a) order the examination upon oath of a person before an officer of the Court or other person, at any place within

Australia; or

- (b) order that a commission issue to a person either within or beyond Australia authorizing him or her to take the testimony of a person upon oath;

and may:

- (c) by the same or a subsequent order, give any necessary directions concerning the time, place and manner of the examination; and
- (d) admit in evidence, saving all just exceptions, the testimony obtained at the examination or in pursuance of the commission.

Standard of proof

- (1) Where, in proceedings in the Court (other than proceedings for an offence), it is necessary, for a purpose relating to a matter arising under this Act, to establish, or for the Court to be satisfied as to, a particular fact (including a contravention of this Act), it is sufficient if that fact is established, or the Court is satisfied as to that fact, as the case may be, on the balance of probabilities.
- (2) Subsection (1) has effect except to the extent that this Act expressly provides otherwise.

Family Court's jurisdiction in bankruptcy where trustee is a party to property settlement or spousal maintenance proceedings etc.

- (1) If, at a particular time:
 - (a) a party to a marriage is a bankrupt; and
 - (b) the trustee of the bankrupt's estate is:
 - (i) a party to property settlement proceedings in relation to either or both of the parties to the marriage; or
 - (ii) an applicant under section 79A of the *Family Law Act 1975* for the variation or setting aside of an order made under section 79 of that Act in property settlement proceedings in relation to either or both of the parties to the marriage; or
 - (iia) an applicant for an order under subsection 90K(1)(3) of the *Family Law Act 1975* in relation to the setting aside of a financial agreement of the parties to the marriage; or
 - (iii) a party to spousal maintenance proceedings in relation to the maintenance of a party to the marriage;
- then, at and after that time, the Family Court has jurisdiction in bankruptcy in relation to any matter connected with, or arising out of, the bankruptcy of the bankrupt.

- (1A) If, at a particular time:
 - (a) a party to a de facto relationship is a bankrupt; and
 - (b) the trustee of the bankrupt's estate is:
 - (i) a party to property settlement proceedings in relation to either or both of the parties to the de facto relationship; or
 - (ii) an applicant under section 90SN of the *Family Law Act 1975* for the variation or setting aside of an order made under section 90SM of that Act in property settlement proceedings in relation to either or both of the parties to the de facto relationship; or
 - (iia) an applicant for an order under subsection 90UM(1)(3) of the *Family Law Act 1975* in relation to the setting aside of a financial agreement of the parties to the de facto relationship;

(6) of the *Family Law Act 1975* in relation to the setting aside of a Part VIIIAB financial agreement of the parties to the de facto relationship; or

(iii) a party to maintenance proceedings under Part VI of the *Family Law Act 1975* in relation to the maintenance of one of the parties to the de facto relationship;

then, at and after that time, the Family Court has jurisdiction in bankruptcy in relation to any matter connected with, or arising out of, the bankruptcy of the bankrupt.

(2) Subsections (1) and (1A) do not limit the Family Court's jurisdiction under section 35A.

(3) In this section:

property settlement proceedings has the same meaning as in the *Family Law Act 1975*.

spousal maintenance proceedings means proceedings under the *Family Law Act 1975* with respect to the maintenance of a party to a marriage.

(4) An expression used in subsection (1A) that is also used in the *Family Law Act 1975* has the same meaning in that subsection as it has in that Act.

Transfer of proceedings to Family Court

(1) Subject to subsection (2), where a proceeding is pending in the Federal Court, the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.

(2) A proceeding that is pending in the Federal Court at the commencement of this section shall not be transferred to the Family Court unless the parties to the proceeding consent to the transfer.

(2A) If a proceeding is pending in the Federal Circuit Court, the Federal Circuit Court may, on the application of a party to the proceeding or on its own initiative, transfer the proceeding to the Family Court.

(3) Subject to subsection (4), where a proceeding is transferred to the Family Court:

(a) the Family Court has jurisdiction to hear and determine the proceeding;

(b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether by virtue of paragraph (a) or otherwise):

(i) that are associated with matters arising in the proceeding; or

(ii) that, apart from subsection 32(1) of the *Federal Circuit and Family Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding;

(c) the Family Court may, in and in relation to the proceeding:

(i) grant such remedies;

(ii) make orders of such kinds; and

(iii) issue, and direct the issue of, writs of such kinds; as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding;

(d) remedies, orders and writs granted, made or issued by

Family Court in and in relation to the proceeding have effect and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court;

(e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge and do not otherwise lie; and

(f) subject to paragraphs (a) to (e) (inclusive), this Act, the *Federal Court of Australia Act 1976*, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:

(i) a reference to the Federal Court (other than in the expression “the Court or a Judge”) included a reference to the Family Court;

(ii) a reference to a Judge of the Federal Court (other than in the expression “the Court or a Judge”) included a reference to a Family Court Judge;

(iii) a reference to the expression “the Court or a Judge” when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers;

(iv) a reference to a Registrar included a reference to a Registrar of the Family Court; and

(v) any other necessary changes were made.

Note: Rules of Court made under the *Family Law Act 1975* (rather than rules of Court made under the *Federal Court of Australia Act 1976*) apply in relation to proceedings transferred to the Family Court under this section.

(4) Where any difficulty arises in the application of paragraphs (c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders as it considers appropriate to resolve the difficulty.

(5) An appeal does not lie from a decision of the Federal Court or the Federal Circuit Court in relation to the transfer of a proceeding under this Act to the Family Court.

Family Court of Western Australia

(1) Sections 27, 35 (other than subsection (1A)) and 35A apply to the Family Court of Western Australia in a corresponding way to the way in which they apply to the Family Court of Australia.

(1A) Despite subsection (1), section 35A does not apply to the Family Court of Western Australia in relation to a de facto financial covenant (within the meaning of the *Family Law Act 1975*).

(2) Paragraph 35A(3)(f) has effect, in relation to a proceeding transferred to the Family Court of Western Australia, as if:

(a) each reference in subparagraph 35A(3)(f)(ii) or (iii) to a Family Court Judge were a reference to a judge of the Family Court of Western Australia; and

(b) the reference in subparagraph 35A(3)(f)(iv) to a Registrar of the Family Court were a reference to a registrar of the Family Court of Western Australia.

Enforcement of orders etc.

(1) An order of the Court made, or a warrant issued, under this section may be enforced throughout Australia by a constable.

(2) A warrant for the arrest or detention of a person for the purpose

of giving effect to an order of committal or a sentence of imprisonment made or imposed by the Court under this Act made or issued under the seal of the Court.

- (3) Where the Court commits a person to prison under this Act, committal may be to such prison as the Court thinks fit.

Power of Court to rescind orders etc.

- (1) Subject to subsection (2), the Court may rescind, vary or discharge an order made by it under this Act or may suspend the operation of such an order.
- (2) The Court does not have power to rescind or discharge, or to suspend the operation of:
- (a) a sequestration order; or
 - (b) an order for the administration of the estate of a deceased person under Part XI.

Part V—Proceedings in connexion with bankruptcy

Division 1—Acts of bankruptcy

Acts of bankruptcy

- (1) A debtor commits an act of bankruptcy in each of the following cases:
- (a) if in Australia or elsewhere he or she makes a conveyance or assignment of his or her property for the benefit of his or her creditors generally;
 - (b) if in Australia or elsewhere:
 - (i) he or she makes a conveyance, transfer, settlement or other disposition of his or her property or of any part of his or her property;
 - (ii) he or she creates a charge on his or her property or on any part of his or her property;
 - (iii) he or she makes a payment; or
 - (iv) he or she incurs an obligation;that would, if he or she became a bankrupt, be void as against the trustee;
 - (c) if, with intent to defeat or delay his or her creditors:
 - (i) he or she departs or remains out of Australia;
 - (ii) he or she departs from his or her dwelling-house or from his or her usual place of business;
 - (iii) he or she otherwise absents himself or herself; or
 - (iv) he or she begins to keep house;
 - (d) if:
 - (i) execution has been issued against him or her under the process of a court and any of his or her property has, in consequence, either been sold by the sheriff or held by the sheriff for 21 days; or
 - (ii) execution has been issued against him or her under the process of a court and has been returned unsatisfied;
 - (daa) if the debtor presents a debtor's petition under this Act;
 - (da) if the debtor presents to the Official Receiver a declaration under section 54A;
 - (e) if, at a meeting of any of his or her creditors:
 - (i) he or she consents to present a debtor's petition under this Act and does not, within 7 days from the date on which

he or she so consented, present the petition; or
(ii) he or she consents to sign an authority under section 188 and does not, within 7 days from the date which he or she so consented, sign such an authority to inform the chair of the meeting, in writing, of the name of the person in whose favour the authority has been signed;

(f) if, at a meeting of any of his or her creditors, he or she admits that he or she is in insolvent circumstances and, having been requested by a resolution of the creditors to bring his or her affairs under the provisions of this Act, he or she does not, within 7 days from the date of the meeting, either:

(i) present a debtor's petition; or

(ii) sign an authority under section 188 and inform the chair of the meeting, in writing, of the name of the person in whose favour the authority has been signed;

(g) if a creditor who has obtained against the debtor a final judgment or final order, being a judgment or order the execution of which has not been stayed, has served on the debtor in Australia or, by leave of the Court, elsewhere, a bankruptcy notice under this Act and the debtor does not:

(i) where the notice was served in Australia—within the time fixed for compliance with the notice; or

(ii) where the notice was served elsewhere—within the time specified by the order giving leave to effect the service;

or does not comply with the requirements of the notice or satisfy the Court that he or she has a counter-claim, set-off or cross demand equal to or exceeding the amount of the judgment debt or sum payable under the final order, as the case may be, being a counter-claim, set-off or cross demand that he or she could not have set up in the action or proceeding in which the judgment or order was obtained;

(h) if he or she gives notice to any of his or her creditors that he or she has suspended, or that he or she is about to suspend, payment of his or her debts;

(ha) if the debtor gives the Official Receiver a debt agreement proposal;

(hb) if a debt agreement proposal given by the debtor to the Official Receiver is accepted by the debtor's creditors;

(hc) if the debtor breaches a debt agreement;

(hd) if a debt agreement to which the debtor was a party (as debtor) is terminated under section 185P, 185Q or 185QA;

(i) if he or she signs an authority under section 188;

(j) if a meeting of his or her creditors is called in pursuance of such an authority;

(k) if, without sufficient cause, he or she fails to attend a meeting of his or her creditors called in pursuance of such an authority;

(l) if, having been required by a special resolution of a meeting of his or her creditors so called to execute a personal insolvency agreement or to present a debtor's petition, he or she fails, without sufficient cause:

(i) to comply with the requirements of this Act as to the execution of the agreement by him or her; or

(ii) to present a debtor's petition within the time specified in the resolution;

as the case may be;

- (m) if a personal insolvency agreement executed by him or her under Part X is:
 - (i) set aside by the Court; or
 - (ii) terminated;
 - (n) if a composition or scheme of arrangement accepted by the debtor's creditors under Division 6 of Part IV is:
 - (i) set aside by the Court; or
 - (ii) terminated;
 - (o) if the debtor becomes insolvent as a result of one or more transfers of property in accordance with:
 - (i) a financial agreement (within the meaning of the *Family Law Act 1975*); or
 - (ii) a Part VIIIAB financial agreement (within the meaning of the *Family Law Act 1975*);
 to which the debtor is a party.
- (2) In calculating for the purposes of subparagraph (1)(d)(i) the period for which property has been held by the sheriff, any time between the date on which an interpleader summons in respect of the property is taken out and the date on which the proceedings in the summons are finally disposed of, settled or discontinued shall not be taken into account.
- (3) For the purposes of paragraph (1)(g):
- (a) where leave is given by a court to enforce an award made by a submission to arbitration, being an award under which money is payable by a debtor to another person:
 - (i) the award shall be deemed to be a final order obtained by that person against the debtor; and
 - (ii) the arbitration proceedings shall be deemed to be the proceedings in which that final order was obtained;
 - (b) a judgment or order that is enforceable as, or in the same manner as, a final judgment obtained in an action shall be deemed to be a final judgment so obtained and the proceedings in which, or in consequence of which, the judgment or order was obtained shall be deemed to be the action in which it was obtained;
 - (d) a person who is for the time being entitled to enforce a judgment or final order for the payment of money shall be deemed to be a creditor who has obtained a final judgment or final order;
 - (e) a judgment or order for the payment of money made by the Court in the exercise of jurisdiction conferred on it by this Act shall be deemed to be a judgment or order the execution of which has not been stayed notwithstanding that it may not be enforceable at law by execution; and
 - (f) an order made after the commencement of this paragraph under the *Family Law Act 1975* for the payment by a person of arrears of maintenance for another person shall be deemed to be a final order against the first-mentioned person obtained by the other person.
- (4) The act of bankruptcy specified in paragraph (1)(j) shall be deemed to be committed on the day on which the notices calling the meeting are delivered or sent to the creditors or, if they are all delivered or sent on the one day, on the day on which the last of the notices is so delivered or sent.
- (5) The act of bankruptcy specified in paragraph (1)(l) shall be deemed to be committed on the day after the day on which the

deemed to be committed on the day after the day on which the period within which the agreement is required to be executed by the debtor or the period within which the petition is required to be presented, as the case may be, expires.

(6) The act of bankruptcy specified in paragraph (1)(m) shall be deemed to be committed on the day on which the agreement is set aside or terminated, as the case may be.

(7) The act of bankruptcy specified in paragraph (1)(n) shall be deemed to be committed on the day on which the composition or scheme of arrangement is set aside or terminated.

(7A) For the purposes of paragraph (1)(o):

(a) **transfer of property** includes a payment of money; and

(b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person.

(8) This section applies, so far as it is capable of application, in relation to acts and things done or occurring, and omissions and failures to do acts or things occurring, before, or partly before and partly after, the commencement of this Act, as well as to acts and things done or occurring, and omissions and failures to do acts or things occurring, after the commencement of this Act.

Bankruptcy notices

(1) An Official Receiver may issue a bankruptcy notice on the application of a creditor who has obtained against a debtor:

(a) a final judgment or final order that:

(i) is of the kind described in paragraph 40(1)(g); and

(ii) is for an amount of at least the statutory minimum.

(b) 2 or more final judgments or final orders that:

(i) are of the kind described in paragraph 40(1)(g); and

(ii) taken together are for an amount of at least the statutory minimum.

(2) The notice must be in accordance with the form prescribed by the regulations.

(2A) The notice must specify a period for compliance with the notice. That period must be:

(a) if the notice is to be served in Australia—the statutory period after the debtor is served with the notice; or

(b) if the notice is to be served elsewhere—the period specified by the order of the Court giving leave to effect the service.

(3) A bankruptcy notice shall not be issued in relation to a debt:

(a) except on the application of a creditor who has obtained against the debtor a final judgment or final order within the meaning of paragraph 40(1)(g) or a person who, by virtue of paragraph 40(3)(d), is to be deemed to be such a creditor; or

(b) if, at the time of the application for the issue of the bankruptcy notice, execution of a judgment or order to which the debt relates has been stayed; or

(c) in respect of a judgment or order for the payment of money, if:

(i) a period of more than 6 years has elapsed since the judgment was given or the order was made; or

(ii) the operation of the judgment or order is suspended under section 37.

(5) A bankruptcy notice is not invalidated by reason only that the sum specified in the notice as the amount due to the creditor exceeds the amount in fact due, unless the debtor, within the time fixed for compliance with the notice, gives notice to the creditor that he or she disputes the validity of the notice on the ground of the misstatement.

(6) Where the amount specified in a bankruptcy notice exceeds the amount in fact due and the debtor does not give notice to the creditor in accordance with subsection (5), he or she shall be deemed to have complied with the notice if, within the time fixed for compliance with the notice, he or she takes such action as would have constituted compliance with the notice if the amount due had been correctly specified in it.

(6A) Where, before the expiration of the time fixed for compliance with a bankruptcy notice:

(a) proceedings to set aside a judgment or order in respect of which the bankruptcy notice was issued have been instituted by the debtor; or

(b) an application has been made to the Court to set aside the bankruptcy notice;

the Court may, subject to subsection (6C), extend the time for compliance with the bankruptcy notice.

(6C) Where:

(a) a debtor applies to the Court for an extension of the time for complying with a bankruptcy notice on the ground that proceedings to set aside a judgment or order in respect of which the bankruptcy notice was issued have been instituted by the debtor; and

(b) the Court is of the opinion that the proceedings to set aside the judgment or order:

(i) have not been instituted *bona fide*; or

(ii) are not being prosecuted with due diligence;

the Court shall not extend the time for compliance with the bankruptcy notice.

(7) Where, before the expiration of the time fixed for compliance with a bankruptcy notice, the debtor has applied to the Court for an order setting aside the bankruptcy notice on the ground that the debtor has such a counter-claim, set-off or cross demand as is referred to in paragraph 40(1)(g), and the Court has not, before the expiration of that time, determined whether it is satisfied that the debtor has such a counter-claim, set-off or cross demand, that the time shall be deemed to have been extended, immediately before its expiration, until and including the day on which the Court determines whether it is so satisfied.

Compliance with a bankruptcy notice by the Commonwealth or State after service of bankruptcy notice

(1) Where a bankruptcy notice under this Act is served on a debtor by the Commonwealth or a State, it is a sufficient compliance with the notice if, within the time fixed for compliance with the notice, the debtor pays the amount required to be paid by the notice to the creditor, or secures it or compounds it to the satisfaction of:

(a) the Secretary of the Attorney-General's Department, or the Crown Solicitor of the State, as the case may be; or

(b) if an agent of the Commonwealth, or of the State, as the case may be, is specified in the notice for the purpose, the

agent so specified.

- (2) A statement that the debtor may comply with the notice in the manner referred to in subsection (1) may be included in a bankruptcy notice issued on the application of the Commonwealth or a State.

Division 2—Creditors' petitions

Section 152—Jurisdiction to make sequestration orders

- (1) Subject to this Act, where:
- (a) a debtor has committed an act of bankruptcy; and
 - (b) at the time when the act of bankruptcy was committed the debtor:
 - (i) was personally present or ordinarily resident in Australia;
 - (ii) had a dwelling-house or place of business in Australia;
 - (iii) was carrying on business in Australia, either personally or by means of an agent or manager; or
 - (iv) was a member of a firm or partnership carrying on business in Australia by means of a partner or partner of an agent or manager;
- the Court may, on a petition presented by a creditor, make a sequestration order against the estate of the debtor.
- (2) Upon the making of a sequestration order against the estate of a debtor, the debtor becomes a bankrupt, and continues to be a bankrupt until:
- (a) he or she is discharged by force of subsection 149(1); or
 - (b) his or her bankruptcy is annulled by force of subsection 74(1) or 153A(1) or under section 153B.

Section 153—Conditions on which creditor may petition

- (1) A creditor's petition shall not be presented against a debtor unless:
- (a) there is owing by the debtor to the petitioning creditor a debt that amounts to the statutory minimum or 2 or more times that amount in the aggregate to the statutory minimum, or where 2 or more creditors join in the petition, there is owing by the debtor to the several petitioning creditors debts that amount in the aggregate to the statutory minimum;
 - (b) that debt, or each of those debts, as the case may be:
 - (i) is a liquidated sum due at law or in equity or partly at law and partly in equity; and
 - (ii) is payable either immediately or at a certain future time; and
 - (c) the act of bankruptcy on which the petition is founded was committed within 6 months before the presentation of the petition.
- (2) Subject to subsection (3), a secured creditor shall, for the purposes of paragraph (1)(a), be deemed to be a creditor only to the extent, if any, by which the amount of the debt owing to him or her exceeds the value of his or her security.
- (3) A secured creditor may present, or join in presenting, a creditor's petition as if he or she were an unsecured creditor if he or she includes in the petition a statement that he or she is willing to surrender his or her security for the benefit of creditors generally in the event of a sequestration order being made against the

debtor.

- (4) Where a petitioning creditor is a secured creditor, he or she set out in the petition particulars of his or her security.
- (5) Where a secured creditor has presented, or joined in presenting, a creditor's petition as if he or she were an unsecured creditor, he or she shall, upon request in writing by the trustee within 3 months after the making of a sequestration order, surrender his or her security to the trustee for the benefit of the creditors generally.
- (6) A secured creditor to whom subsection (5) applies who fails to surrender his or her security when requested to do so by the trustee in accordance with that subsection is guilty of contempt of court.

creditor's petition against partnership

- (1) A creditor of a partnership may present a petition against the partnership if he or she is entitled to present a petition against one of the members of the partnership in respect of a partnership debt.
- (2) A creditor who is entitled to present a petition against a partnership may present a petition against any of the members of the partnership without including the others.

petition against 2 or more joint debtors

- (1) A creditor's petition may be presented against 2 or more joint debtors, whether partners or not.
- (2) Where there are 2 or more respondents to a creditor's petition, the Court may make a sequestration order against one or more of them and dismiss the petition in so far as it relates to the other respondents.

requirements as to creditor's petition

- (1) A creditor's petition must be verified by an affidavit of a person who knows the relevant facts.
- (1A) If the rules of court prescribe a form for the purposes of this subsection, the petition must be in the form prescribed.
- (2) Except with the leave of the Court, a creditor's petition shall not be withdrawn after presentation.

range of petitioners

Where a creditor's petition is not prosecuted with due diligence or where for any other reason the Court considers it proper to do so, the Court may permit to be substituted as petitioner or petitioners another creditor or other creditors to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor, and the petition may be proceeded with as if the substituted creditor or creditors had been the petitioning creditor.

control of debtor's property before sequestration

- (1) At any time after a bankruptcy notice is issued, or a creditor's petition is presented, in relation to a debtor, but before the debtor becomes a bankrupt, the Court may:
 - (a) direct the Official Trustee or a specified registered trustee to take control of the debtor's property; and

- (b) make any other orders in relation to the property.
- (1A) The Court may give a direction or make an order only if:
 - (a) a creditor has applied for the Court to make a direction
 - (b) the Court is satisfied that it is in the interests of the creditors to do so; and
 - (c) the debtor has not complied with the bankruptcy notice
- (1B) If the Court directs a trustee to take control of the debtor's property, the Court must specify when the control is to end.
- (2) Without limiting the generality of subsection (1), the Court may at any time after giving a direction under subsection (1), summon the debtor, or an examinable person in relation to the debtor, for examination under this section in relation to the debtor.
- (3) A summons to a person under subsection (2) shall require the person to attend:
 - (a) at a specified place and at a specified time on a specified day; and
 - (b) before the Court, the Registrar or a magistrate, as specified in the summons;to be examined on oath under this section about the debtor and the debtor's examinable affairs.
- (4) A summons to a person under subsection (2) may require the person to produce at the examination books (including books of the associated entity of the debtor) that:
 - (a) are in the possession of the first-mentioned person; and
 - (b) relate to the debtor or to any of the debtor's examinable affairs.
- (5) For the purpose of the examination under this section of a person summoned under subsection (2), subsections 81(2) to (17), inclusive, apply, with any modifications prescribed by the regulations, as if:
 - (a) a sequestration order had been made against the debtor when the Court gave the direction under subsection (1) of this section;
 - (b) the examination were being held under section 81; and
 - (c) a reference in those subsections to a creditor were a reference to a person who has a debt that would be provable in the debtor's bankruptcy if a sequestration order had been made as mentioned in paragraph (a) of this subsection.

Costs of prosecuting creditor's petition

Subject to section 109, the prosecution of a creditor's petition and including the making of a sequestration order on the petition shall be at the expense of the creditor.

Proceedings and order on creditor's petition

- (1) At the hearing of a creditor's petition, the Court shall require proof of:
 - (a) the matters stated in the petition (for which purpose the Court may accept the affidavit verifying the petition as sufficient);
 - (b) service of the petition; and
 - (c) the fact that the debt or debts on which the petitioning creditor relies is or are still owing;and, if it is satisfied with the proof of those matters, may make

sequestration order against the estate of the debtor.

- (1A) If the Court makes a sequestration order, the creditor who obtained the order must give a copy of it to the Official Receiver before the end of the period of 2 days beginning on the day the order was made.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

- (1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) If the Court is not satisfied with the proof of any of those matters or is satisfied by the debtor:

- (a) that he or she is able to pay his or her debts; or
- (b) that for other sufficient cause a sequestration order ought not to be made;

it may dismiss the petition.

- (3) The Court may, if it thinks fit, upon such terms and conditions as it thinks proper, stay all proceedings under a sequestration order for a period not exceeding 21 days.

- (4) A creditor's petition lapses at the expiration of:

- (a) subject to paragraph (b), the period of 12 months commencing on the date of presentation of the petition; or
- (b) if the Court makes an order under subsection (5) in relation to the petition—the period fixed by the order;

unless, before the expiration of whichever of those periods is applicable, a sequestration order is made on the petition or the petition is dismissed or withdrawn.

- (5) The Court may, at any time before the expiration of the period of 12 months commencing on the date of presentation of a creditor's petition, if it considers it just and equitable to do so, upon such terms and conditions as it thinks fit, order that the period at the expiration of which the petition will lapse be such period, being a period exceeding 12 months and not exceeding 24 months, commencing on the date of presentation of the petition as is specified in the order.

Consolidation of proceedings

- (1) Where 2 or more members of a partnership or 2 or more joint debtors have become bankrupts, the Court may consolidate the proceedings upon such terms as it thinks fit.

- (2) Where the Court makes an order under subsection (1), section 110 applies in the administration under this Act of all the estates to which the order relates.

- (3) Where the Court makes an order under subsection (1) in relation to the estates of 2 or more bankrupts, the Court may, in the order,

- (a) declare a specified date to be, for the purpose of the application of the provisions of Division 3 of Part VI in the administration of the joint estate, the date on which all the petitions relevant to the administration of those estates shall be deemed to have been presented;
- (b) declare a specified date to be, for that purpose, the date of the bankruptcy in respect of each of those estates; and
- (c) declare a specified time to be, for that purpose, the time at which that is the commencement of the bankruptcy in respect of

those estates;
and, if the Court does so, those estates shall be administered accordingly.

bankrupt's statement of affairs

(1) Where a sequestration order is made, the person against whom the order is made shall, within 14 days from the day on which he or she is notified of the bankruptcy:

- (a) make out and file with the Official Receiver a statement of his or her affairs; and
- (b) furnish a copy of the statement to the trustee.

Penalty: 50 penalty units.

(2) Where a sequestration order is made against 2 or more joint debtors (whether partners or not), each of those persons shall, in addition to complying with subsection (1) in relation to his or her affairs, within 14 days from the day on which he or she is notified of the bankruptcy, and either on his or her own account or jointly with another or others of those debtors:

- (a) make out and file in the office of the Official Receiver a statement of the joint affairs of those persons; and
- (b) furnish a copy of the statement to the trustee.

Penalty: 50 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

(4) A person who states in writing that he or she is a creditor of a bankrupt against whom a sequestration order has been made, or a creditor of 2 or more bankrupts against whom the one sequestration order has been made, may without fee, and any person may on payment of the fee determined by the Minister by legislative instrument, inspect, personally or by an agent, the statement of affairs filed by the bankrupt or the statements of affairs filed by the bankrupts, as the case may be, and may obtain a copy of, or take extracts from, the statement or statements.

(5) A bankrupt against whom a sequestration order has been made may, without fee and either personally or by an agent:

- (a) inspect the bankrupt's statement of affairs; or
- (b) obtain a copy of, or take extracts from, the bankrupt's statement of affairs.

(6) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person (other than the bankrupt or an agent of the bankrupt).

(6A) Subsection (6) does not prevent the making available of information as required by law.

(7) The Official Receiver may refuse to allow a person access under this section to particular information in a bankrupt's statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.

Section 2A—Declaration of intention to present debtor's petition

Declaration of intention to present declaration

- (1) Subject to section 54B, a debtor may present to the Official Receiver a declaration, in the approved form, of the debtor's intention to present a debtor's petition.
- (2) A declaration presented by a debtor under this section must be accompanied by a statement of the debtor's affairs and a copy of that statement.

When debtor disqualified from presenting declaration

A debtor is not entitled to present a declaration under section 54A:

- (a) when the debtor is not entitled, except with the leave of the Court, to present a petition under section 55;
- (b) after a creditor's petition presented against the debtor has been served on the debtor and before:
 - (i) a sequestration order is made on the petition;
 - (ii) the petition is withdrawn or dismissed; or
 - (iii) the petition lapses under subsection 52(4);
- (c) after a debtor's petition is presented against the debtor and before the petition is accepted or rejected;
- (d) while the debtor's property is subject to control under Division 2 of Part X;
- (e) within 6 months after the debtor signs an authority under section 188; or
- (f) within 12 months after a declaration presented by the debtor under section 54A is accepted under section 54C.

Acceptance or rejection of declaration

- (1) Subject to section 54D, where a debtor presents a declaration under section 54A, the Official Receiver shall:
 - (a) if it appears to the Official Receiver that the debtor is entitled to present a declaration under section 54A and that the declaration presented is in accordance with the approved form:
 - (i) accept the declaration and endorse it accordingly;
 - (ii) forthwith sign a copy of the declaration; or
 - (b) in any other case—reject the declaration.
- (2) If the Official Receiver accepts the declaration, the Official Receiver must give written notice of the acceptance of the declaration to each of the creditors disclosed in the debtor's statement of affairs.

Official Receiver to give information to debtor

- (1) Before accepting a declaration presented by a debtor under section 54A, the Official Receiver must give the debtor the information prescribed by the regulations.
- (2) A contravention of subsection (1) does not affect the validity of the Official Receiver's acceptance under section 54C of a declaration presented under section 54A.

Enforcement suspended during stay period

- (1) Where, during the stay period in relation to a declaration of intention presented by a debtor, a copy of the declaration signed by the Official Receiver who accepted it is produced to a creditor to whom the debtor owes a frozen debt, subsection (2) has effect throughout the remainder of that period.

- (2) It is not competent for the creditor:
 - (a) to apply for the issue of enforcement process in respect of the debt; or
 - (b) to enforce a remedy against the debtor's person or property in respect of the debt.
- (3) Nothing in this section prevents a creditor from commencing a legal proceeding in respect of a debt, or from taking a fresh step in such a proceeding otherwise than in connection with enforcing a judgment.

Duties of sheriff

- (1) Where, during the stay period in relation to a declaration of intention presented by a debtor, a copy of the declaration signed by the Official Receiver who accepted it is produced to a sheriff, subsections (2) and (3) have effect throughout the remainder of that period.
- (2) The sheriff shall refrain from taking action, or further action to execute, or to sell property under, enforcement process issued in respect of a frozen debt owed by the debtor.
- (3) The sheriff shall refrain from paying to a person proceeds of enforcement process issued in respect of a frozen debt owed by the debtor.
- (4) A contravention of this section does not affect a person's title to property that was purchased in good faith under a sale under enforcement process issued in respect of a debt.
- (5) Where:
 - (a) under this section, a sheriff refrains from taking action or further action, to sell real property under enforcement process issued in respect of a debt;
 - (b) the debtor becomes a bankrupt; and
 - (c) the property vests in the trustee of the bankrupt's estate;
 the costs of executing the enforcement process are a first charge on the property.

Duties of court registrar

Where, during the stay period in relation to a declaration of intention presented by a debtor, a copy of the declaration signed by the Official Receiver who accepted it is produced to the registrar or other appropriate officer of a court, the registrar or other officer shall, throughout the remainder of that period, refrain from paying to a person proceeds of enforcement process issued in respect of a frozen debt owed by the debtor.

Duties of person entitled to deduct money owing to declared debtor

- (1) Where, during the stay period in relation to a declaration of intention presented by a debtor, a copy of the declaration signed by the Official Receiver who accepted it is produced to a person who is entitled under a law of the Commonwealth, of a State, or of a Territory of the Commonwealth:
 - (a) to retain or deduct money from money payable or owing to become payable or owing, to the debtor; and
 - (b) to apply the retained or deducted money toward discharge of a frozen debt owed by the debtor to any person;
 subsections (2) and (3) apply.

- (2) The person shall, throughout the remainder of that period:
 - (a) refrain from so retaining or deducting money; and
 - (b) refrain from paying to a person (other than the debtor) otherwise applying, money that was so retained or deducted before the signed copy was produced to the person.
- (3) Nothing in this section affects a person's liability to pay money to the debtor.

Extension of time where this Division prevents the doing of an act

Where, throughout a particular period, this Division prevents the doing of a particular act, that period shall be disregarded in determining, for the purposes of any law, agreement or instrument, whether or not that act has been done within a particular period before a particular time.

Section 33 not to apply to this Division

Nothing in section 33 permits the extension or abridgment of a period or time limited by this Division.

Secured creditor's rights under security not affected

Nothing in this Division affects the right of a secured creditor to realise or otherwise deal with the creditor's security.

Division 3—Debtors' petitions

Debtor's petition

- (1) Subject to this section, a debtor may present to the Official Receiver a petition against himself or herself.
- (2) A petition presented by a debtor under this section:
 - (a) shall be in accordance with the approved form; and
 - (b) shall be accompanied by a statement of the debtor's affairs and a copy of that statement.
- (2A) The Official Receiver must reject a debtor's petition unless, at the time when the petition is presented, the debtor:
 - (a) was personally present or ordinarily resident in Australia;
 - (b) had a dwelling-house or place of business in Australia;
 - (c) was carrying on business in Australia, either personally or by means of an agent or manager; or
 - (d) was a member of a firm or partnership carrying on business in Australia by means of a partner or partners or of an agent or manager.
- (3) The Official Receiver may reject a debtor's petition if:
 - (a) the petition does not comply substantially with the approved form; or
 - (b) the petition is not accompanied by a statement of affairs;
 - (c) the Official Receiver thinks that the statement of affairs accompanying the petition is inadequate.
- (3AA) The Official Receiver may reject a debtor's petition (the **current petition**) if:
 - (a) it appears from the information in the statement of affairs (and any additional information supplied by the debtor) that if the debtor did not become a bankrupt, the debtor would be unlikely (either immediately or within a reasonable time) to

able to pay all the debts specified in the statement of affairs and

(b) at least one of the following applies:

(i) it appears from the information in the statement of affairs (and any additional information supplied by the debtor) that the debtor is unwilling to pay one or more debts to a particular creditor or creditors, or is unwilling to pay creditors in general;

(ii) before the current petition was presented, the debtor has previously become a bankrupt on a debtor's petition at least 3 times, or at least once in the period of 5 years before presentation of the current petition.

(3AB) The Official Receiver is not required to consider in each case whether there is a discretion to reject under subsection (3AA)

(3AC) The debtor may apply to the Administrative Appeals Tribunal for the review of a decision by the Official Receiver to reject a petition under subsection (3AA).

(3A) Before accepting a debtor's petition the Official Receiver must give the debtor the information prescribed by the regulations.

(3B) The Official Receiver must refer a debtor's petition to the Court for a direction to accept or reject it if there is a creditor's petition pending against a group of debtors (whether they are joint debtors or members of a partnership) that includes the debtor against whom the debtor's petition is presented.

Example 1: When Anna presents a debtor's petition against herself, there is also a creditor's petition pending against Anna and Tim as joint debtors. The Official Receiver must refer the debtor's petition to the Court.

Example 2: When Peter presents a debtor's petition against himself, there are also creditor's petitions pending against him alone. The Official Receiver is not required to refer the debtor's petition to the Court, because Peter does not form a group by himself.

(3C) If the Court directs the Official Receiver to accept the debtor's petition, the Court must specify the time of the commencement of the bankruptcy that results from acceptance of the debtor's petition.

(4) The Official Receiver must accept a debtor's petition, unless the Official Receiver rejects it under this section or is directed by the Court to reject it.

(4A) Where the Official Receiver accepts a petition presented under this section:

(a) he or she shall endorse the petition accordingly; and

(b) upon the Official Receiver endorsing the petition, the debtor who presented the petition becomes a bankrupt by force of this section and by virtue of presentation of the petition.

(5) If a registered trustee is the trustee of the estate of a debtor who becomes a bankrupt under this section, the Official Receiver must

(a) notify the trustee of the bankruptcy; and

(b) give the trustee a copy of the statement of affairs that accompanied the debtor's petition.

(5A) A debtor who is a party (as debtor) to a debt agreement must present a debtor's petition unless the Court gives the debtor permission to do so.

(6) A debtor who has executed a personal insolvency agreement

not, except with the leave of the Court, entitled to present a petition against himself or herself unless:

- (a) the agreement has been set aside; or
- (b) the agreement has been terminated; or
- (c) all the obligations that the agreement created have been discharged.

(6A) A debtor in relation to whom a stay under a proclaimed law applies is not, except with the leave of the Court, entitled to present a petition against himself or herself.

(7) Where a petition is presented by a debtor against himself or herself in contravention of subsection (5A), (6) or (6A), the debtor does not become a bankrupt by virtue of its presentation.

(8) A person who becomes a bankrupt by force of this section continues to be a bankrupt until:

- (a) he or she is discharged by force of subsection 149(1); or
- (b) his or her bankruptcy is annulled by force of subsection 74(1) or 153A(1) or under section 153B.

(9) A person who states in writing that he or she is a creditor of a bankrupt who has become a bankrupt by force of this section may, without fee, and any other person may on payment of the fee determined by the Minister by legislative instrument, inspect, personally or by an agent, the statement of affairs that accompanied the petition presented by the bankrupt, and may obtain a copy of, or take extracts from, the statement.

(10) A bankrupt who has become a bankrupt by force of this section may, without fee and either personally or by an agent:

- (a) inspect the bankrupt's statement of affairs; and
- (b) obtain a copy of, or make extracts from, the bankrupt's statement of affairs.

(11) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person other than the bankrupt (or an agent of the bankrupt).

(11A) Subsection (11) does not prevent the making available of information as required by law.

(12) The Official Receiver may refuse to allow a person access under this section to particular information in a bankrupt's statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.

Persons who may present a debtor's petition against a partnership

(1) A debtor's petition against a partnership may be presented by:

- (a) all the partners; or
- (b) a majority of the partners who are resident in Australia.

(2) A member of a partnership who is a party (as debtor) to a debt agreement must not join in presenting a debtor's petition against the partnership unless the Court gives the member permission to do so.

(3) A member of a partnership who has executed a personal insolvency agreement must not join in presenting a petition against the partnership unless:

- (a) the agreement has been set aside; or
 - (b) the agreement has been terminated; or
 - (c) all the obligations that the agreement created have been discharged; or
 - (d) the Court gives permission for the member to join in presenting a petition against the partnership.
- (6) A member of a partnership in relation to whom a stay under proclaimed law applies must not join in presenting a petition against the partnership unless the Court gives the member permission to do so.
- (7) If a member of a partnership contravenes subsection (2), (3), (5) or (6) by joining in the presentation of a petition, the petition does not have any effect.

presentation of a debtor's petition against a partnership

- (1) Any debtor's petition against a partnership must be presented to the Official Receiver.
- (2) A petition must be in accordance with the approved form.
- (3) A petition must be accompanied by:
 - (a) a statement of affairs of each member of the partnership in relation to whom the petition is presented; and
 - (b) a statement of the partnership affairs; and
 - (c) a copy of each of those statements.
- (4) The Official Receiver may reject a petition if:
 - (a) the petition does not comply substantially with the approved form; or
 - (b) the petition is not accompanied by the statements of affairs of each petitioning partner and of the partnership; or
 - (c) the Official Receiver thinks that any of the statements of affairs accompanying the petition is inadequate.
- (5) Before accepting a debtor's petition against a partnership, the Official Receiver must give the information prescribed by the regulations to each member of the partnership who joined in presenting the petition.

referral to the Court of a debtor's petition against a partnership

- (1) The Official Receiver must refer a debtor's petition against a partnership to the Court for a direction to accept or reject the petition if either or both of the following conditions are met:
 - (a) the petition was presented against the partnership by some but not all, members of the partnership;
 - (b) there is at least one creditor's petition pending against at least one of the members of the partnership (not counting a creditor's petition against all the members of the partnership and no-one else).

Example 1: Edith, Lindsay and Bertha are the members of a partnership. When Edith and Lindsay present a debtor's petition against the partnership there is also a creditor's petition pending against Bertha. The Official Receiver must refer the debtor's petition to the Court.

Example 2: Keith, Leigh and Judith are the members of a partnership. When they present a debtor's petition against the partnership, there are 2 creditor's petitions pending: one against Keith, Leigh and Judith, the other against Judith alone. The Official Receiver must refer the debtor's petition to the Court.

Court.

Example 3: Meredith, Ramsay and Wilson are the members of a partnership. If they all present a debtor's petition against the partnership, there are no creditor's petitions pending. Both of the creditor's petitions are against Meredith, Ramsay and Wilson (and no-one else). There is no requirement for the Official Receiver to refer the debtor's petition to the Court.

- (2) If the Official Receiver refers a petition to the Court because a petition was presented by some, but not all, of the members of the partnership, the Official Receiver must give notice in accordance with the regulations to the members who did not present the petition.
- (3) After a petition has been referred to the Court, the Court must direct the Official Receiver:
 - (a) to accept the petition in the form in which it was referred to the Court; or
 - (b) to accept the petition after amending it as directed by the Court; or
 - (c) to reject the petition.
- (4) If:
 - (a) a debtor's petition is presented against a partnership that includes a person to whom a stay applies under a proclamation of law; and
 - (b) the person is not one of the petitioning partners;the Court must not give a direction in relation to the petition unless the person administering the proclaimed law has had an opportunity to be heard.
- (5) If the Court directs the Official Receiver to accept (either with or without amendments) a petition referred to the Court, the Court must specify the time of the commencement of the bankruptcy of each of the persons who becomes a bankrupt as a result of the acceptance of the petition.

Acceptance of a debtor's petition against a partnership by the Official Receiver

- (1) The Official Receiver must accept a debtor's petition against a partnership unless the Official Receiver rejects it under section 149 or is directed by the Court to reject the petition.
- (2) When the Official Receiver accepts the petition, the Official Receiver must note on it the fact that it has been accepted.

Effects of acceptance of a debtor's petition against a partnership

- (1) When the Official Receiver notes the fact of acceptance on a petition that has not been amended under a direction of the Court, each member of the partnership becomes a bankrupt by force of this section.
- (2) When the Official Receiver notes the fact of acceptance on a petition that has been amended under a direction of the Court, each member of the partnership to whom the petition applies becomes a bankrupt by force of this section.
- (3) A person who becomes a bankrupt by force of this section continues to be a bankrupt until:
 - (a) he or she is discharged by force of subsection 149(1); or
 - (b) his or her bankruptcy is annulled by force of

subsection 74(1) or 153A(1) or under section 153B.

- (4) If a registered trustee is the trustee of the estate of a person who becomes a bankrupt under this section, the Official Receiver must:
- (a) notify the trustee of the bankruptcy; and
 - (b) give the trustee a copy of each statement of affairs that accompanied the debtor's petition.

Extra duties of non-petitioning partners who become bankrupts

- (1) A member of a partnership who did not join in presenting a debtor's petition against the partnership but became a bankrupt as a result of the acceptance of the petition must give the Official Receiver:

(a) a statement of the member's affairs; and

(b) a statement of the affairs of the partnership;

within 14 days after the day that the member was notified of her bankruptcy.

Penalty: 50 penalty units.

- (1A) Subsection (1) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

- (1B) Subsection (1) does not apply if the member has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A member of a partnership complies with paragraph (1)(b) if the member and at least one other member of the partnership who did not join in presenting the petition against the partnership jointly give the Official Receiver a statement of the affairs of the partnership.

- (3) A member of a partnership who must give statements of affairs to the Official Receiver under subsection (1) must give copies of those statements to the trustee in the member's bankruptcy.

Inspection of statements of affairs of partners and partnerships

- (1) A person may inspect, obtain a copy of, or take extracts from any statement of affairs that was given to the Official Receiver in connection with a debtor's petition against a partnership.

- (2) Before inspecting, obtaining a copy of or taking extracts from any statement, the person must pay the fee determined by the Minister by legislative instrument, unless:

(a) the person states in writing that he or she is a creditor of the partnership or of a member of the partnership who became a bankrupt as a result of the petition; or

(aa) the person is a member of the partnership who became a bankrupt as a result of the petition; or

(b) the person is an agent of a person described in paragraph (a) or (aa).

- (3) A person who has become a bankrupt by force of section 56 may, without fee and either personally or by an agent:

(a) inspect any statement of affairs that accompanied the petition; and

(b) obtain a copy of, or make extracts from, any statement

affairs that accompanied the petition.

- (4) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person (other than a member of the partnership who became a bankrupt as a result of the petition or an agent of such a member).
- (5) The Official Receiver may refuse to allow a person access under this section to particular information in a statement of affairs on the ground that access to that information would jeopardise, or is likely to jeopardise, the safety of any person.

Debtor's petition by joint debtors who are not partners

- (1) Where joint debtors are not in partnership with one another, any 2 or more of the debtors, may present to the Official Receiver a petition jointly against themselves.
- (2) A petition under this section shall be in accordance with the approved form and shall be accompanied by:
 - (a) a statement of affairs of each of the petitioning debtors;
 - (b) a statement of their joint affairs; and
 - (c) a copy of each of those statements.
- (2A) The Official Receiver must reject a debtor's petition unless, at the time when the petition is presented, each petitioning debtor:
 - (a) was personally present or ordinarily resident in Australia;
 - (b) had a dwelling-house or place of business in Australia;
 - (c) was carrying on business in Australia, either personally or by means of an agent or manager; or
 - (d) was a member of a firm or partnership carrying on business in Australia by means of a partner or partners or of an agent or manager.
- (3) The Official Receiver may reject a debtor's petition if:
 - (a) the petition does not comply substantially with the approved form; or
 - (b) the petition is not accompanied by all the statements of affairs required by subsection (2); or
 - (c) the Official Receiver thinks that any of the statements of affairs accompanying the petition is inadequate.
- (3AA) The Official Receiver may reject a debtor's petition (the **current petition**) if the following conditions are satisfied for at least one of the petitioning debtors:
 - (a) it appears from the information in the statement of affairs (and any additional information supplied by the debtor) that if the debtor did not become a bankrupt, the debtor would be unlikely (either immediately or within a reasonable time) to be able to pay all the debts specified in the debtor's statement of affairs;
 - (b) at least one of the following applies:
 - (i) it appears from the information in the statement of affairs (and any additional information supplied by the debtor) that the debtor is unwilling to pay one or more debts to a particular creditor or creditors, or is unwilling to pay creditors in general;
 - (ii) before the current petition was presented, the debtor has previously become a bankrupt on a debtor's petition at least 3 times, or at least once in the period of 5 years

before presentation of the current petition.

(3AB) The Official Receiver is not required to consider in each case whether there is a discretion to reject under subsection (3AA)

(3AC) An application may be made to the Administrative Appeals Tribunal for the review of a decision by the Official Receiver to reject a petition under subsection (3AA).

(3A) Before accepting a debtor's petition against joint debtors, the Official Receiver must give each petitioning debtor the information prescribed by the regulations.

(3B) The Official Receiver must refer a debtor's petition to the Court for a direction to accept or reject it if there is at least one creditor's petition that:

- (a) is pending against at least one of the debtors (whether or not the creditor's petition also relates to other persons); and
- (b) does not relate only to all the joint debtors who presented the debtor's petition.

Example 1: Peta and Abdul are joint debtors. When they present a debtor's petition against themselves, there is a creditor's petition pending against Abdul. The Official Receiver must refer the debtor's petition to the Court, because the creditor's petition does not relate to both Peta and Abdul.

Example 2: Joan and Craig are joint debtors. When they present a debtor's petition against themselves, there is a creditor's petition pending against Joan, Craig and Paul. The Official Receiver must refer the debtor's petition to the Court.

Example 3: Kim, Robin and Jane are joint debtors. When they present a debtor's petition against themselves, there is a creditor's petition pending against Kim, Robin and Jane, and no-one else. The Official Receiver is not required to refer the debtor's petition to the Court.

(3C) If the Court directs the Official Receiver to accept the debtor's petition, the Court must specify the time of the commencement of each bankruptcy that results from acceptance of the debtor's petition.

(4) The Official Receiver must accept a debtor's petition, unless the Official Receiver rejects it under subsection (3) or is directed by the Court to reject it.

(5) Where the Official Receiver accepts a petition presented under this section:

- (a) he or she shall endorse the petition accordingly; and
- (b) upon the Official Receiver endorsing the petition, each of the petitioning debtors becomes a bankrupt by force of this section and by virtue of presentation of the petition.

(6) If a registered trustee is the trustee of the estate of a person who becomes a bankrupt under this section, the Official Receiver must:

- (a) notify the trustee of the bankruptcy; and
- (b) give the trustee a copy of each statement of affairs that accompanied the debtor's petition.

(6A) A debtor who is a party (as debtor) to a debt agreement must present a debtor's petition unless the Court gives the debtor permission to do so.

(7) A debtor who has executed a personal insolvency agreement is not entitled to join in presenting a petition under this section unless:

- (a) the agreement has been set aside; or

- (a) the agreement has been set aside; or
 - (b) the agreement has been terminated; or
 - (c) all the obligations that the agreement created have been discharged; or
 - (d) the Court grants leave for the debtor to join in presenting a petition under this section.
- (8) A debtor in relation to whom a stay under a proclaimed law applies is not, except with the leave of the Court, entitled to join in presenting a petition under this section.
- (9) Where a petition is presented in contravention of subsection (7) or (8), the presentation of the petition does not have any effect.
- (10) A person who becomes a bankrupt by force of this section continues to be a bankrupt until:
- (a) he or she is discharged by force of subsection 149(1); or
 - (b) his or her bankruptcy is annulled by force of subsection 74(1) or 153A(1) or under section 153B.
- (11) A person who states in writing that he or she is a creditor of a bankrupt who has become a bankrupt by virtue of the presentation of a debtor's petition against joint debtors, or a creditor of joint debtors some or all of whom have become bankrupts by force of this section, may without fee, and any other person may on payment of the fee determined by the Minister by legislative instrument, inspect, personally or by an agent, any statement of affairs that accompanied the petition presented by the joint debtors, and may obtain a copy of, or take extracts from, any statement of affairs.
- (12) A bankrupt who has become a bankrupt by force of this section may, without fee and either personally or by an agent:
- (a) inspect any statement of affairs that accompanied the petition; and
 - (b) obtain a copy of, or make extracts from, any statement of affairs that accompanied the petition.
- (13) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person (other than a petitioning debtor or an agent of a petitioning debtor).
- (14) The Official Receiver may refuse to allow a person access under this section to particular information in a statement of affairs on the ground that access to that information would jeopardise, or is likely to jeopardise, the safety of any person.

Time at which person becomes bankrupt on debtor's petition

Where, after the commencement of this section, a person becomes a bankrupt by virtue of the presentation of a debtor's petition, the person shall, for the purposes of this Act, be deemed to become a bankrupt at the first instant of the day on which the petition is accepted by the Official Receiver.

Part 4—Effect of bankruptcy on property and proceedings

Effect of property upon bankruptcy—general rule

- (1) Subject to this Act, where a debtor becomes a bankrupt:

- (a) the property of the bankrupt, not being after-acquired property, vests forthwith in the Official Trustee or, if, at the time when the debtor becomes a bankrupt, a registered trustee becomes the trustee of the estate of the bankrupt by virtue of section 156A, in that registered trustee; and
- (b) after-acquired property of the bankrupt vests, as soon as it is acquired by, or devolves on, the bankrupt, in the Official Trustee or, if a registered trustee is the trustee of the estate of the bankrupt, in that registered trustee.

Note 1: This subsection has a limited application if there are orders in force under the proceeds of crime law: see section 58A.

Note 2: Even if property has vested under this section, it may, under the *Proceeds of Crime Act 2002*:

- (a) become subject to a restraining order; and
- (b) be taken into account in making a pecuniary penalty order; and
- (c) become subject to a charge to secure the payment of an amount under a pecuniary penalty order, if it is subject to a restraining order; and
- (d) be dealt with by the Official Trustee, if it is subject to a restraining order and a court has directed the Official Trustee to pay the Commonwealth an amount under a pecuniary penalty order out of property subject to the restraining order.

- (2) Where a law of the Commonwealth or of a State or Territory requires the transmission of property to be registered and enables the trustee of the estate of a bankrupt registered as the owner of any such property that is part of the property of the bankrupt, that property, notwithstanding that it vests in equity in the trustee by virtue of this section, does not vest at law until the requirements of that law have been complied with.
- (3) Except as provided by this Act, after a debtor has become a bankrupt, it is not competent for a creditor:
 - (a) to enforce any remedy against the person or the property of the bankrupt in respect of a provable debt; or
 - (b) except with the leave of the Court and on such terms as the Court thinks fit, to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.
- (4) After a debtor has become a bankrupt, distress for rent shall not be levied or proceeded with against the property of the bankrupt whether or not the bankrupt is a tenant of the landlord by whom the distress is sought to be levied.
- (5) Nothing in this section affects the right of a secured creditor to realize or otherwise deal with his or her security.
- (5A) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a bankrupt, or against any property of a bankrupt that is not vested in the trustee of the bankrupt, in respect of any liability of the bankrupt under:
 - (a) a maintenance agreement; or
 - (b) a maintenance order;
 whether entered into or made, as the case may be, before or at the commencement of this subsection.
- (6) In this section, ***after-acquired property***, in relation to a bankrupt, means property that is acquired by, or devolves on, the bankrupt on or after the date of the bankruptcy, being property that is divisible amongst the creditors of the bankrupt.

Transmission of property upon bankruptcy—effect of orders in force under the proceeds of crime law

If a restraining order or forfeiture order is in force

- (1) If property of a bankrupt is covered by a restraining order, or a forfeiture order, made before the date of the bankruptcy, subsection 58(1) does not apply to property that is covered by the order while that property is so covered.

If a pecuniary penalty order is in force

- (2) If a pecuniary penalty order is made against a bankrupt before the date of the bankruptcy, subsection 58(1) does not apply to the property of the bankrupt while the order is in force.

Note: For proceeds of crime orders made on or after the date of the bankruptcy, and applications for proceeds of crime orders, see sections 114A to 114C.

Notifying the trustee of grounds for subsection 58(1) to apply to property

- (3) If circumstances arise as a result of which this section no longer prevents subsection 58(1) applying to property of the bankrupt, the Director of Public Prosecutions (or the Commissioner of the Australian Federal Police, if the Commissioner is the responsible Commonwealth proceeds of crime authority that is the responsible authority for the order under the *Proceeds of Crime Act 2002*) must, as soon as practicable, give the trustee written notice of the existence of the circumstances.

Second or subsequent bankruptcy

- (1) Where a person who is a bankrupt again becomes a bankrupt:
- (a) the property of the bankrupt:
 - (i) that was acquired by, or devolved on, the bankrupt before or after the date of the earlier bankruptcy; and
 - (ii) that had not been distributed amongst the creditors in the earlier bankruptcy before the date on which the person became a bankrupt on the later occasion;shall (subject to any disposition of that property made by the trustee in the earlier bankruptcy without knowledge of the presentation of the petition on, or by virtue of the present bankruptcy of which, the person became bankrupt on the later occasion) and subject also to section 126) vest forthwith in the trustee in the later bankruptcy;
 - (b) property:
 - (i) that is acquired by, or devolves on, the bankrupt before or after the date of the later bankruptcy; and
 - (ii) that is divisible amongst the creditors in the later bankruptcy;vests in the trustee in the later bankruptcy as soon as the property is acquired by, or devolves on, the bankrupt;
 - (c) the trustee in the earlier bankruptcy:
 - (i) shall be deemed to be a creditor in the later bankruptcy in respect of any unsatisfied balance of his or her expenses or remuneration in the earlier bankruptcy in respect of the liabilities incurred by him or her in administering the estate in the earlier bankruptcy and the debts proved in the earlier bankruptcy (whether or not those debts are entitled to priority, or are postponed, in the earlier bankruptcy);
 - (ii) shall rank equally with the ordinary unsecured creditors in the later bankruptcy; and
 - (iii) may, where he or she has lodged a proof of debt in the later bankruptcy,

later bankruptcy, amend that proof of debt, without the consent of the trustee in the later bankruptcy, for the purpose of adding:

(A) his or her expenses in the earlier bankruptcy that have, or his or her remuneration in the earlier bankruptcy that has, accrued after the proof of debt was lodged;

(B) liabilities incurred by him or her in administering the estate in the earlier bankruptcy after the proof of debt was lodged; or

(C) debts proved in the earlier bankruptcy after proof of debt was lodged;

or, with the consent of the trustee in the later bankruptcy, for any other purpose;

(d) a charge or charging order that, by virtue of subsection 118(9), is void as against the trustee in the earlier bankruptcy continues to be void as against that trustee; and

(e) a transaction that, by virtue of section 120, 121, 122, 123 or 128C, is void as against the trustee in the earlier bankruptcy continues to be void as against that trustee.

(2) Where the trustee of the estate of a bankrupt receives notice of the presentation of a creditor's petition against the bankrupt, the trustee shall hold the after-acquired property of the bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the petition has been dealt with by the Court or has lapsed.

(3) Where the trustee of the estate of a bankrupt receives notice of a debtor's petition against the bankrupt has been referred to the Court, the trustee shall hold the after-acquired property of the bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the Court has dealt with the petition.

(4) Where the trustee of the estate of a bankrupt is holding after-acquired property of the bankrupt, or the proceeds of an interest in such property, in pursuance of subsection (2) or (3) and the bankrupt again becomes a bankrupt, the trustee shall:

(a) in a case where the trustee is also the trustee in the later bankruptcy—hold all such property, and the proceeds of such property, as the trustee in the later bankruptcy; or

(b) in any other case—deliver all such property, and pay the proceeds of such property, to the trustee in the later bankruptcy.

(5) Where a law of the Commonwealth or of a State or Territory requires the transmission of property to be registered, and enables the trustee of the estate of a bankrupt registered as the owner of any such property that is part of the property of the bankrupt, that property, notwithstanding that it vests in equity in the trustee by virtue of subsection (1), does not vest in the trustee at law until the requirements of that law have been complied with.

(6) In subsections (2), (3) and (4), **after-acquired property**, in relation to a bankrupt, means such of the property that was acquired by, or devolved on, the bankrupt on or after the date of the bankruptcy, being property divisible amongst the creditors of the bankrupt, as has not been distributed amongst the creditors of the bankrupt.

Sections 58 and 59 have effect subject to an order under Part VIIIAB of the *Family Law Act 1975*.

Stay of legal proceedings

- (1) The Court may, at any time after the presentation of a petition, upon such terms and conditions as it thinks fit:
 - (a) discharge an order made, whether before or after the commencement of this subsection, against the person or property of the debtor under any law relating to the imprisonment of fraudulent debtors and, in a case where a debtor is imprisoned or otherwise held in custody under such law, discharge the debtor out of custody; or
 - (b) stay any legal process, whether civil or criminal and whether instituted before or after the commencement of this subsection, against the person or property of the debtor:
 - (i) in respect of the non-payment of a provable debt or of a pecuniary penalty payable in consequence of the non-payment of a provable debt; or
 - (ii) in consequence of his or her refusal or failure to comply with an order of a court, whether made in civil or criminal proceedings, for the payment of a provable debt and, in a case where the debtor is imprisoned or otherwise held in custody in consequence of the non-payment of a provable debt or of a pecuniary penalty referred to in subparagraph (i) or in consequence of his or her refusal or failure to comply with an order referred to in subparagraph (ii), discharge the debtor out of custody.
- (2) An action commenced by a person who subsequently becomes bankrupt is, upon his or her becoming a bankrupt, stayed until the trustee makes election, in writing, to prosecute or discontinue the action.
- (3) If the trustee does not make such an election within 28 days after notice of the action is served upon him or her by a defendant or other party to the action, he or she shall be deemed to have abandoned the action.
- (4) Notwithstanding anything contained in this section, a bankrupt may continue, in his or her own name, an action commenced by him or her before he or she became a bankrupt in respect of:
 - (a) any personal injury or wrong done to the bankrupt, his or her spouse or de facto partner or a member of his or her family; or
 - (b) the death of his or her spouse or de facto partner or of a member of his or her family.

Note: See also subsection 5(6).

- (4A) Notwithstanding paragraph (1)(b), this section does not empower the Court to stay any proceedings under a proceeds of crime law.
- (5) In this section, **action** means any civil proceeding, whether in law or in equity.

Actions by bankrupt partner's trustee

- (1) Where a member of a partnership becomes a bankrupt, the trustee may, upon the application of the trustee, authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner or partners.

- (2) Notice of the application for authority to commence the action shall be given to the bankrupt's partner or partners, who, or a whom, may show cause against it.
- (3) Upon application by such a partner, the Court may, if it thinks fit, direct that that partner shall receive the share of the proceeds of the action to which he or she is entitled as a partner.
- (4) If a partner does not claim any benefit from the action, the Court may order that he or she be indemnified against costs in respect of the action.
- (5) Unless the Court otherwise orders, a release by a partner of a debt or demand to which the action relates made after notice has been given to him or her under this section is void as against the trustee.
- (6) This section applies to and in relation to joint debtors who are not partners as if they were partners.

Actions on joint contracts

Where a bankrupt is a contractor in respect of a contract joint with another person or other persons, that person or those persons may sue or be sued in respect of the contract without the joining of the bankrupt.

Death of bankrupt

Where a bankrupt dies before he or she is discharged from the bankruptcy, the proceedings in bankruptcy shall, unless the Court otherwise directs, be continued, so far as they are capable of being continued, as if he or she were alive.

Part 6—Composition or arrangement with creditors

Composition or arrangement

- (1) Where a bankrupt desires to make a proposal to his or her creditors for:
 - (a) a composition in satisfaction of his or her debts; or
 - (b) a scheme of arrangement of his or her affairs;
 he or she may lodge with the trustee a proposal in writing signed by him or her setting out the terms of the proposed composition or scheme of arrangement and particulars of any sureties or securities forming part of the proposal.
- (1A) The trustee must, within 2 business days after receiving the proposal, give a copy of the proposal to the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

- (1C) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Declaration of relationships by proposed trustee of composition or scheme of arrangement

- (1) This section applies if the proposal provides that a person (the **proposed trustee**) other than the trustee of the bankrupt's estate is to become the trustee of the composition or scheme of arrangement.
- (2) The proposed trustee must make a written declaration stating whether the bankrupt is a related entity of:

- (a) the proposed trustee; or
 - (b) a related entity of the proposed trustee.
- (3) The proposed trustee must:
- (a) give a copy of the declaration to the Official Receiver; and
 - (b) give a copy of the declaration to the trustee of the bankrupt's estate; and
 - (c) keep a copy of the declaration.

Annulment of bankruptcy

- (1) If the proposal is accepted by a special resolution of creditors at a meeting held in accordance with the Insolvency Practice Rules, the bankruptcy is annulled, by force of this subsection, on the day the special resolution was passed.

- (5A) The trustee must, before the end of the period of 2 days beginning on that date, give the Official Receiver a written notice setting out the name and the bankruptcy number of the former bankrupt and the date of the annulment.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

- (5B) Subsection (5A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) Where a bankruptcy is annulled under this section, all sales and dispositions of property and payments duly made, and all acts done by the trustee or any person acting under the authority of the trustee or the Court before the annulment shall be deemed to have been validly made or done but, subject to subsection (7), the property of the bankrupt still vested in the trustee vests in such person as the Court appoints or, in default of such an appointment, reverts to the bankrupt for all his or her estate or interest in it on such terms and subject to such conditions (if any) as the Court orders.

- (7) Where a law of the Commonwealth or of a State or Territory requires the transmission of property to be registered, any such property vested in the trustee at the time of the annulment of the bankruptcy, notwithstanding that it vests in such person as the Court appoints or in the bankrupt in the case may be, does not vest in that person or the bankrupt until the requirements of that law have been complied with.

Variation of composition or scheme of arrangement

- (1) This section applies to a composition or scheme of arrangement that has been accepted in accordance with this Division.

Variation by special resolution of creditors

- (2) The creditors, with the written consent of the debtor, may vary the composition or scheme by special resolution at a meeting called for the purpose.

Variation proposal by trustee

- (3) The trustee may, in writing, propose a variation of the composition or scheme. The trustee cannot propose a variation without the written consent of the debtor.
- (4) The trustee must give notice of the proposed variation to all creditors who are entitled to receive notice of a meeting of

creditors.

- (5) The notice must:
 - (a) include a statement of the reasons for the variation and likely impact it will have on creditors (if it takes effect); and
 - (b) specify a proposed date of effect for the variation (at least 14 days after the notice is given); and
 - (c) state that any creditor may, by written notice to the trustee at least 2 days before the specified date, object to the variation taking effect without there being a meeting of creditors.
- (6) If no creditor lodges a written notice of objection with the trustee at least 2 days before the specified date, then the proposed variation takes effect on the date specified in the notice.
- (7) A certificate signed by the trustee stating any matter relating to a proposed variation under this section is prima facie evidence of the matter.

Effect of composition or scheme of arrangement

- (1) Subject to this section, a composition or scheme of arrangement accepted in accordance with this Division is binding on all the creditors of the bankrupt so far as relates to provable debts due to them from the bankrupt.
- (2) The acceptance of a composition or scheme of arrangement does not:
 - (a) except with the consent of the creditor to whom the debt is due, release the bankrupt from a provable debt that would otherwise be released by his or her discharge from bankruptcy; or
 - (b) release any other person from any liability from which she would not be released by the discharge of the bankrupt.
- (3) The provisions of a composition or scheme of arrangement that has been accepted in accordance with this Division may be enforced by the Court on application by a person interested, and disobedience of an order of the Court made on the application is contempt of the Court and is punishable accordingly.

Application of Part VIII and Schedule 2 to trustee of a composition or arrangement

- (1) Part VIII and Schedule 2 apply, with any modifications prescribed by the regulations, in relation to the trustee of a composition or scheme of arrangement under this Division as if the debtor were bankrupt and the trustee were the trustee in his or her bankruptcy.
- (2) If, after taking into account the modifications prescribed by the regulations, a provision of Part VIII or Schedule 2 is incapable of application in relation to the trustee of a composition or scheme of arrangement, or is inconsistent with this Division, that provision does not so have application.

Setting aside and termination of a composition or scheme of arrangement

Sections 222 to 222D, 224 and 224A apply, with such modifications (if any) as are prescribed by the regulations, in relation to a composition or scheme of arrangement under this Division as if:

- (a) the composition or scheme were a personal insolvency agreement executed by the debtor; and
- (b) the trustee of the composition or scheme were the trustee

(b) the trustee or the composition of scheme were the trustee the personal insolvency agreement.

7—Control over person and property of debtors and bankrupts

Part 1—General

Powers of bankrupt as to discovery etc. of property

(1) A bankrupt shall, unless excused by the trustee or prevented by illness or other sufficient cause:

- (a) forthwith after becoming a bankrupt, give to the trustee
 - (i) all books (including books of an associated entity or bankrupt) that are in the possession of the bankrupt and relate to any of his or her examinable affairs; and
 - (ii) any passport or document issued for the purposes of travel held by the bankrupt; and

- (b) attend the trustee whenever the trustee reasonably requires; and

- (ba) give such information about any of the bankrupt's conduct and examinable affairs as the trustee requires; and

- (bb) as soon as practicable after becoming a bankrupt, advise the trustee of any material change that occurred between the time the bankrupt lodged his or her statement of affairs and the time the bankrupt became a bankrupt; and

- (bc) if a material change occurred later, advise the trustee of that change as soon as practicable after the change occurred; and

- (c) attend a meeting of creditors whenever the trustee requires; and

- (d) at each meeting of creditors at which the bankrupt is present, give such information about any of the bankrupt's conduct and examinable affairs as the meeting requires; and

- (e) execute such instruments and generally do all such acts and things in relation to his or her property and its realization as are required by this Act or by the trustee or as are ordered by the Court upon the application of the trustee; and

- (f) disclose to the trustee, as soon as practicable, property that is acquired by him or her, or devolves on him or her, before or after his or her discharge, being property divisible amongst his or her creditors; and

- (g) aid to the utmost of his or her power in the administration of his or her estate.

(2) In this section:

material change means a change in the particulars contained in the bankrupt's statement of affairs, where the change could reasonably be expected to be relevant to the administration of the bankrupt's estate.

Access by Official Receiver and others to premises

(1) The Official Receiver, or an officer authorised in writing by the Official Receiver to exercise powers under this section, is entitled at all reasonable times to full and free access to all premises and books for any purpose of this Act, and for that purpose:

- (a) may make copies of, or take extracts from, books; and

- (b) may remove from premises any books that the Official Receiver or officer reasonably considers may be relevant to the administration of the bankrupt's estate.

examinable affairs of:

- (i) a bankrupt whose affairs are being administered under Part IV; or
- (ii) a person who is a party (as debtor) to a debt agreement; or
- (iii) a debtor whose affairs are being administered under Part X; or
- (iv) a deceased debtor whose affairs are being administered under Part XI or are subject to a debt agreement.

(1A) A registered trustee may accompany and assist the Official Receiver or an officer exercising powers under subsection (1)

- (a) the Official Receiver has given written authority for the registered trustee to do so; and
- (b) the exercise of the powers under subsection (1) relates to a bankrupt, debtor or deceased debtor whose affairs the registered trustee is administering.

(1B) The registered trustee may be accompanied by a person nominated by the registered trustee.

(1C) The Official Receiver or officer may remove books from premises only if the Official Receiver or officer reasonably considers that

- (a) it is not reasonably practicable to make copies of, or take extracts from, the books on the premises; or
- (b) it would be an unreasonable intrusion on the affairs of the occupier of the premises to remain on the premises to make copies of, or take extracts from, the books.

(1D) If the Official Receiver or officer reasonably believes that any books are, or may be, relevant to the examinable affairs of a bankrupt, a person who is a party (as debtor) to a debt agreement, a debtor whose affairs are being administered under Part X or a deceased debtor whose affairs are being administered under Part XI, the Official Receiver or officer may keep the books until he or she decides that:

- (a) he or she no longer needs the books; or
- (b) the books are not relevant to the examinable affairs of a bankrupt, person who is a party (as debtor) to a debt agreement, debtor or deceased debtor.

(1E) While the Official Receiver or officer is keeping books, a person whose books they are, or from whose premises the books were taken, may inspect the books at any reasonable time.

(2) An officer is not entitled to enter or remain in or on any premises under this section if, on being requested by the occupier of the premises for proof of authority, the officer does not produce to the occupier the officer's authority under subsection (1).

(3) The occupier of any premises entered or proposed to be entered by the Official Receiver, or by an officer, under subsection (1) must provide the Official Receiver or officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: 30 penalty units.

Access by trustee to books of associated entity

(1) Where a trustee is conducting under section 19AA an investigation relating to a person (in this section called the **bankrupt**), subsections (2) and (3) of this section apply

bankrupt), subsections (2) and (3) of this section apply.

- (2) For the purposes of the investigation, the a trustee may by writing require a person to produce:
- (a) to a specified person, being the a trustee or another person and
 - (b) at a specified place, and within a specified period or at a specified time on a specified day, being a place, and a person or a time and day, that are reasonable in the circumstances specified books, or specified classes of books, that:
 - (c) are books of an associated entity of the bankrupt;
 - (d) are in the possession of the person of whom the requirement is made; and
 - (e) in the trustee's opinion, are relevant to the investigation
- (3) Where the trustee requires a person (in this subsection called **relevant person**) under this section to produce books to a specified person, the trustee or the specified person:
- (a) if the books are so produced:
 - (i) may make copies of, or take extracts from, the books and
 - (ii) may require the relevant person, or any other person who was a party to the compilation of the books, to explain to the best of his or her knowledge and belief any material about the compilation of the books or to which the books relate; or
 - (b) in any other case—may require the relevant person to:
 - (i) where the books may be found; and
 - (ii) who last had possession, custody or control of the books and where that person may be found.
- (4) The production of books under this section does not prejudice any lien that a person has on the books.

Power of Official Receiver to obtain information and evidence

- (1) The Official Receiver may, by written notice given to a person require the person to do one or more of the following:
- (a) give the Official Receiver information the Official Receiver requires for the purposes of the performance of the functions of the Official Receiver or a trustee under this Act;
 - (b) attend before the Official Receiver, or an officer authorised in writing by the Official Receiver to exercise powers under this paragraph, and do one or both of the following:
 - (i) give evidence relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act;
 - (ii) produce all books in the person's possession relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act;
 - (c) produce all books in the person's possession relating to matters connected with the performance of the functions of the Official Receiver or a trustee under this Act.

It does not matter whether or not the person is a bankrupt or employed in or in connection with a Department, or an authority of the Commonwealth or of a State or Territory.

- (2) The Official Receiver or authorised officer may require the

- (2) The Official Receiver or authorised officer may require the bankrupt to provide information or evidence to be given on oath, and either orally or in writing, and for that purpose may administer an oath.
- (3) Notes taken down and signed by a person who attends before the Official Receiver or an authorised officer under paragraph (1) and the transcript of the evidence given by the person at the attendance:
- (a) may be used in evidence in any proceeding under this Act, whether or not the person is a party to the proceeding; and
 - (b) may be inspected:
 - (i) by the person, without fee; and
 - (ii) if the notes and evidence relate to matters concerning the bankruptcy of the person or of another person—by the trustee and a person who states in writing that he or she is a creditor, without fee; and
 - (iii) by any other person on payment of the fee determined by the Minister by legislative instrument.

Power of Official Receiver to obtain statement of affairs

The Official Receiver may, by written notice given to a bankrupt, require the bankrupt to give the Official Receiver a statement of the bankrupt's affairs within 14 days after receiving the notice.

Note 1: Section 6A sets out requirements for statements of affairs.

Note 2: A failure to comply with the notice is an offence: see section 267B.

Allowances and expenses in respect of attendance

- (1) Subject to this section, a person who attends before the Official Receiver, or before an authorised officer, under subsection 77D(1) is entitled:
- (a) to be paid by the Official Receiver an allowance of \$20 in respect of each day or part of a day on which the person so attends; and
 - (b) to be reimbursed by the Official Receiver any reasonable expenses incurred by the person for transport, meals and accommodation in connection with the person's attendance.
- (2) A person who is or has been a bankrupt is not entitled to be paid an allowance, or reimbursed any expenses, in respect of the attendance of that person to give evidence or produce books or documents relating to his or her bankruptcy.
- (3) A person is not entitled to be reimbursed any expenses unless the person produces to the Official Receiver sufficient documentary evidence to establish that the person incurred those expenses.
- (4) This section has effect subject to section 304A.

Advance on account of allowances and expenses

- (1) If a person who is required by a notice under subsection 77D(1) to attend before the Official Receiver or an authorised officer is entitled under subsection 77D(1) to be paid an allowance and reimbursed expenses in respect of the attendance, the Official Receiver must, before the person begins to travel for the purpose so attending, offer to the person, on account of the allowance and reimbursement of expenses, an advance determined under this section.
- (2) If the Official Receiver is satisfied that it will be necessary for a person to travel by aircraft from the person's principal place of residence to attend before the Official Receiver or an authorised officer, the Official Receiver may, in determining the advance, take into account the cost of the travel by aircraft.

residence to the place at which the person is required to attend in advance is to be an amount equal to the sum of \$20 and the ordinary one-way economy class airfare from the airport nearest that principal place of residence to the airport nearest to the place at which the person is required to attend.

- (3) If the person will be travelling by private motor vehicle, the advance is to be the sum of \$20 and whichever is the lesser of the following amounts:
 - (a) an amount prescribed by the regulations;
 - (b) if there is an airport open to civilian passenger traffic that is within a radius of 100 kilometres from the person's principal place of residence—the ordinary one-way economy class airfare from that airport to the airport nearest to the place at which the person is required to attend.
- (4) If the person will be travelling otherwise than as mentioned in subsections (2) and (3), the advance is to be:
 - (a) if the distance between the person's principal place of residence and the place at which the person is required to attend exceeds 50 kilometres—\$10 plus such additional amount (if any) as is prescribed by the regulations; or
 - (b) in any other case—\$10.
- (5) The regulations may prescribe different amounts in respect of different distances and different means of travel.
- (6) This section has effect subject to section 304A.

allowances and expenses to be paid out of bankrupt's estate

If the evidence that a person gives, or the books that a person produces, under section 77C, relate to matters concerning the bankruptcy of a particular person, any amount payable to the first-mentioned person under section 77D or 77E is to be paid out of the estate of the bankrupt as an expense of the administration of the bankruptcy.

Test of debtor or bankrupt

- (1) Where it is made to appear to the Court:
 - (a) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has absconded, or is about to abscond, with a view to avoiding payment of his or her debts or to preventing or delaying proceedings against him or her under this Act;
 - (b) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has concealed or removed, or is about to conceal or remove, any of his or her property with a view to preventing or delaying possession of the property being taken under this Act in the event of his or her becoming a bankrupt;
 - (c) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has destroyed, concealed or removed, or is about to destroy, conceal or remove, books (including books of an associated entity of the debtor) relating to any of the debtor's examinable affairs;
 - (d) that a bankrupt has concealed, or, without the permission of the trustee, has removed, any of the property of the bankrupt;
 - (e) that a bankrupt has, without good cause shown, neglected or failed to comply with an order of the Court or with any

obligation under this Act;

the Court may issue a warrant for the arrest of the debtor or bankrupt, as the case may be, and his or her committal to such place as the Court appoints until the Court otherwise orders and make the same warrant, order that any property and books in the possession of the debtor or bankrupt be seized and delivered into the custody of such person as the Court appoints.

- (2) Any property and books delivered into the custody of a person pursuant of an order under subsection (1) shall be retained by him or her until the Court makes an order as to their disposal.
- (3) Paragraphs (1)(a), (b) and (c) apply in relation to a debtor whether or not he or she has become a bankrupt and whether in the case of a debtor against whom a petition has been presented the petition was a creditor's petition or a debtor's petition.

Notification of change in name, address or day-time telephone number

- (1) If during a bankruptcy a change occurs in the bankrupt's name or in the address of the bankrupt's principal place of residence the bankrupt must immediately tell the trustee in writing of the change.

Penalty: Imprisonment for 6 months.

- (1A) Subsection (1) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) For the purposes of subsection (1), a change in the name of a bankrupt shall be deemed to occur if the bankrupt in fact assumes the use of a different name or an additional name.

Recovery of bankrupt's property etc.

- (1) Where a person (in this section called the **relevant person**) becomes a bankrupt, the Court or a Registrar may at any time (whether before or after the end of the bankruptcy), on the application of:

- (a) a person (in this section called a **creditor**) who has or claims a debt provable in the bankruptcy;
- (b) the trustee of the relevant person's estate; or
- (c) the Official Receiver;

summon the relevant person, or an examinable person in relation to the relevant person, for examination in relation to the bankruptcy.

- (1A) A summons to a person by the Court or the Registrar under subsection (1) shall require the person to attend:
 - (a) at a specified place and at a specified time on a specified day, being a place, time and day that are reasonable in the circumstances; and
 - (b) before the Court or the Registrar or, if the Court or the Registrar thinks fit, a magistrate;to be examined on oath under this section about the relevant person and the relevant person's examinable affairs.

- (1B) A summons to a person under subsection (1) may require the person to produce at the examination books (including books of account) and documents (including documents of title) of the relevant person or associated entity of the relevant person) that:
 - (a) are in the possession of the first-mentioned person; and
 - (b) relate to the relevant person or to any of the relevant person's examinable affairs.

- (1C) Before summoning a person on an application under subsection (1) by a creditor, the Court or the Registrar, as the case may be, may impose on the applicant such terms as to costs as the Court or he or she, thinks fit.
- (2) An examination under this section shall be held in public.
- (3) The Court, the Registrar or a magistrate may at any time adjourn the examination of a person under this section either to a fixed time or generally, or conclude the examination.
- (4) The Registrar or a magistrate may at any time adjourn the examination of a person under this section for further hearing before the Court.
- (5) Where the examination is adjourned by the Registrar or a magistrate for further hearing before the Court, the Registrar or the magistrate, as the case may be, may submit to the Court a report with respect to the examination as he or she thinks fit.
- (6) Where the examination is adjourned for further hearing before the Court, the Court may:
- (a) continue the examination;
 - (b) at any time direct that the examination be continued before the Registrar or a magistrate; or
 - (c) make such other order as it thinks proper in the circumstances.
- (7) A person summoned to attend before the Court, the Registrar or a magistrate for examination under this section is entitled to be represented, on his or her examination, by counsel or a solicitor who may re-examine him or her after his or her examination.
- (8) Where a person is summoned for examination under this section by a creditor, the trustee or the Official Receiver may take part in the examination and, for that purpose, may be represented by counsel or a solicitor or by an agent authorized in writing for the purpose.
- (9) Without limiting the generality of subsection (8), where the Official Trustee is the trustee, the Official Trustee may, for the purpose of taking part in the examination, be represented by the Official Receiver.
- (10) The Court, the Registrar or the magistrate may put, or allow to be put, to a person being examined under this section such questions about the relevant person or any of the relevant person's examinable affairs as the Court, the Registrar or the magistrate, as the case may be, thinks appropriate.
- (10A) Notwithstanding subsection (10), where a person is being examined under this section after the end of the bankruptcy, a question about a matter or thing arising or occurring after the end of the bankruptcy shall not be put, or allowed to be put, at the examination unless the question is about a matter or thing connected with the administration of the relevant person's estate.
- (11) A person being examined under this section shall answer all questions that the Court, the Registrar or the magistrate puts or allows to be put to him or her.
- (11AA) Subject to any contrary direction by the Court, the Registrar or the magistrate, the relevant person is not excused from answering a question merely because to do so might tend to incriminate the relevant person.

- (11A) The Court, the Registrar or the magistrate may direct a person who is being examined under this section to produce at the examination specified books, or specified classes of books, that are in the possession of the person and are relevant to matters about which the person is being, or is to be, examined.
- (11B) Without limiting the generality of subsection (11A), a direction under that subsection may relate to books of an associated entity of the relevant person.
- (12) Where a person admits on examination under this section that he or she is indebted to the relevant person, then, the Court, the Registrar or the magistrate, as the case may be, may, on the application of the trustee or a creditor, order the person to pay the trustee, at or by such time and in such manner as the Court, the Registrar or the magistrate, as the case may be, thinks fit, the whole or a part of the amount in which the person admits he or she is indebted to the relevant person.
- (13) Where a person admits on examination under this section that there is in the possession of the person property of the relevant person that is divisible among creditors, the Court, the Registrar or the magistrate, as the case requires, may, on the application of the trustee or a creditor, order the first-mentioned person to deliver the property to the trustee within a specified period, in a specified manner and on specified terms.
- (14) The Court, the Registrar or the magistrate, as the case may be, may direct that the costs of a person, other than the relevant person, examined under this section shall be paid out of the estate of the relevant person.
- (15) The Court, the Registrar or the magistrate, as the case may be, may cause such notes of the examination of a person under this section to be taken down in writing as the Court, the Registrar or the magistrate, as the case may be, thinks proper, and the person examined shall sign the notes.
- (17) Notes taken down and signed by a person in pursuance of subsection (15), and the transcript of the evidence given at the examination of a person under this section:
- (a) may be used in evidence in any proceedings under this section, whether or not the person is a party to the proceeding; and
 - (b) shall be open to inspection by the person, the relevant person, the trustee or a person who states in writing that she is a creditor without fee and by any other person on payment of the fee prescribed by the regulations.

Division 2—Offshore information notices

Issue of notices

- (1) If the Official Receiver has reason to believe that:
- (a) information relevant to the examinable affairs of a bankrupt is:
 - (i) known (whether exclusively or otherwise) by a person outside Australia; or
 - (ii) recorded (whether exclusively or otherwise) in a book outside Australia; or
 - (b) books relevant to the examinable affairs of a bankrupt are outside Australia (whether or not copies are in Australia) or the books are copies of other books, whether or not those books are in Australia;

the Official Receiver, by written notice (in this Division called **offshore information notice**) given to any person, may require the person:

- (c) to give to the Official Receiver, within the period and in the manner set out in that notice, any such information; or
- (d) to produce to the Official Receiver, within the period and in the manner set out in that notice, any such books; or
- (e) to make copies of any such books and to produce to the Official Receiver, within the period and in the manner set out in that notice, those copies.

(2) The period set out in the offshore information notice must end not more than 14 days after the date on which the notice is given.

Extension of period of notice

(1) Upon written application made by the person to whom the offshore information notice was given within the period set out in that notice, the Official Receiver, by written notice given to that person, may extend the period set out in the offshore information notice.

(2) If:

- (a) an application under subsection (1) is made before the end of the period set out in the offshore information notice; and
- (b) at the end of the period, the Official Receiver has not notified the person of the decision of the Official Receiver on the application;

the following provisions have effect:

- (c) the Official Receiver is taken to have extended the period set out in the offshore information notice under subsection (1) to the end of the day on which the decision of the Official Receiver is notified to the person to whom the offshore information notice was given;
- (d) if the Official Receiver decides to extend the period—the extended period must end after the day referred to in paragraph (c).

(3) A reference in this Division (other than subsection (1) of this section) to the period set out in the offshore information notice is a reference to the period as extended under that subsection.

Variation of notices

(1) If:

- (a) an offshore information notice (in this subsection called **first notice**) was given to a person; and
- (b) during the period set out in the first notice (including any period set out by virtue of one or more previous applications under this subsection), another offshore information notice (in this subsection called the **subsequent notice**) is given to the person; and
- (c) the subsequent notice is expressed to be by way of variation of the first notice;

the following provisions have effect:

- (d) the request, or each of the requests, set out in the subsequent notice is taken, for the purposes of section 81B, to have been set out in the first notice;
- (e) if the period set out in the first notice would, apart from this subsection, end before the end of the period set out in the subsequent notice—the period set out in the first notice is taken to have been extended under subsection 81B(1) to the end of the period set out in the subsequent notice.

end of the period set out in the subsequent notice.

- (2) The Official Receiver, by written notice given to the person whom the offshore information notice was given, may vary the offshore information notice by:
- (a) reducing its scope; or
 - (b) correcting a clerical error or obvious mistake;
- and, if the Official Receiver does so, a reference in this Division to the offshore information notice is taken to be a reference to the notice as so varied.

Withdrawal of notices

- (1) The Official Receiver may withdraw an offshore information notice.
- (2) If the Official Receiver withdraws an offshore information notice, the withdrawal does not prevent the Official Receiver from giving another offshore information notice in substitution, in whole or in part, for the withdrawn notice.

Offshore information notices may be included in same document

An offshore information notice may be contained in the same document as a notice under section 77C.

Relationship between this Division and section 77C

Nothing in this Division affects the operation of section 77C and nothing in section 77C affects the operation of this Division.

Division 3—Failure to comply with certain notices

Effect of non-compliance with notice

- (1) In this section:

relevant proceeding means a proceeding:

- (a) for the recovery of an amount payable by a bankrupt under section 139ZG; or
 - (b) for the recovery of an amount payable by a person under section 139ZL; or
 - (c) involving the question whether a transaction is void against the trustee under Division 3 of Part VI.
- (2) Subject to subsection (3), where a person refuses or fails to comply with a request or requirement set out in a notice given to the person under Division 1 or 2 to give any information or produce any books:
- (a) if the request or requirement applies to information—the information is not admissible in a relevant proceeding; or
 - (b) if the request or requirement applies to books—neither the books, nor any secondary evidence of the books, is admissible in a relevant proceeding.
- (3) Subsection (2) does not apply to information or a book if the person proves that:
- (a) the information or book was not in the possession of the person when the notice was given; and
 - (b) there were no reasonable steps that the person could have taken to obtain the information or book.
- (4) A notice given to a person under Division 1 or 2 must set out the effect of subsections (2) and (3).

- (5) A failure to comply with subsection (4) does not affect the validity of the notice.

Part VI—Administration of property

Division 1—Proof of debts

Section 1317—Debts provable in bankruptcy

- (1) Subject to this Division, all debts and liabilities, present or future, certain or contingent, to which a bankrupt was subject at the date of the bankruptcy, or to which he or she may become subject before his or her discharge by reason of an obligation incurred before the date of the bankruptcy, are provable in his or her bankruptcy.

- (1A) Without limiting subsection (1), debts referred to in that subsection include a debt consisting of all or part of a sum that became payable by the bankrupt under a maintenance agreement or maintenance order before the date of the bankruptcy.

- (2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of contract are not provable in bankruptcy.

- (3) Penalties or fines imposed by a court in respect of an offence against a law, whether a law of the Commonwealth or not, are not provable in bankruptcy.

- (3AA) An amount payable under an order made under section 1317 of the *Corporations Act 2001* is not provable in bankruptcy.

- (3AB) A debt incurred under any of the following is not provable in bankruptcy:

- (a) Part 4-1 of the *Higher Education Support Act 2003* (HEVET debts);

- (aaa) Part 3A of the *VET Student Loans Act 2016* (VETSL debts);

- (aa) Part 2AA.3 of the *Social Security Act 1991* (student start-up loan debts);

- (ab) Division 3 or 4 of Part 2 of the *Student Assistance Act 2011* (ABSTUDY student start-up loan debts);

- (b) Part 3.1 of the *Trade Support Loans Act 2014* (trade support loan debts).

- (3A) An amount payable under an order made under a proceeds of crime law is not provable in bankruptcy.

- (3B) A debt is not provable in a bankruptcy in so far as the debt consists of interest accruing, in respect of a period commencing before or after the date of the bankruptcy, on a debt that is provable in bankruptcy.

- (4) The trustee shall make an estimate of the value of a debt or liability provable in the bankruptcy which, by reason of its being subject to a contingency, or for any other reason, does not bear a certain value.

- (5) A person aggrieved by an estimate so made may appeal to the Court not later than 28 days after the day on which the person was notified of the estimate.

- (6) If the Court finds that the value of the debt or liability cannot be fairly estimated, the debt or liability shall be deemed not to be provable in the bankruptcy.

- (7) If the Court finds that the value of the debt or liability can be fairly estimated, the Court shall assess the value in such manner as it thinks proper.
- (8) In this section, **liability** includes:
- (a) compensation for work or labour done;
 - (b) an obligation or possible obligation to pay money or money's worth on the breach of an express or implied covenant, contract, agreement or undertaking, whether or not the breach occurs, is likely to occur or is capable of occurring, before or after the discharge of the bankrupt; and
 - (c) an express or implied engagement, agreement or undertaking, to pay, or capable of resulting in the payment of money or money's worth, whether the payment is:
 - (i) in respect of amount—fixed or unliquidated;
 - (ii) in respect of time—present or future, or certain or dependent on a contingency; or
 - (iii) in respect of the manner of valuation—capable of being ascertained by fixed rules or only as matter of opinion.

Debt not to be considered proved until admitted

For the purposes of this Act, a creditor shall be taken not to have proved a debt until a proof of debt lodged by him or her in respect of that debt has been admitted.

Manner of proving debts

- (1) Subject to this Division, a creditor who desires to prove a debt in a bankruptcy shall lodge, or cause to be lodged, with the trustee a proof of debt in accordance with this section.
- (2) A proof of debt:
- (a) shall set out particulars of the debt;
 - (b) shall be in accordance with the approved form;
 - (c) shall specify the vouchers, if any, by which the debt can be substantiated; and
 - (d) shall state whether or not the creditor is a secured creditor.
- (3) Where the trustee is of the opinion that it is desirable that all or some of the matters, or some of the matters, contained in a proof of debt lodged with him or her by a creditor should be verified by statutory declaration, the trustee may serve on the creditor a written notice informing the creditor that he or she is of that opinion and that, unless the creditor lodges with the trustee a statutory declaration verifying the matters contained in the proof of the debt or such of those matters as the trustee specifies in the notice, the trustee will administer the estate as if the proof of debt had not been lodged.
- (4) A statutory declaration verifying matters in a proof of debt lodged by a creditor may be made by:
- (a) the creditor; or
 - (b) a person whose own knowledge includes the facts set out in the statutory declaration and the proof of debt, and who is authorised by the creditor to make the declaration.
- (5) Where the trustee serves a notice on a creditor under subsection (3) in respect of a proof of debt, the proof of debt so served for the purposes of this Act (other than section 263), be deemed to have been lodged with the trustee unless and until the creditor has lodged with the trustee a statutory declaration verifying the matters in the proof of debt or such of those matters as are

specified in the notice, as the case requires.

- (6) A proof of debt under this section, or a statutory declaration referred to in subsection (3), sent to the trustee by post as certified mail (postage being prepaid) shall be deemed to have been lodged with the trustee and shall be deemed to have been so lodged at the time at which it would have been delivered in the ordinary course of post unless it is shown that the trustee did not receive it at that time.

Proof of debt by employees

- (1) Where it appears from the bankrupt's statement of affairs that he or she is indebted to numerous persons employed by him or her for wages or salary, the debts may be proved by one of those persons on behalf of all of those persons.
- (2) The proof of debt in respect of the several debts shall be in accordance with the approved form.
- (2A) Where the trustee is of the opinion that it is desirable that all matters, or some of the matters, contained in a proof of debt lodged with him or her by a person in pursuance of this section should be verified by statutory declaration, the trustee may serve on the person a written notice informing the person that he or she is of that opinion and that, unless the person lodges with the trustee a statutory declaration verifying the matters contained in the proof of debt or such of those matters as the trustee specifies in the notice, the trustee will administer the estate as if the proof of the debt had not been lodged.
- (2B) A statutory declaration verifying matters in a proof of debt lodged by a person (the **creditor**) under this section may be made by
- (a) the creditor; or
 - (b) another person whose own knowledge includes the facts stated out in the statutory declaration and the proof of debt, and who is authorised by the creditor to make the declaration.
- (2C) Where the trustee serves a notice on a person under subsection (2A) in respect of a proof of debt, the proof of debt for the purposes of this Act (other than section 263), be deemed to have been lodged with the trustee unless and until the person has lodged with the trustee a statutory declaration verifying the matters in the proof of debt or such of those matters as are specified in the notice, as the case requires.
- (2D) A proof of debt under this section, or a statutory declaration referred to in subsection (2A), sent to the trustee by post as certified mail (postage being prepaid) shall be deemed to have been lodged with the trustee and shall be deemed to have been so lodged at the time at which it would have been delivered in the ordinary course of post unless it is shown that the trustee did not receive it at that time.
- (3) A proof of debt lodged in pursuance of this section has the same effect as if separate proofs of debt had been lodged by each of the creditors to whom it relates.

Mutual credit and set-off

- (1) Subject to this section, where there have been mutual credits, mutual debts or other mutual dealings between a person who becomes a bankrupt and a person claiming to prove a debt in the bankruptcy:

(a) an account shall be taken of what is due from the one

- (a) an account shall be taken of what is due from the one party to the other in respect of those mutual dealings;
- (b) the sum due from the one party shall be set off against sum due from the other party; and
- (c) only the balance of the account may be claimed in the bankruptcy, or is payable to the trustee in the bankruptcy the case may be.

- (2) A person is not entitled under this section to claim the benefit of a set-off if, at the time of giving credit to the person who has become a bankrupt or at the time of receiving credit from that person, he or she had notice of an available act of bankruptcy committed by that person.

Reduction of discounts

In proving a debt, a creditor shall make an allowance for all discounts for which an allowance would have been made if the debtor had not become a bankrupt.

Apportionment to principal and interest of payments made before bankruptcy

A payment made by a debtor to a creditor before the debtor became a bankrupt and representing in part principal and in part interest shall, notwithstanding any agreement to the contrary, be deemed, for the purposes of this Act but not otherwise, to have been apportioned in satisfaction of principal and interest in the proportion that the principal bears to the amount payable as interest at the agreed rate.

Apportionment where security realized before or after bankruptcy

- (1) Where a debt that consisted partly of principal and partly of interest was secured and the security has been realized before the debtor became a bankrupt, the proceeds of the realization shall, for the purposes of this Act but not otherwise, notwithstanding any agreement to the contrary, be deemed to have been apportioned in satisfaction of principal and interest in the proportion that the principal bore, at the time of the realization, to the amount then payable as interest at the agreed rate.
- (2) Where a debt that consists partly of principal and partly of interest is secured and the security is realized after the debtor became a bankrupt or the value of the security is estimated in the creditor's proof of debt, the amount realized or estimated shall, for the purposes of this Act but not otherwise and notwithstanding any agreement to the contrary, be deemed to have been apportioned in satisfaction of principal and interest in the proportion that the principal bears to the amount payable as interest at the agreed rate.

Proof of debt by secured creditor

- (1) A secured creditor is entitled to prove the whole or a part of his or her secured debt in the debtor's bankruptcy in accordance with the succeeding provisions of this Division, and not otherwise.
- (2) A secured creditor who surrenders his or her security to the trustee for the benefit of creditors generally may prove for the whole of his or her debt.
- (3) A secured creditor who realizes his or her security may prove any balance due to him or her after deducting the net amount

any balance due to him or her after deducting the net amount realized, unless the trustee is not satisfied that the realization been effected in good faith and in a proper manner.

- (4) A secured creditor who has not realized or surrendered his her security may:
- (a) estimate its value; and
 - (b) prove for the balance due to him or her after deducting value so estimated.
- (5) A secured creditor to whom subsection (4) applies shall state particulars of his or her security, and the value at which he or estimates it, in his or her proof of debt.

Redemption of security by trustee etc.

- (1) Where a secured creditor has lodged a proof of debt in respect of the balance due after deducting the estimated value of his or her security, the trustee may at any time redeem the security on payment to the creditor of the value at which it has been estimated by the creditor.
- (2) If the trustee is dissatisfied with the value at which a security has been estimated by a creditor, he or she may require the property comprised in the security to be offered for sale at such times and on such terms and conditions as are agreed on by the creditor and the trustee.
- (3) If any such property is offered for sale by public auction, the creditor, or the trustee on behalf of the estate is entitled to bid and purchase, the property.
- (4) The creditor may at any time, by notice in writing, require the trustee to elect whether he or she will, or will not, exercise his or her power of redeeming the security or of requiring it to be redeemed and if the trustee does not, within 3 months after receiving the notice, notify the creditor, in writing that he or she elects to exercise the power:
- (a) he or she is not entitled to exercise it;
 - (b) subject to subsection (5), any equity of redemption or other interest in the property comprised in the security that is vested in the trustee vests in the creditor; and
 - (c) the amount of the creditor's debt shall, for the purpose of this Division, be deemed to be reduced by the amount at which the creditor has estimated the value of the security.
- (5) The vesting of an equity of redemption or other interest in property by virtue of paragraph (4)(b) is subject to compliance with any law of the Commonwealth or of a State or Territory of the Commonwealth requiring the transmission of such interests in property to be registered.

Amendment of valuation

- (1) Where a secured creditor has lodged a proof of debt in respect of the balance due after deducting the estimated value of his or her security, he or she may, at any time, apply to the trustee or the Court for permission to amend the proof of debt by altering the estimated value.
- (2) If the trustee or the Court is satisfied:
- (a) that the estimate of the value of the security was made in good faith on a mistaken basis; or
 - (b) that the value of the security has changed since the estimate was made;

was made;

the trustee or the Court may permit the creditor to amend his or her proof of debt accordingly.

- (3) Where the Court permits a creditor to amend his or her proof of debt, it may do so on such terms as it thinks just and equitable.

Payment of excess

- (1) Where a creditor who has amended a proof of debt under section 92 has received, by way of dividend, any amount in excess of the amount to which he or she would have been entitled under the amended proof of debt, he or she shall forthwith repay the amount of the excess to the trustee.

- (2) Where a creditor who has so amended a proof of debt has received, by way of dividend, less than the amount to which he or she would have been entitled under the amended proof of debt or she is entitled to be paid, out of moneys for the time being available for distribution as dividend, the amount of the deficiency before those moneys are applied in the payment of future dividends, but is not entitled to affect the distribution of a dividend declared before the amendment of the proof of debt.

Subsequent realization of security

Where a secured creditor who has lodged a proof of debt in respect of the balance due after deducting the estimated value of his or her security subsequently realizes his or her security, or realizes under section 91, the net amount realized shall be substituted for the estimated value of the security and section 92 applies as if the proof of debt had been amended accordingly by the creditor under section 92.

Liability of in respect of distinct contracts

Where a person was, at the time when he or she became a bankrupt, liable in respect of distinct contracts as a member of more distinct firms, or as a sole contractor and also as a member of a firm, the fact that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also a member of the firm, does not prevent proof in respect of the contracts against the estates respectively liable on the contracts.

Liability of in respect of proportionate part of periodical payment

Where a person who is liable to make any periodical payment (including rent) becomes a bankrupt on a day other than a day on which such a payment becomes due, the person entitled to the payments may prove in the bankruptcy for a proportionate part of a payment in respect of the period from the date when the last payment became due to the date of the bankruptcy, as if the payment accrued due from day to day.

Production of bills of exchange and promissory notes

Where a creditor seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security on which the bankrupt is liable, the proof of debt shall, subject to any order of the Court to the contrary, be admitted, unless the bill, note, instrument or security is produced to the trustee.

Amendment of proof of debt

- (1) A creditor may, with the consent of the trustee, amend a proof of debt lodged by him or her.
- (2) This section does not authorize the amendment of the proof of debt of a secured creditor by altering the estimated value of his or her security.

Costs of proving debts etc.

- (1) A creditor shall, unless the Court in the particular case otherwise orders, bear his or her own costs of proving a debt.
- (2) The costs in relation to the amendment of a proof of debt under section 92 or 98 shall be borne by the creditor.

Inspection of proofs by creditors etc.

- (1) A creditor is entitled to examine at all reasonable times the proofs of debt of other creditors.
- (2) The trustee shall, upon request in writing by a creditor who has proved a provable debt, supply the creditor with a statement in writing containing the names of the creditors who have lodged proofs of debt, the amount claimed by each such creditor and the amount admitted by the trustee in respect of each such creditor.

Admission or rejection of proofs

- (1) The trustee shall examine each proof of debt and the grounds for the debt sought to be proved and, subject to the power of the Court to extend the time, shall, not later than 14 days after the expiry of the period specified in the notice of intention to declare a dividend as the period within which creditors may lodge their proofs of debt, either:
 - (a) admit the proof of debt in whole;
 - (b) admit it in part and reject it in part;
 - (c) reject it in whole; or
 - (d) require further evidence in support of it.
- (2) Where the trustee rejects a proof of debt in whole or in part or she shall inform the creditor by whom it was lodged, in writing, of the grounds of the rejection.
- (3) Where the trustee considers that a proof of debt has been wrongly admitted, he or she may:
 - (a) revoke the decision to admit the proof of debt and reject it in whole; or
 - (b) amend the decision to admit the proof of debt by increasing or reducing the amount of the admitted debt.
- (4) Where the trustee considers that a proof of debt has been wrongly rejected in whole, he or she may:
 - (a) revoke the decision to reject the proof of debt; and
 - (b) admit the proof of debt in whole or admit the proof of debt in part and reject it in part.
- (5) Where the trustee revokes a decision to admit a proof of debt or rejects it in whole or amends such a decision by reducing the amount of the admitted debt:
 - (a) he or she shall inform the creditor by whom it was lodged in writing, of his or her grounds for the revocation or amendment; and
 - (b) the creditor shall forthwith repay to the trustee any amount received by way of dividend in respect of the proof of debt.

received by way of dividend in respect of the proof of debt any amount received by way of dividend in excess of the amount that the creditor would have been entitled to receive if his or her debt had been originally admitted for the reduced amount, as the case requires.

- (6) Where the trustee revokes a decision to reject a proof of debt in whole, or amends a decision to admit a proof of debt in part by increasing the amount of the admitted debt, the creditor by whom it was lodged is entitled to be paid, out of available money for the time being in the hands of the trustee, the dividends or additional amounts of dividend, as the case may be, that the creditor would have been entitled to receive if the debt had been originally admitted in whole or for the increased amount, as the case may be, before the available money is applied in the payment of a further dividend, but the creditor is not entitled to disturb the distribution of any dividends declared before the trustee revoked or so amended the decision.

Debts to be rounded down to nearest dollar

If the amount of a debt includes cents, the cents must be disregarded in admitting proof of the debt.

Appeal against decision of trustee in respect of proof

- (1) A creditor, or the bankrupt, may apply to the Court for review of a decision of the trustee under subsection 102(1), (3) or (4) in respect of a proof of debt.
- (2) The Court may, upon the application, confirm, reverse or vary a decision of the trustee.
- (3) Subject to the power of the Court to extend the time, an application under this section to review a decision shall not be heard by the Court unless it was made within 21 days from the date on which the decision was made.

Costs of appeal

- (1) The Official Trustee is not personally liable for costs in relation to an application to review a decision made by the Official Trustee under subsection 102(1), (3) or (4) in respect of a proof of debt.
- (2) A registered trustee is not personally liable for such costs unless the Court is of opinion that there are special circumstances that justify an order that the trustee be personally liable.

Trustee may administer oaths etc.

- (1) A trustee may, for the purpose of carrying out his or her duties under this Division, administer oaths and take affirmations and affidavits, but is not entitled to charge a fee in respect of such oath, affirmation or affidavit unless he or she is authorized to do so as a Commissioner for Affidavits.
- (2) This section does not apply in relation to the Official Trustee.

Creditor not to receive more than the amount of his or her debt and interest

Subject to the operation of the provisions of section 91, a creditor is not entitled to receive, in respect of a provable debt, more than the amount of the debt and any interest payable to him or her under this Act.

Part 2—Order of payment of debts

Division A—General

Debts proved to rank equally except as otherwise provided

Except as otherwise provided by this Act, all debts proved in the bankruptcy rank equally and, if the proceeds of the property of the bankrupt are insufficient to meet them in full, they shall be paid proportionately.

Note: The rules under this Subdivision for payments of debts can be affected by proceeds of crime orders and applications for proceeds of crime compensation: see Subdivision B.

Priority payments

- (1) Subject to this Act, the trustee must, before applying the proceeds of the property of the bankrupt in making any other payments, apply those proceeds in the following order:
 - (a) first, in the order prescribed by the regulations, in payment of the taxed costs of the petitioning creditor and the costs, charges and expenses of the administration of the bankruptcy including the remuneration and expenses of the trustee and the costs of any audit carried out under section 70-15 or 70-16 of Schedule 2;
 - (b) second, if the bankrupt had signed an authority under section 188 before the date of the bankruptcy, in payment of
 - (i) the remuneration of the controlling trustee (as defined in section 187); and
 - (ii) the costs, charges and expenses properly and reasonably incurred by the controlling trustee while that authority was in force (including any debts incurred by the controlling trustee that are provable in the bankruptcy);
 - (c) third, in the case of a bankruptcy that occurs within 2 months after a personal insolvency agreement executed by the bankrupt, or a composition or scheme of arrangement accepted by the bankrupt's creditors, has (including at a time before the commencement of this paragraph) been set aside or terminated, in payment of liabilities, commitments, expenses or remuneration referred to in section 114;
 - (d) fourth, in the case of the estate of a deceased debtor whose estate is being administered under Part XI, in payment of proper funeral and testamentary expenses;
 - (e) fifth, in payment of amounts (including amounts payable by way of allowance or reimbursement under a contract of employment or under an industrial instrument, but not including amounts in respect of long service leave, extended leave, annual leave, recreation leave or sick leave), not exceeding in the case of any one employee \$1,500 or such greater amount as is prescribed by the regulations for the purposes of this paragraph, due to or in respect of any employee of the bankrupt, whether remunerated by salary, wages, commission or otherwise, in respect of services rendered to or for the bankrupt before the date of the bankruptcy;
 - (f) sixth, in payment of all amounts due in respect of compensation payable under any law of the Commonwealth or of a State or Territory relating to workers compensation, or compensation the liability for which accrued before the date of the bankruptcy;
 - (g) seventh, in payment of all amounts due to or in respect of

- (g) seventh, in payment of all amounts due to or in respect of any employee of the bankrupt, whether remunerated by salary, wages, commission or otherwise, in respect of long service leave, extended leave, annual leave, recreation leave or sick leave in respect of a period before the date of the bankruptcy;
- (h) eighth, in payment of any sum payable under section 118(1)(b);
- (j) ninth, in payment of:
 - (i) such preferences, priorities or advantages in favour of any creditor or group of creditors as regards any other creditor or group of creditors; and
 - (ii) such costs, charges and expenses incurred in the administration of the interests of creditors before the date of the bankruptcy, as a meeting of the creditors, by special resolution, or otherwise, resolves.

(1A) Subsection (1) has effect subject to:

- (a) section 50 of the *Child Support (Registration and Collection) Act 1988*; and
- (b) former subsections 221YHJ(3), (4) and (5) and 221YHZ(4) and (5) and former section 221YU of the *Income Tax Assessment Act 1936*.

Note: The provisions of the *Income Tax Assessment Act 1936* referred to in paragraph (b) do not apply to liabilities arising after 30 June 1993.

(1B) The reference in paragraph (1)(e) to amounts due in respect of any employee of the bankrupt includes a reference to amounts due in respect of contributions to a fund for the purposes of making provision for the employee's obtaining, superannuation benefits for the employee, or for dependants of the employee.

(1C) The reference in paragraph (1)(e) to amounts due to or in respect of any employee of the bankrupt also includes a reference to amounts due as superannuation guarantee charge (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*), or general interest charge in respect of non-payment of superannuation guarantee charge.

(2) Subject to subsection (3), where a payment has been made by the bankrupt of an amount referred to in paragraph (1)(e) or (g) and the payment was made out of moneys advanced by a person for the purpose of enabling the payment, or such a payment, to be made, the person by whom the moneys were advanced has the same priority in respect of the moneys so advanced as the person to whom the payment was made would have had if the payment had not been made.

(3) The right of priority conferred by subsection (2) in respect of moneys advanced for the purpose referred to in that subsection does not extend to so much of the money so advanced as exceeds the amount by which the amount in respect of which the person to whom the payment was made would have been entitled to priority had not been diminished by reason of the payment.

(5) Paragraph (1)(f) does not apply to the extent to which the bankrupt is indemnified under a contract of insurance against liability referred to in that paragraph.

(6) Where, under a law of the Commonwealth or of a State or Territory that provides for workers compensation, a bankrupt is liable to make a payment to a body or fund by way of reimbursing the body or fund in respect of compensation paid or payable by the body or out of the fund under that law, paragraph (1)(f) does not apply to the amount so payable by the bankrupt.

- (6A) Where compensation payable under a law relating to worker compensation is payable by way of periodical payments, the amount of that compensation shall, for the purposes of paragraph (1)(f), be taken to be the lump sum for which those periodical payments could, if redeemable, be redeemed under law under which those periodical payments are made.
- (8) A payment must not be made under paragraph (1)(j) until 28 days after the day on which the special resolution referred to in that paragraph was passed.
- (9) The bankrupt or a creditor may, before the expiration of the period referred to in subsection (8), apply to the Court to review the decision of the creditors and the Court may, upon the application, make such order as it thinks proper.
- (10) Where in any bankruptcy:
- (a) property has been recovered, realized or preserved under an indemnity for costs of litigation given by a creditor or creditors; or
 - (b) expenses in relation to which a creditor has, or creditors have, indemnified a trustee have been recovered;
- the Court may, upon the application of the trustee or a creditor, make such orders as it thinks just and equitable with respect to the distribution of that property and the amount of those expenses recovered with a view to giving the indemnifying creditor or creditors, as the case may be, an advantage over others in consideration of the risk assumed by creditor or creditors.
- (11) Except as provided in paragraph (1)(a), the debts in each of the classes specified in subsection (1) rank equally between themselves and shall be paid in full unless the proceeds of the property of the bankrupt are insufficient to meet them, in which case they shall be paid proportionately.
- (12) In subsection (11), **debts** includes liabilities, remuneration, commitments and expenses specified in subsection (1).

Debts due to employees

- (1) Where a contract of employment with a bankrupt was subsisting immediately before the date of the bankruptcy, the employee under the contract is, whether or not the employee is a person referred to in subsection (2), entitled to payment under section 109 as if the employee's employment had been terminated by the bankrupt on that date.
- (2) Where, for the purposes of a bankruptcy, a trustee employs a person whose employment by the bankrupt had been terminated for reason of the bankruptcy, that person shall, for the purpose of calculating any entitlement to payment for long service leave, extended leave, annual leave, recreation leave or sick leave, be deemed, while the trustee employs that person for those purposes, to be employed by the bankrupt.
- (3) Subject to subsection (4), where, after the date of a bankruptcy, an amount in respect of long service leave or extended leave becomes due to a person referred to in subsection (2) in respect of the employment so referred to, the amount is a cost of the bankruptcy.
- (4) Where, at the date of a bankruptcy, the length of qualifying service of a person employed by the bankrupt is insufficient to entitle that person to any amount in respect of long service leave

entitled that person to any amount in respect of long service leave extended leave, but, by the operation of subsection (2), that person becomes entitled to such an amount after that date, that amount

- (a) is a cost of the bankruptcy to the extent of an amount that bears to that amount the same proportion as the length of that person's qualifying service after that date bears to the total length of that person's qualifying service; and
- (b) shall, to the extent of the balance of that amount, be deemed to be an amount referred to in paragraph 109(1)(c).

Application of estates of joint debtors

- (1) In the case of joint debtors, whether partners or not, the joint estate shall be applied in the first instance in payment of their debts, and the separate estate of each joint debtor shall be applied in the first instance in payment of his or her separate debts.
- (2) If there is a surplus in the case of any of the separate estates, it shall be dealt with as part of the joint estate and if there is a surplus in the case of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each joint debtor in the joint estate.

Apprenticeship etc. claims

- (1) Where, at the time of the presentation of a petition on which a person became a bankrupt, by virtue of the presentation of which, a person became a bankrupt, a person was apprenticed, or was an articulated clerk, to the bankrupt, the sequestration order or, in the case of a debtor's petition, the presentation of the petition is, if the apprentice or clerk or a person acting on his or her behalf gives notice in writing to the trustee of the apprentice or clerk elects that the indenture of apprenticeship or articles of agreement be discharged, a complete discharge of that indenture or those articles.
- (2) Where such an indenture or such articles are so discharged and any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on application by or on behalf of the apprentice or clerk, pay out of the property of the bankrupt, to or for the use of the apprentice or clerk, such sum as the trustee thinks reasonable, having regard to the amount paid by or on behalf of the apprentice or clerk and to the time during which he or she has served with the bankrupt under the indenture or articles and to the other circumstances of the case.
- (3) The trustee shall, on the application of an apprentice or articulated clerk to the bankrupt, or of a person acting on his or her behalf, execute a transfer of the indenture of apprenticeship or articles of agreement to some other person.

Payment of liabilities etc. incurred under terminated deed etc.

- (1) Where a debtor becomes a bankrupt after a personal insolvency agreement executed by him or her, or a composition or scheme of arrangement accepted by his or her creditors, has, whether before or after the commencement of this Act, been set aside or terminated:
 - (a) any unpaid liabilities incurred in good faith, and any unperformed commitments entered into in good faith, under the terminated agreement, composition or scheme of arrangement by the debtor, the trustee or the debtor;
 - (b) any expenses reasonably incurred in good faith under the

terminated agreement, composition or scheme of arrangement by the trustee, being expenses for which he or she has not been reimbursed; and

- (c) such proportionate part of the unpaid remuneration of trustee as the creditors in relation to the terminated agreement, composition or scheme of arrangement determined by resolution;

are debts provable in the bankruptcy.

- (2) In this section:

the terminated agreement, composition or scheme of arrangement means the agreement, composition or scheme of arrangement that has been set aside or terminated.

Division B—The effect of proceeds of crime orders and applications for proceeds of crime orders

The effect of proceeds of crime orders

- (1) If property of a bankrupt is covered by a restraining order, or forfeiture order, made on or after the date of the bankruptcy, proceeds of property that is covered by the order must not be applied under Subdivision A while that property is so covered.
- (2) If a pecuniary penalty order is made against a bankrupt on or after the date of the bankruptcy, proceeds of any of the property of the bankrupt must not be applied under Subdivision A while the order is in force.

Note: For proceeds of crime orders made before the date of the bankruptcy, see section 58A.

The effect of applications for proceeds of crime orders

- (1) If:
 - (a) an application is made under a proceeds of crime law for a restraining order or a forfeiture order; and
 - (b) if the order were made, it would cover property of a bankrupt (whether the application is made before, on or after the date of the bankruptcy);proceeds of any of the property of the bankrupt that would be covered by the order must not be applied under Subdivision A before the application is finally determined.
- (2) If:
 - (a) an application is made under a proceeds of crime law for a pecuniary penalty order; and
 - (b) the person against whom the order would be made is, or later becomes, a bankrupt;proceeds of any of the property of the bankrupt must not be applied under Subdivision A before the application is finally determined.

Director of Public Prosecutions or Commissioner of the Australian Federal Police must notify the trustee of certain matters

If circumstances arise as a result of which:

- (a) this Subdivision prevents Subdivision A from being applied to the proceeds of property of a bankrupt; or
- (b) this Subdivision no longer prevents Subdivision A from being applied to the proceeds of property of a bankrupt;

the Director of Public Prosecutions (or the Commissioner of the Australian Federal Police, if the Commissioner is the

Australian Federal Police, if the Commissioner is the Commonwealth proceeds of crime authority that is the response authority for the order under the *Proceeds of Crime Act 2002*) must, as soon as practicable, give the trustee written notice of existence of the circumstances.

Division 3—Property available for payment of debts

Division A—General

Commencement of bankruptcy

(1) If a person becomes a bankrupt on a creditor’s petition and subsection (1A) does not apply, then the bankruptcy is taken to have relation back to, and to have commenced at, the time of the commission of the earliest act of bankruptcy committed by the person within the period of 6 months immediately before the date on which the creditor’s petition was presented.

(1A) If:

- (a) a person becomes a bankrupt on a creditor’s petition that was based on breach of a bankruptcy notice; and
- (b) the time for compliance with the notice was extended under subsection 41(7); and
- (c) the Court making the sequestration order considers that the application under subsection 41(7) was frivolous, vexatious or otherwise without substantial merit;

then the bankruptcy is taken to have relation back to, and to have commenced at, the time that would have applied under subsection (1) of this section if the time for compliance had not been extended.

(1B) If a person becomes a bankrupt because of a sequestration order made under Division 6 of Part IV or under Part X, then the bankruptcy is taken to have relation back to, and to have commenced at, the time of the commission of the earliest act of bankruptcy committed by the person within the period of 6 months immediately before the date on which the application for the sequestration order was made.

(2) The bankruptcy of a person who becomes a bankrupt as a result of the acceptance of a debtor’s petition is taken to have relation back to, and to have commenced at, the time indicated in the following table.

Debtor’s petition bankruptcy—time to which bankruptcy has relation back and time bankruptcy commences		
	Circumstances in which debtor’s petition was presented or accepted	Time to which bankruptcy has relation back and time of commencement of bankruptcy
1	Petition accepted by the Official Receiver under a direction of the Court	Time specified by the Court as the commencement of the bankruptcy
2	Petition presented when at least one creditor’s petition was pending against the petitioning debtor (whether alone, as a member of a partnership or as a joint debtor), and accepted by the Official Receiver without a direction from the Court	Time of the commission of the earliest act of bankruptcy on which any of the creditor’s petitions was based
3	Petition presented when no creditor’s petitions were pending but the debtor had committed at least one act of bankruptcy in the past 6 months, and accepted by the Official Receiver without a direction from the Court	Time of commission of the earliest act of bankruptcy within the 6 months before the petition was presented

4	Petition presented when no creditor's petitions were pending and the debtor had not committed any act of bankruptcy in the past 6 months, and accepted by the Official Receiver without a direction from the Court	Time of presentation of the petition
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- (3) A creditor's petition or a sequestration order made on a creditor's petition is not invalid by reason of the commission of an act of bankruptcy before the time when the debt on which the petition was based was incurred.

Property divisible among creditors

- (1) Subject to this Act:

- (a) all property that belonged to, or was vested in, a bankrupt at the commencement of the bankruptcy, or has been acquired or is acquired by him or her, or has devolved or devolves on him or her, after the commencement of the bankruptcy and before his or her discharge; and
- (b) the capacity to exercise, and to take proceedings for exercising all such powers in, over or in respect of property that might have been exercised by the bankrupt for his or her benefit at the commencement of the bankruptcy or at any time after the commencement of the bankruptcy and before his or her discharge; and
- (c) property that is vested in the trustee of the bankrupt's estate by or under an order under section 139D or 139DA;
- (d) money that is paid to the trustee of the bankrupt's estate under an order under section 139E or 139EA; and
- (e) money that is paid to the trustee of the bankrupt's estate under an order under paragraph 128K(1)(b); and
- (f) money that is paid to the trustee of the bankrupt's estate under a section 139ZQ notice that relates to a transaction that is void against the trustee under section 128C; and
- (g) money that is paid to the trustee of the bankrupt's estate under an order under section 139ZU;

is property divisible amongst the creditors of the bankrupt.

- (2) Subsection (1) does not extend to the following property:

- (a) property held by the bankrupt in trust for another person;
- (b) the bankrupt's household property that is:
 - (i) of a kind prescribed by the regulations; or
 - (ii) identified by a resolution passed by the creditors before the trustee realises the property;
- (ba) personal property of the bankrupt that:
 - (i) has sentimental value for the bankrupt; and
 - (ii) is of a kind prescribed by the regulations; and
 - (iii) is identified by a special resolution passed by the creditors before the trustee realises the property;
- (c) the bankrupt's property that is for use by the bankrupt in earning income by personal exertion and:
 - (i) does not have a total value greater than the limit prescribed by the regulations; or
 - (ii) is identified by a resolution passed by the creditors;
 - (iii) is identified by an order made by the Court on an application by the bankrupt;

- (ca) property used by the bankrupt primarily as a means of transport, being property whose aggregate value does not exceed the amount prescribed by the regulations or, if the

should the amount proceeds by the Regulations 67, and if the trustee realises the last-mentioned property the creditor determine by resolution a greater amount in relation to the property, that greater amount;

(d) subject to sections 128B, 128C and 139ZU:

(i) policies of life assurance or endowment assurance in respect of the life of the bankrupt or the spouse or de facto partner of the bankrupt;

(ii) the proceeds of such policies received on or after the date of the bankruptcy;

(iii) the interest of the bankrupt in:

(A) a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or

(B) an approved deposit fund (within the meaning of that Act); or

(C) an exempt public sector superannuation scheme (within the meaning of that Act);

(iv) a payment to the bankrupt from such a fund received on or after the date of the bankruptcy, if the payment is a pension within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

(iva) a payment to the bankrupt under a payment splitting arrangement in Part VIIIB of the *Family Law Act 1975* where:

(A) the eligible superannuation plan involved is a fund or scheme covered by subparagraph (iii); and

(B) the splittable payment involved is not a pension or annuity within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

(v) the amount of money a bankrupt holds in an RSA;

(vi) a payment to a bankrupt from an RSA received on or after the date of the bankruptcy, if the payment is not a pension or annuity within the meaning of the *Retirement Savings Accounts Act 1997*;

(vii) a payment to the bankrupt under a payment splitting arrangement in Part VIIIB of the *Family Law Act 1975* where:

(A) the eligible superannuation plan involved is a fund or scheme covered by subparagraph (iii); and

(B) the splittable payment involved is not a pension or annuity within the meaning of the *Retirement Savings Accounts Act 1997*;

(g) any right of the bankrupt to recover damages or compensation:

(i) for personal injury or wrong done to the bankrupt or spouse or de facto partner of the bankrupt or a member of the family of the bankrupt; or

(ii) in respect of the death of the spouse or de facto partner of the bankrupt or a member of the family of the bankrupt;

and any damages or compensation recovered by the bankrupt (whether before or after he or she became a bankrupt) in respect of such an injury or wrong or the death of such a person;

Note: See also subsection 5(6).

(ga) a payment under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to the bankrupt (whether before or after he or she became a bankrupt and whether or not he or she is the person who suffered the sexual abuse);

abuse to which the payment relates);

(k) amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph;

(l) amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph, where the amounts are paid in circumstances prescribed for the purposes of this paragraph;

(m) prescribed amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph;

(ma) prescribed amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph where the amounts are paid in circumstances prescribed for the purposes of this paragraph;

(mb) amounts paid to the bankrupt by the Commonwealth as compensation in relation to the loss of:

(i) an amount covered by paragraph (k), (l), (m) or (n) or

(ii) property purchased or acquired wholly or partly with such an amount;

(n) property to which, by virtue of subsection (3), this paragraph applies;

(p) amounts paid to the bankrupt under subsection (2C) or

(q) any property that, under an order under Part VIII of the *Family Law Act 1975*, the trustee is required to transfer to a spouse, or a former spouse, of the bankrupt;

(r) any property that, under an order under Part VIIIAB of the *Family Law Act 1975*, the trustee is required to transfer to a former de facto partner of the bankrupt;

(s) the bankrupt's property that is:

(i) a support for the bankrupt that was funded under the National Disability Insurance Scheme (as defined in the *National Disability Insurance Scheme Act 2013*); or

(ii) an NDIS amount (as defined in that Act).

(2B) Where, because of a resolution passed by the creditors, or an order made by the Court, under paragraph (2)(b), (c) or (ca), property that is vested in the trustee ceases at a particular time to be property divisible among the creditors, then, immediately after that time:

(a) the property reverts in the bankrupt;

(b) the trustee is discharged from the trustee's liabilities in respect of the property; and

(c) the bankrupt becomes subject to those liabilities.

(2C) Where:

(a) property used by the bankrupt primarily as a means of transport is vested in the trustee; and

(b) as at the time when the trustee realises that property:

(i) no other property has remained vested in the bankrupt by virtue of paragraph (2)(ca); and

(ii) no other property has, because of a determination of the creditors under paragraph (2)(ca), reverted in the bankrupt by virtue of subsection (2B);

the trustee shall pay to the bankrupt so much of the proceeds realising that property as, when added to the aggregate of the amounts (if any) that the trustee has previously paid to the bankrupt under this subsection, does not exceed the prescribed amount within the meaning of paragraph (2)(ca).

(2D) In subsections (3) and (4):

exempt loan money, in relation to a particular time, means so much of the principal sum of a loan to the bankrupt, or to the bankrupt and another person or other persons, as was repaid, before that time, out of exempt money.

exempt money means money of any of the following kinds:

- (a) an amount to which subsection (1) does not extend because of subparagraph (2)(d)(ii) or (iv);
- (b) damages or compensation of a kind referred to in paragraph (2)(g);
- (c) amounts covered by paragraph (2)(k), (l), (m), (ma) or (mb).

outlay, in relation to property, in relation to a particular time, means all of the following:

- (a) the money paid for the purchase, or used in the acquisition, of the property;
- (b) the money paid before that time in respect of the extensions, alterations and improvements, if any, of the property constructed or made since that purchase or acquisition.

protected money, in relation to a particular time, means:

- (a) exempt money; or
- (b) exempt loan money in relation to that time.

(2E) Nothing in this Act or the *Legislation Act 2003* prevents regulations made for the purposes of paragraph (2)(k), (l), (m) or (ma) from applying to amounts paid before the regulations commence.

(2F) Regulations made for the purposes of paragraph (2)(k), (l), (m) or (ma) may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

(3) Where, at any time, the whole, or substantially the whole, of money paid for the purchase, or used in the acquisition, of particular property is protected money, paragraph (2)(n) applies to the property.

(4) Where, as at the time when the trustee realises particular property to which paragraph (2)(n) does not apply, the outlay in relation to the property is in part protected money and in part exempt money, the trustee shall pay to the bankrupt so much of the proceeds of realising the property as can fairly be attributed to the protected money.

Policies of insurance against liabilities to third parties

(1) Where:

- (a) a bankrupt is or was insured under a contract of insurance against liabilities to third parties; and
- (b) a liability against which he or she is or was so insured has been incurred (whether before or after he or she became bankrupt);

the right of the bankrupt to indemnity under the policy vests in the trustee and any amount received by the trustee from the insurer under the policy in respect of the liability shall, if the liability has not already been satisfied, be paid in full forthwith to the third party to whom it has been incurred.

- (2) Subsection (1) does not limit the rights of the third party in respect of any balance due to him or her after the payment referred to in that subsection has been made.
- (3) This section applies notwithstanding any agreement to the contrary, whether entered into before or after the commencement of this Act.

Execution by creditor against property of debtor who becomes a bankrupt etc.

- (1) Subject to subsection (2), where:
- (a) a creditor has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a debtor:
 - (i) received moneys as a result of execution having been issued by him or her, or on his or her behalf, against property of the debtor, being moneys that are the proceeds of the sale of property of the debtor that has been sold in pursuance of the process or that were seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of the process; or
 - (ii) received moneys as a result of the attachment by him or her, or on his or her behalf, of a debt due to the debtor; and
 - (b) the debtor subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition;

the creditor shall pay to the trustee of the estate of the bankrupt the amount by which the amount of those moneys exceeds the taxed costs of the execution or attachment, as the case may be.

- (2) Subsection (1) does not apply in relation to a creditor who has received moneys as a result of execution having been issued by him or her, or on his or her behalf, against property of a debtor, or as a result of the attachment by him or her, or on his or her behalf, of a debt due to the debtor, in respect of any liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section).
- (3) Where a creditor has, in pursuance of subsection (1), paid to the trustee of the estate of a bankrupt the proceeds of the sale of property or other moneys to the trustee of the estate of a bankrupt, the creditor may prove in the bankruptcy for his or her debt as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.
- (4) Where:
- (a) a creditor has, in pursuance of subsection (1), paid to the trustee of the estate of a bankrupt the proceeds of the sale of property or other moneys that were received as a result of execution having been issued by him or her, or on his or her behalf, against property of the bankrupt or of the attachment by him or her, or on his or her behalf, of a debt due to the bankrupt; and
 - (b) that property or debt would not have been property divisible amongst the creditors of the bankrupt if the bankrupt had become a bankrupt immediately before the execution was issued or the debt was attached, as the case may be;
- the trustee shall pay those proceeds or other moneys to the bankrupt or to a person authorized by the bankrupt in writing for the purpose.

(5) Subject to this section, where notice in writing of the presentation of a creditor's petition against a debtor is given to a creditor:

(a) the creditor shall not take any action or further action, in the case may be, to attach a debt due to the debtor until the petition has been dealt with by the Court or has lapsed; and

(b) if a debt due to the debtor has been attached by the creditor:

(i) the creditor shall forthwith give a written notice of the presentation of the petition to the person liable to pay the debt; and

(ii) the attachment of the debt is suspended until the petition has been dealt with by the Court or has lapsed.

(6) Subject to this section, where notice in writing of the reference to the Court of a debtor's petition against a debtor is given to a creditor:

(a) the creditor shall not take any action or further action, in the case may be, to attach a debt due to the debtor until the Court has dealt with the petition; and

(b) if a debt due to the debtor has been attached by the creditor:

(i) the creditor shall forthwith give a written notice of the presentation of the petition to the person liable to pay the debt; and

(ii) the attachment of the debt is suspended until the Court has dealt with the petition.

(7) Nothing in this section shall be taken to prevent a person liable to pay a debt to a debtor from paying the debt or a part of the debt to the debtor during the suspension, in accordance with subsection (5) or (6), of an attachment of that debt.

(8) A creditor who contravenes, or fails to comply with, subsection (5) or (6) is guilty of contempt of court.

(9) Subject to subsection (10), where:

(a) a creditor has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a debtor obtained a charge or charging order against property of the debtor; and

(b) the debtor subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition;

the charge or charging order, as the case may be, is void as against the trustee in the bankruptcy.

(10) Subsections (5), (6) and (9) do not apply in relation to the attachment of a debt due to a debtor, or to a charge or charging order against property of a debtor, in respect of any liability of a debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section).

(11) Notwithstanding anything contained in this Act, a person who purchases property in good faith:

(a) under a sale by a sheriff in consequence of the issue of a writ of execution against property of a debtor who, after the sale, becomes a bankrupt; or

(b) under a sale in consequence of the enforcement by a creditor of a charge or a charging order against property of a debtor who, after the sale, becomes a bankrupt:

acquires a good title to it as against the trustee of the estate of a bankrupt.

(12) In this section:

charge means a charge created by a law of the Commonwealth of a State or Territory of the Commonwealth upon registration or judgment in any registry.

charging order means a charging order made by a court in respect of a judgment.

duties of sheriff after receiving notice of presentation of creditor's petition etc.

(1) Subject to this section, where notice in writing of the presentation of a creditor's petition against a debtor is given to a sheriff, the sheriff:

(a) shall refrain:

(i) from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and

(ii) from taking any action on behalf of a creditor to attach a debt due to the debtor; and

(b) shall not:

(i) pay to the creditor by whom, or on whose behalf, any process of execution was issued, or to any person on his or her behalf, the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of any such process or

(ii) pay to the creditor, or to any person on his or her behalf, any moneys received as a result of the attachment of the debt due to the debtor;

until the petition has been dealt with by the Court or has lapsed.

(2) Subject to this section, where notice in writing of the referral to the Court of a debtor's petition against a debtor is given to a sheriff, the sheriff:

(a) shall refrain:

(i) from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and

(ii) from taking any action on behalf of a creditor to attach a debt due to the debtor; and

(b) shall not:

(i) pay to the creditor by whom, or on whose behalf, any process of execution was issued, or to any person on his or her behalf, the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of any such process or

(ii) pay to the creditor, or to any person on his or her behalf, any moneys received as a result of the attachment of the debt due to the debtor;

until the Court has dealt with the petition.

(3) Where notice of the presentation of a creditor's petition against a debtor has been given under subsection (1) to a sheriff or notary

debtor has been given under subsection (2) to a sheriff or to the reference to the Court of a debtor's petition against a debtor has been given under subsection (2) to a sheriff, a creditor who issued a process of execution, or on whose behalf a process of execution has been issued, against property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section) may give to the sheriff a written notice setting out details of the maintenance agreement or maintenance order, and, upon the giving of the notice, subsection (1) or (2), as the case may be, ceases to apply in relation to the process of execution or attachment, as the case may be.

(4) Subject to this section, where notice in writing of the presentation of a creditor's petition against a debtor is given to the registrar or other appropriate officer of a court:

(a) to which the proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or

(b) to which moneys have been paid in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor;

any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on his or her behalf until the petition has been dealt with by the Court or has lapsed.

(5) Subject to this section, where notice in writing of the reference to the Court of a debtor's petition against a debtor is given to the registrar or other appropriate officer of a Court:

(a) to which the proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or

(b) to which moneys have been paid in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor;

any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on his or her behalf until the Court has dealt with the petition.

(6) Where notice of the presentation of a creditor's petition against a debtor has been given under subsection (4) to the registrar or other appropriate officer of any court or notice of the reference to the Court of a debtor's petition against a debtor has been given under subsection (5) to the registrar or other appropriate officer of a court, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section) may give to the registrar or other officer a written notice setting out details of the maintenance agreement or maintenance order, and, upon the giving of the notice, subsection (4) or (5), as the case may be, ceases to apply in relation to the process of execution or attachment, as the case may be.

(7) Where a sheriff in pursuance of subsection (1) or (2) refuses

(7) Where a sheriff, in pursuance of subsection (1) or (2), refrains from taking action to sell property of a debtor (being real property) because the debtor becomes a bankrupt and the property vests in the trustee in the bankruptcy, the costs of the execution are a first charge on that property.

(8) A failure by a sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a bankrupt in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

Duties of sheriff after receiving notice of bankruptcy etc.

(1) Where a debtor has become a bankrupt (whether on a creditor's petition or otherwise and whether before or after the commencement of this section), the trustee may give to the sheriff or to the registrar or other appropriate officer of a court, notice in writing of that fact and, upon the giving of the notice:

(a) the sheriff shall deliver or pay to the trustee:

(i) any property of the bankrupt in his or her possession under a process of execution issued by or on behalf of a creditor;

(ii) any proceeds of the sale of property of the bankrupt and other moneys in his or her possession, being proceeds of the sale of property sold, whether before or after the bankrupt became a bankrupt, in pursuance of any such process or moneys seized, or paid to avoid seizure or release of property of the bankrupt, whether before or after the bankrupt became a bankrupt, in pursuance of any such process; and

(iii) any moneys in his or her possession as a result of attachment, by or on behalf of a creditor, of a debt due to the bankrupt; or

(b) the registrar or other officer of the court shall pay to the trustee:

(i) any proceeds of the sale of property of the bankrupt and other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the bankrupt became a bankrupt, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the bankrupt; and

(ii) any moneys in court that have been paid into court whether before or after the bankrupt became a bankrupt in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the bankrupt;

as the case requires.

(2) Where property is, or the proceeds of the sale of property or other moneys are, required by subsection (1) to be delivered or paid to the trustee, the costs of the execution or attachment, as the case may be, are a first charge on that property or those proceeds of sale or other moneys, as the case may be.

(3) For the purpose of giving effect to the charge referred to in subsection (2), the sheriff, registrar or other officer of a court shall retain on behalf of the creditor entitled to the benefit of the charge such amount from the proceeds of sale or other moneys referred to in that subsection as he or she thinks necessary for the purpose.

(4) Where a sheriff, registrar or other officer of a court has, in pursuance of subsection (1), delivered property or paid money to the trustee, the creditor who issued the process of execution or

the trustee, the creditor who issued the process of execution or instituted the attachment proceedings, or on whose behalf the process was issued or the proceedings instituted, as the case may be, may prove in the bankruptcy for his or her debt as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.

(5) Where:

(a) a sheriff, registrar or other officer of a court has, in pursuance of subsection (1), delivered to the trustee property that was seized, or paid to the trustee the proceeds of the sale of property or other moneys that were received, as a result of the issue of execution against property of a bankrupt or the attachment of a debt due to a bankrupt; and

(b) that property or debt would not have been property divisible amongst the creditors of the bankrupt if the bankrupt had become a bankrupt immediately before the execution was issued or the debt attached, as the case may be;

the trustee shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the bankrupt or to a person authorized by the bankrupt in writing for the purpose.

(6) Where:

(a) property has been delivered by a sheriff, or the proceeds of the sale of property or other moneys have been paid by a sheriff, registrar or other officer of a court, to the trustee in the estate of a bankrupt in pursuance of subsection (1); and

(b) the property was in the possession of the sheriff, or the proceeds of the sale of the property or the other moneys were in the possession of the sheriff or paid into court, as the case may be, under or in pursuance of a process of execution issued, or proceedings to attach a debt instituted, by or on behalf of a creditor in respect of a liability of the bankrupt under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section);

the trustee shall deliver that property, or pay those proceeds or other moneys, as the case requires, to that creditor.

(7) A failure by a sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a bankrupt in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

Undervalued transactions

Transfers that are void against trustee

(1) A transfer of property by a person who later becomes a bankrupt (the **transferor**) to another person (the **transferee**) is void against the trustee in the transferor's bankruptcy if:

(a) the transfer took place in the period beginning 5 years before the commencement of the bankruptcy and ending on the date of the bankruptcy; and

(b) the transferee gave no consideration for the transfer or consideration of less value than the market value of the property.

Note: For the application of this section where consideration is given to a third party rather than the transferor, see section 121A.

Exemptions

- (2) Subsection (1) does not apply to:
- (a) a payment of tax payable under a law of the Commonwealth or of a State or Territory; or
 - (b) a transfer to meet all or part of a liability under a maintenance agreement or a maintenance order; or
 - (c) a transfer of property under a debt agreement; or
 - (d) a transfer of property if the transfer is of a kind described in the regulations.
- (3) Despite subsection (1), a transfer is not void against the trustee if:
- (a) in the case of a transfer to a related entity of the transferor:
 - (i) the transfer took place more than 4 years before the commencement of the bankruptcy; and
 - (ii) the transferee proves that, at the time of the transfer, the transferor was solvent; or
 - (b) in any other case:
 - (i) the transfer took place more than 2 years before the commencement of the bankruptcy; and
 - (ii) the transferee proves that, at the time of the transfer, the transferor was solvent.

Rebuttable presumption of insolvency

- (3A) For the purposes of subsection (3), a rebuttable presumption arises that the transferor was insolvent at the time of the transfer if it is established that the transferor:
- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the transferor and as sufficiently disclose the transferor's business transactions and financial position; or
 - (b) having kept such books, accounts and records, has not preserved them.

Refund of consideration

- (4) The trustee must pay to the transferee an amount equal to the value of any consideration that the transferee gave for a transfer that is void against the trustee.

What is not consideration

- (5) For the purposes of subsections (1) and (4), the following have no value as consideration:
- (a) the fact that the transferee is related to the transferor;
 - (b) if the transferee is the spouse or de facto partner of the transferor—the transferee making a deed in favour of the transferor;
 - (c) the transferee's promise to marry, or to become the de facto partner of, the transferor;
 - (d) the transferee's love or affection for the transferor;
 - (e) if the transferee is the spouse, or a former spouse, of the transferor—the transferee granting the transferor a right to live at the transferred property, unless the grant relates to the transfer or settlement of property, or an agreement, under the *Family Law Act 1975*;
 - (f) if the transferee is a former de facto partner of the transferor—the transferee granting the transferor a right to live at the transferred property, unless the grant relates to the transfer or settlement of property, or an agreement, under the *Family Law Act 1975*.

Protection of successors in title

- (6) This section does not affect the rights of a person who acquires property from the transferee in good faith and by giving consideration that was at least as valuable as the market value of the property.

*Meaning of **transfer of property** and **market value***

- (7) For the purposes of this section:
- (a) **transfer of property** includes a payment of money; and
 - (b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person;
 - (c) the **market value** of property transferred is its market value at the time of the transfer.

Transfers to defeat creditors

Transfers that are void

- (1) A transfer of property by a person who later becomes a bankrupt (the **transferor**) to another person (the **transferee**) is void against the trustee in the transferor's bankruptcy if:
- (a) the property would probably have become part of the transferor's estate or would probably have been available to creditors if the property had not been transferred; and
 - (b) the transferor's main purpose in making the transfer was
 - (i) to prevent the transferred property from becoming divisible among the transferor's creditors; or
 - (ii) to hinder or delay the process of making property available for division among the transferor's creditors

Note: For the application of this section where consideration is given to a party rather than the transferor, see section 121A.

Showing the transferor's main purpose in making a transfer

- (2) The transferor's main purpose in making the transfer is taken to be the purpose described in paragraph (1)(b) if it can reasonably be inferred from all the circumstances that, at the time of the transfer, the transferor was, or was about to become, insolvent.

Other ways of showing the transferor's main purpose in making a transfer

- (3) Subsection (2) does not limit the ways of establishing the transferor's main purpose in making a transfer.

Transfer not void if transferee acted in good faith

- (4) Despite subsection (1), a transfer of property is not void against the trustee if:
- (a) the consideration that the transferee gave for the transfer was at least as valuable as the market value of the property; and
 - (b) the transferee did not know, and could not reasonably have inferred, that the transferor's main purpose in making the transfer was the purpose described in paragraph (1)(b); and
 - (c) the transferee could not reasonably have inferred that, at the time of the transfer, the transferor was, or was about to become, insolvent.

Rebuttable presumption of insolvency

- (4A) For the purposes of this section, a rebuttable presumption arises that the transferor was, or was about to become, insolvent at the time of the transfer if it is established that the transferor:
- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the transferor and as sufficiently disclose the transferor's business transactions and financial position; or
 - (b) having kept such books, accounts and records, has not preserved them.

Refund of consideration

- (5) The trustee must pay to the transferee an amount equal to the value of any consideration that the transferee gave for a transfer that is void against the trustee.

What is not consideration

- (6) For the purposes of subsections (4) and (5), the following have no value as consideration:
- (a) the fact that the transferee is related to the transferor;
 - (b) if the transferee is the spouse or de facto partner of the transferor—the transferee making a deed in favour of the transferor;
 - (c) the transferee's promise to marry, or to become the de facto partner of, the transferor;
 - (d) the transferee's love or affection for the transferor;
 - (e) if the transferee is the spouse, or a former spouse, of the transferor—the transferee granting the transferor a right to live at the transferred property, unless the grant relates to a transfer or settlement of property, or an agreement, under the *Family Law Act 1975*;
 - (f) if the transferee is a former de facto partner of the transferor—the transferee granting the transferor a right to live at the transferred property, unless the grant relates to a transfer or settlement of property, or an agreement, under the *Family Law Act 1975*.

Exemption of transfers of property under debt agreements

- (7) This section does not apply to a transfer of property under a debt agreement.

Protection of successors in title

- (8) This section does not affect the rights of a person who acquires property from the transferee in good faith and for at least the market value of the property.

*Meaning of **transfer of property** and **market value***

- (9) For the purposes of this section:
- (a) **transfer of property** includes a payment of money; and
 - (b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person;
 - (c) the **market value** of property transferred is its market value at the time of the transfer.

Transactions where consideration given to a third party

- (1) This section applies if:

- (a) a person who later becomes a bankrupt (the **transferor**) transfers property to another person (the **transferee**); and
 - (b) the transferee gives some or all of the consideration for the transfer to a person (a **third party**) other than the transferor.
- (2) Sections 120 and 121 apply as if the giving of the consideration to the third party were a transfer by the transferor of the property constituting the consideration.
- (3) If the giving of the consideration to the third party is void against the trustee in the transferor's bankruptcy under section 120 or 121, the trustee has the same rights to recover the property constituting the consideration as the trustee would have if the giving of the consideration had actually been a transfer by the transferor of the property constituting the consideration.

Voidance of preferences

- (1) A transfer of property by a person who is insolvent (the **debtor**) in favour of a creditor is void against the trustee in the debtor's bankruptcy if the transfer:
- (a) had the effect of giving the creditor a preference, prior to the transfer, over other creditors; and
 - (b) was made in the period that relates to the debtor, as indicated in the following table.

Periods during which transfers of property may be void		
	Description of petition leading to debtor's bankruptcy	Period during which the transfer was made
1	Creditor's petition	Period beginning 6 months before the presentation of the petition and ending immediately before the date of the bankruptcy of the debtor
2	Debtor's petition presented when at least one creditor's petition was pending against a petitioning debtor or a member of a partnership against which the debtor's petition was presented	Period beginning on the commencement of the debtor's bankruptcy and ending immediately before the date of the bankruptcy of the debtor
3	Debtor's petition presented in any other circumstances	Period beginning 6 months before the presentation of the petition and ending immediately before the date of the bankruptcy of the debtor

- (1A) Subsection (1) applies in relation to a transfer of property by a debtor in favour of a creditor:
- (a) whether or not the liability of the debtor to the creditor is his or her separate liability or is a liability with another person or other persons jointly; and
 - (b) whether or not the property transferred is the debtor's property or is the property of the debtor and one or more persons.
- (2) Nothing in this section affects:
- (a) the rights of a purchaser, payee or encumbrancer in the ordinary course of business who acted in good faith and who gave consideration at least as valuable as the market value of the property; or
 - (b) the rights of a person who is making title through or under a creditor of the debtor in good faith and who gave consideration at least as valuable as the market value of the property; or
 - (c) a conveyance, transfer, charge, payment or obligation of a

debtor executed, made or incurred under or in pursuance of a maintenance agreement or maintenance order; or

(d) a transfer of property under a debt agreement.

(3) The burden of proving the matters referred to in subsection (2) lies upon the person claiming to have the benefit of that subsection.

(4) For the purposes of this section:

(a) a transfer of property is taken to have been made in favour of a creditor if it is made in favour of a person in trust for that creditor; and

(b) a payment of tax, or of any other amount payable to the Commonwealth, or to the Commissioner of Taxation, under an Act because of an Act of which the Commissioner has the general administration, is taken to be made for consideration equivalent in value to the payment and in the ordinary course of business; and

(c) a creditor shall be deemed not to be a purchaser, payee or encumbrancer in good faith if the transfer of property was made under such circumstances as to lead to the inference that the creditor knew, or had reason to suspect:

(i) that the debtor was unable to pay his or her debts when they became due from his or her own money; and

(ii) that the effect of the transfer would be to give him or her a preference, priority or advantage over other creditors.

(4A) A reference in this section (other than subsection (5)) to a creditor of the debtor shall be read as including a reference to a person who would be a creditor of the debtor in relation to a contract, agreement, transaction or other dealing if the contract, agreement, transaction or other dealing were not, in whole or in part, void or unenforceable, or had not been voided in whole or in part, by or under a law of the Commonwealth or of a State or Territory of the Commonwealth.

(5) If a transfer of property is set aside by the trustee in a bankruptcy as a result of this section, the creditor to whom the property was transferred may prove in the bankruptcy as if the transfer had not been made.

(7) In this section:

tax means tax (however described) payable under a law of the Commonwealth or of a State or Territory, and includes, for example, a levy, a charge, and municipal or other rates.

(8) For the purposes of this section:

(a) **transfer of property** includes a payment of money; and

(b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person;

(c) the **market value** of property transferred is its market value at the time of the transfer.

Protection of certain transfers of property against relation back etc.

(1) Subject to sections 118 to 122 (inclusive) and sections 128B to 128C, nothing in this Act invalidates, in any case where a debtor becomes a bankrupt:

(a) a payment by the debtor to any of his or her creditors;

(b) a conveyance, transfer or assignment by the debtor for

- (b) a conveyance, transfer or assignment by the debtor for market value;
- (c) a contract, dealing or other transaction by or with the debtor for market value; or
- (d) any transaction to the extent of a present advance made to an existing creditor;

if:

- (e) the transaction took place before the day on which the debtor became a bankrupt;
 - (f) the person, other than the debtor, with whom it took place did not, at the time of the transaction, have notice of the presentation of a petition against the debtor; and
 - (g) the transaction was in good faith and in the ordinary course of business.
- (2) The burden of proving the matters referred to in paragraph (e), (f) and (g) in relation to a transaction lies upon the person who relies on the validity of the transaction.
- (3) For the purposes of subsection (1), a transaction shall not be deemed not to have been in good faith and in the ordinary course of business by reason only that, at the time of the transaction, the person, other than the debtor, with whom it took place had notice of the commission of an act of bankruptcy by the debtor.
- (4) Nothing in this Act invalidates a payment by a debtor, on or before the date on which he or she became a bankrupt, of, or in respect of, a penalty or fine imposed on him or her by a court in respect of an offence against a law, whether a law of the Commonwealth or not.
- (6) Subject to sections 121, 128B and 128C, nothing in this Act invalidates, in any case where a debtor becomes a bankrupt, a conveyance, transfer, charge, disposition, assignment, payment or obligation executed, made or incurred by the debtor, before the day on which the debtor became a bankrupt, under or in pursuance of a maintenance agreement or maintenance order.
- (7) In this section:
- payment** includes the drawing, making or indorsing of a bill of exchange, cheque or promissory note.
- transaction** includes payment, delivery, conveyance, transfer, assignment, contract or dealing.

Protection of certain payments to bankrupt etc.

- (1) Notwithstanding anything contained in this Act, a payment of money or delivery of property (including a security or a negotiable instrument) to, or in accordance with the order or direction of a person who becomes, or has become, a bankrupt or a person claiming by assignment from him or her is a good discharge to the person paying the money or delivering the property:
- (a) if, in the case of a payment or delivery made before the day on which the first-mentioned person becomes a bankrupt, it is made in good faith and in the ordinary course of business;
 - (b) if, in the case of a payment or delivery made on or after the day on which the first-mentioned person became a bankrupt, it is made in good faith, in the ordinary course of business and without negligence.
- (2) The burden of proving the matters referred to in subsection (1) lies upon the person who relies on the validity of the payment or delivery.

delivery of property.

- (3) For the purposes of this section, a payment or delivery of property shall not be deemed not to have been made in good faith and in the ordinary course of business by reason only that, at the time of the payment or delivery, the person by whom it was made
- (a) knew or had reason to suspect that the person to whom it was made was acting in accordance with whose order or direction, it was made, was unable to pay his or her debts as they became due from his or her own money; or
 - (b) had notice of the commission of an act of bankruptcy by that person or of the presentation of a creditor's petition against that person.

Prescribed accounts of undischarged bankrupt

- (1) Where a prescribed organization has ascertained that a person having an account with it is an undischarged bankrupt, then, unless the prescribed organization is satisfied that the account is on behalf of some other person, it shall forthwith inform the trustee in writing, of the existence of the account and, subject to subsection (2), shall not make any further payments out of the account, except under an order of the Court of which a copy has been served on it or in accordance with written instructions from the trustee.
- (2) If, within 1 month from the date on which the prescribed organization informed the trustee of the existence of the account, a copy of an order of the Court in respect of the account has not been served on the prescribed organization and it has not received written instructions from the trustee within that period in respect of the account, the prescribed organization is entitled to act without regard to any claim or right the trustee may have in respect of the account.
- (2A) This section does not apply in relation to an account held by a bankrupt if the account is a supervised account in relation to that bankrupt.
- (3) In this section:

co-operative society means:

- (a) a society registered or incorporated as a co-operative housing society under a law of a State or Territory; or
- (b) any other society whose principal business consists of borrowing moneys from its members and lending those moneys to its members and that is registered or incorporated under a law of a State or Territory relating to co-operative societies.

prescribed organization means a bank, a co-operative society or any other financial organization of a kind prescribed by the regulations for the purposes of this definition.

supervised account has the meaning given by section 139ZII.

Dealings with undischarged bankrupt in respect of after-acquired property

- (1) A transaction by a bankrupt with a person dealing with him or her in good faith and for valuable consideration in respect of property acquired by the bankrupt on or after the day on which he or she became a bankrupt is, if completed before any intervention by the trustee, valid against the trustee, and any estate or interest in that property which, by virtue of this Act, is vested in the trustee.

shall determine and pass in such manner and to such extent as may be necessary for giving effect to the transaction.

(2) For the purposes of subsection (1), the receipt of any money or security or negotiable instrument from, or in accordance with the order or direction of, a bankrupt by his or her banker, and any payment of money or delivery of a security or negotiable instrument made to, or in accordance with the order or direction of, a bankrupt by his or her banker, shall be deemed to be a transaction by the bankrupt with that banker dealing with him or her for valuable consideration.

(3) The lodging by the trustee of a caveat having the effect of forbidding the registration of an instrument affecting any land or an estate or interest in any land, shall be deemed to be a sufficient intervention for the purposes of this section in relation to a transaction in respect of that land or that estate or interest in that land.

(4) In this section:

banker means an ADI or any other banker.

Limitation of time for making claims by trustee etc.

(1) After the expiration of 20 years from the date on which a person became a bankrupt, a claim shall not be made by the trustee in bankruptcy to any property of the bankrupt, and that property shall, subject to the rights, if any, of a person other than the trustee in respect of the property, be deemed to be vested in the bankrupt or a person claiming through or under him or her, as the case may be.

(2) An action under subsection 118(9) with respect to a charge or a charging order shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.

(3) An action under section 120 with respect to a transfer shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.

(4) An action under section 121 with respect to a transfer of property may be commenced by the trustee of the estate of a bankrupt at any time.

(5) An action under section 122 with respect to a transfer of property shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.

Notice to trustee where identity of vendor etc. with bankrupt in doubt

(1) Where a doubt arises as to the identity with a bankrupt of a person appearing in the title to any property, an intending or actual vendor, mortgagor or lessor of the property or applicant to bring land under the provisions of any law of the Commonwealth or State or Territory of the Commonwealth relating to title to land, a resuming or constructing authority under any law of the Commonwealth or of a State or Territory of the Commonwealth may give to the trustee in the bankruptcy a notice containing particulars of the property in question and of the person whose identity with the bankrupt is in question, and a statement of his or her intention to sell, mortgage or lease, or complete a sale,

not mortgage or lease, mortgage or lease, or complete a sale, mortgage or lease of, the property or to bring the property under the provisions of any law of the Commonwealth or of a State or Territory of the Commonwealth relating to title to land, or to pay compensation in respect of the resumption of the property, as the case may be.

- (2) The trustee may, within 3 months after the notice was given with the Registrar of Titles or Registrar-General or other appropriate officer of the Commonwealth, or of the State or Territory concerned, a memorandum claiming the property in respect of which the notice was given.
- (3) If the trustee does not file a memorandum claiming the property in accordance with subsection (2), he or she is not entitled at a future time to assert his or her title to that property or to make a claim in respect of that property as against the vendor, mortgagee, lessor, applicant or the resuming or constructing authority, as the case may be, or a person claiming under or through the vendor, mortgagor, lessor or applicant.
- (4) The trustee may, at any time before the expiration of the period of 3 months referred to in subsection (2), withdraw a memorandum filed under that subsection.

Division B—Superannuation contributions

Simplified outline

The following is a simplified outline of this Subdivision:

- This Subdivision enables the recovery of superannuation contributions made to defeat the bankrupt's creditors.
- There are 2 types of recoverable contributions:
 - (a) contributions made by a person who later becomes a bankrupt (see section 128B);
 - (b) contributions made by a third party for the benefit of a person who later becomes a bankrupt (see section 128C).
- Superannuation accounts may be frozen for up to 180 days pending the taking of recovery action under section 139ZC or 139ZU.

Superannuation contributions made to defeat creditors—contributor is a person who later becomes a bankrupt

Transfers that are void

- (1) A transfer of property by a person who later becomes a bankrupt (the **transferor**) to another person (the **transferee**) is void against the trustee in the transferor's bankruptcy if:
 - (a) the transfer is made by way of a contribution to an eligible superannuation plan; and
 - (b) the property would probably have become part of the transferor's estate or would probably have been available to creditors if the property had not been transferred; and
 - (c) the transferor's main purpose in making the transfer was:
 - (i) to prevent the transferred property from becoming divisible among the transferor's creditors; or
 - (ii) to hinder or delay the process of making property

available for division among the transferor's creditors

(d) the transfer occurs on or after 28 July 2006.

Showing the transferor's main purpose in making a transfer

- (2) The transferor's main purpose in making the transfer is taken to be the purpose described in paragraph (1)(c) if it can reasonably be inferred from all the circumstances that, at the time of the transfer, the transferor was, or was about to become, insolvent.
- (3) In determining whether the transferor's main purpose in making the transfer was the purpose described in paragraph (1)(c), regard must be had to:
- (a) whether, during any period ending before the transfer, the transferor had established a pattern of making contributions to one or more eligible superannuation plans; and
 - (b) if so, whether the transfer, when considered in the light of that pattern, is out of character.

Other ways of showing the transferor's main purpose in making a transfer

- (4) Subsections (2) and (3) do not limit the ways of establishing the transferor's main purpose in making a transfer.

Rebuttable presumption of insolvency

- (5) For the purposes of this section, a rebuttable presumption arises that the transferor was, or was about to become, insolvent at the time of the transfer if it is established that the transferor:
- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the transferor and as sufficiently disclose the transferor's business transactions and financial position; or
 - (b) having kept such books, accounts and records, has not preserved them.

Refund of contributions tax etc.

(5A) If:

- (a) as a result of subsection (1), a transfer made by way of contribution to an eligible superannuation plan is void against the trustee in the transferor's bankruptcy; and
- (b) any of the following amounts was debited from the contribution:
 - (i) an amount in respect of tax in respect of the contribution;
 - (ii) a fee, or a charge, in respect of the contribution; or
- (c) in compliance with a section 139ZQ notice that relates to the transfer, the trustee of the eligible superannuation plan pays an amount to the trustee in the transferor's bankruptcy; and
- (d) the amount paid in compliance with the section 139ZQ notice exceeds the amount so debited;

the trustee in the transferor's bankruptcy must pay to the trustee of the eligible superannuation plan an amount equal to the amount so debited.

Protection of successors in title

- (6) This section does not affect the rights of a person who acquires property from the transferee in good faith and for at least the market value of the property.

*Meaning of **transfer of property** and **market value***

- (7) For the purposes of this section:
- (a) **transfer of property** includes a payment of money; and
 - (b) a person who does something that results in another person becoming the owner of property that did not previously exist, to be taken to have transferred the property to the other person; and
 - (c) the **market value** of property transferred is its market value at the time of the transfer.

**Superannuation contributions made to defeat creditors—
contributor is a third party**

Transfers that are void

- (1) If:
- (a) a person (the **transferor**) transfers property to another person, (the **transferee**); and
 - (b) the transfer is by way of a contribution to an eligible superannuation plan for the benefit of a person who later becomes a bankrupt (the **beneficiary**); and
 - (c) the transferor did so under a scheme to which the beneficiary was a party; and
 - (d) the property would probably have become part of the beneficiary's estate or would probably have been available to the beneficiary's creditors if the property had not been transferred; and
 - (e) the beneficiary's main purpose in entering into the scheme was:
 - (i) to prevent the transferred property from becoming divisible among the beneficiary's creditors; or
 - (ii) to hinder or delay the process of making property available for division among the beneficiary's creditors; and
 - (f) the transfer occurred on or after 28 July 2006;
- the transfer is void against the trustee in the beneficiary's bankruptcy.

- (2) For the purposes of paragraph (1)(b), disregard a benefit that is payable in the event of the death of a person.

Showing the beneficiary's main purpose in entering into the scheme

- (3) The beneficiary's main purpose in entering into the scheme is taken to be the purpose described in paragraph (1)(e) if it can reasonably be inferred from all the circumstances that, at the time when the beneficiary entered into the scheme, the beneficiary was or was about to become, insolvent.
- (4) In determining whether the beneficiary's main purpose in entering into the scheme was the purpose described in paragraph (1)(e), regard must be had to:
- (a) whether, during any period ending before the scheme was entered into, the transferor had established a pattern of making contributions to one or more eligible superannuation plans for the benefit of the beneficiary; and
 - (b) if so, whether the transfer, when considered in the light of that pattern, is out of character.
- (5) For the purposes of paragraph (4)(a), disregard a benefit that is payable in the event of the death of a person.

Other ways of showing the beneficiary's main purpose in entering into a scheme

- (6) Subsections (3) and (4) do not limit the ways of establishing beneficiary's main purpose in entering into a scheme.

Rebuttable presumption of insolvency

- (7) For the purposes of this section, a rebuttable presumption arises that the beneficiary was, or was about to become, insolvent at the time the beneficiary entered into the scheme if it is established that the beneficiary:

- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the beneficiary and as sufficiently disclose the beneficiary's business transactions and financial position;
- (b) having kept such books, accounts and records, has not preserved them.

Refund of contributions tax etc.

- (7A) If:

- (a) as a result of subsection (1), a transfer made by way of contribution to an eligible superannuation plan is void against the trustee in the beneficiary's bankruptcy; and
- (b) any of the following amounts was debited from the contribution:

- (i) an amount in respect of tax in respect of the contribution;

- (ii) a fee, or a charge, in respect of the contribution; and

- (c) in compliance with a section 139ZQ notice that relates to the transfer, the trustee of the eligible superannuation plan pays an amount to the trustee in the beneficiary's bankruptcy; and

- (d) the amount paid in compliance with the section 139ZQ notice exceeds the amount so debited;

the trustee in the beneficiary's bankruptcy must pay to the trustee of the eligible superannuation plan an amount equal to the amount so debited.

Protection of successors in title

- (8) This section does not affect the rights of a person who acquires property from the transferee in good faith and for at least the market value of the property.

*Meaning of **transfer of property** and **market value***

- (9) For the purposes of this section:

- (a) **transfer of property** includes a payment of money; and
- (b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person;
- (c) the **market value** of property transferred is its market value at the time of the transfer.

Time for making claims by trustee

- (1) An action under section 128B or 128C with respect to a transaction may be commenced by the trustee of a bankrupt's estate at any time.

- (2) A section 139ZQ notice in relation to a transaction that, under

- (2) A section 139ZQ notice in relation to a transaction that, under section 128B or 128C, is void against the trustee of a bankrupt estate must not be given before the commencement of Part 2 of Schedule 1 to the *Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007*.
- (3) A section 139ZQ notice in relation to a transaction that, under section 128B or 128C, is void against the trustee of a bankrupt estate may be given even if the transaction occurred before the commencement of Part 2 of Schedule 1 to the *Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007*.

Superannuation account-freezing notice

Scope

- (1) This section applies in relation to a member of an eligible superannuation plan if the Official Receiver has reasonable grounds to believe that:
- (a) a transaction is void against the trustee of a bankrupt's estate under section 128B or 128C; and
 - (b) either:
 - (i) the whole or a part of the member's superannuation interest is attributable to the transaction; or
 - (ii) the trustee of the bankrupt's estate has made an application for a section 139ZU order that relates to the transaction and the member's superannuation interest.

Giving of freezing notice

- (2) The Official Receiver may, by written notice (a **superannuation account-freezing notice**) given to the trustee of the eligible superannuation plan, direct the trustee of the plan not to:
- (a) cash or debit; or
 - (b) permit the cashing, debiting, roll-over, transfer or forfeiture of;
- the whole or any part of the superannuation interest except:
- (c) for the purposes of complying with a notice under section 139ZQ; or
 - (d) for the purposes of complying with an order under section 139ZU; or
 - (e) for the purposes of charging costs against, or debiting from, the superannuation interest; or
 - (f) for the purposes of giving effect to a family law payment split; or
 - (g) in accordance with the written consent of the Official Receiver given under section 128H; or
 - (h) for the purposes of complying with an order under paragraph 128K(1)(b); or
 - (i) for the purposes of complying with an order under subsection 139ZT(2); or
 - (j) in such circumstances (if any) as are specified in the regulations.
- (3) The superannuation account-freezing notice must set out the facts and circumstances because of which the Official Receiver considers that the Official Receiver has reasonable grounds to believe that:
- (a) the transaction is void against the trustee of the bankrupt estate under section 128B or 128C; and
 - (b) either:

- (i) the whole or a part of the member's superannuation interest is attributable to the transaction; or
- (ii) the trustee of the bankrupt's estate has made an application for a section 139ZU order that relates to the transaction and the member's superannuation interest.

When Official Receiver may give freezing notice

- (4) The Official Receiver may give the superannuation account-freezing notice:
- (a) if the Official Trustee is the trustee of the bankrupt's estate—on the initiative of the Official Receiver; or
 - (b) if a registered trustee is the trustee of the bankrupt's estate—on application by the registered trustee.

When freezing notice comes into force

- (5) The superannuation account-freezing notice comes into force when the notice is given to the trustee of the eligible superannuation plan.

Revocation of superannuation account-freezing notice

Revocation of freezing notice by Official Receiver

- (1) If a superannuation account-freezing notice is in force in relation to a member of an eligible superannuation plan, the Official Receiver may, by written notice given to the trustee of the plan, revoke the superannuation account-freezing notice.
- (2) The Official Receiver may revoke a superannuation account-freezing notice that relates to a member of an eligible superannuation plan:
- (a) if the Official Trustee is the trustee of the bankrupt's estate—on the initiative of the Official Receiver; or
 - (b) if a registered trustee is the trustee of the bankrupt's estate—on application by the registered trustee; or
 - (c) in any case—on application by the member.

Revocation of freezing notice when section 139ZQ notice complies with etc.

- (3) If:
- (a) subparagraph 128E(1)(b)(i) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan; and
 - (b) during the 180-day period after the superannuation account-freezing notice comes into force, a section 139ZQ notice is given in relation to the transaction referred to in paragraph 128E(1)(a);
- the superannuation account-freezing notice is revoked:
- (c) when the trustee of the plan complies with the section 139ZQ notice; or
 - (d) when the section 139ZQ notice is revoked; or
 - (e) when the Court sets aside the section 139ZQ notice.

Revocation of freezing notice if no section 139ZQ notice given within 180 days

- (4) If subparagraph 128E(1)(b)(i) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan, the superannuation account-freezing notice is revoked if:

- (a) 180 days pass after the notice comes into force; and
- (b) no section 139ZQ notice has been given in relation to the transaction referred to in paragraph 128E(1)(a).

Revocation of freezing notice when section 139ZU order complied with etc.

(5) If:

- (a) subparagraph 128E(1)(b)(ii) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan; and
- (b) during the 180-day period after the superannuation account-freezing notice comes into force, a section 139ZU order is made in relation to the transaction referred to in paragraph 128E(1)(a) and in relation to the member's superannuation interest;

the superannuation account-freezing notice is revoked:

- (c) when the trustee of the plan complies with the section 139ZU order; or
- (d) when the section 139ZU order is set aside on appeal.

Revocation of freezing notice when application for section 139ZU order dismissed or withdrawn

(6) If:

- (a) subparagraph 128E(1)(b)(ii) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan; and
- (b) during the 180-day period after the superannuation account-freezing notice comes into force:
 - (i) the Court dismisses an application for a section 139ZU order in relation to the transaction referred to in paragraph 128E(1)(a) and in relation to the member's superannuation interest; or
 - (ii) an application for a section 139ZU order in relation to the transaction referred to in paragraph 128E(1)(a) and in relation to the member's superannuation interest is withdrawn;

the superannuation account-freezing notice is revoked.

Revocation of freezing notice if no section 139ZU order made within 180 days

(7) If subparagraph 128E(1)(b)(ii) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan, the superannuation account-freezing notice is revoked if:

- (a) 180 days pass after the notice comes into force; and
- (b) no section 139ZU order has been made in relation to the transaction referred to in paragraph 128E(1)(a) and in relation to the member's superannuation interest.

Extension of 180-day period

(8) The Court may, on application by the Official Receiver, extend or further extend, the 180-day period referred to in subsection (5) or (7).

(9) The Official Receiver may make an application under subsection (8):

- (a) if the Official Trustee is the trustee of the bankrupt's estate; or

—on the initiative of the Official Receiver; or

(b) if a registered trustee is the trustee of the bankrupt's estate

—on application by the registered trustee.

Copy of superannuation account-freezing notice to be given to trustee etc.

- (1) If the Official Receiver gives or revokes a superannuation account-freezing notice that relates to a member of an eligible superannuation plan:
 - (a) the Official Receiver must give 2 copies of the superannuation account-freezing notice or the revocation notice, as the case may be, to the trustee of the bankrupt's estate; and
 - (b) the trustee must give one of those copies to the member.
- (2) A failure to comply with subsection (1) does not affect the validity of the superannuation account-freezing notice or the revocation notice, as the case may be.

Consent of Official Receiver to the cashing etc. of a superannuation interest

Scope

- (1) This section applies if a superannuation account-freezing notice is in force in relation to a member's superannuation interest.

Consent

- (2) The member may apply in writing to the Official Receiver for the Official Receiver to consent to the cashing, debiting, roll-over, transfer or forfeiture, in whole or in part, of the member's superannuation interest.
- (3) If an application is made under subsection (2), the Official Receiver may, by written notice given to the trustee of the eligible superannuation plan concerned, consent to the cashing, debiting, roll-over, transfer or forfeiture, in whole or in part, of the member's superannuation interest.
- (4) A consent under subsection (3) may be:
 - (a) unconditional; or
 - (b) subject to such conditions (if any) as are specified in the notice of consent.
- (5) If the Official Receiver gives a consent under subsection (3) in relation to a member's superannuation interest, the Official Receiver must give a copy of the consent to the member.

Consultation

- (6) Before giving a consent under subsection (3), the Official Receiver must consult the trustee of the bankrupt's estate.

Review of decisions

- (7) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Official Receiver refusing to give a consent under subsection (3).
- (8) The trustee of the bankrupt's estate may apply to the Administrative Appeals Tribunal for review of a decision of the Official Receiver giving a consent under subsection (3).

Power of Court to set aside superannuation

account-freezing notice

(1) If the Court, on application by:

- (a) a person to whom a superannuation account-freezing notice has been given; or
- (b) the member whose superannuation interest is affected by a superannuation account-freezing notice; or
- (c) any other interested person;

is satisfied that the Official Receiver did not have reasonable grounds to believe that:

- (d) the relevant transaction is void against the trustee of a bankrupt's estate under section 128B or 128C; and
- (e) either:
 - (i) the whole or a part of the relevant member's superannuation interest is attributable to the transaction; or
 - (ii) the trustee of the bankrupt's estate has made an application for a section 139ZU order that relates to the transaction and the relevant member's superannuation interest;

the Court may make an order setting aside the notice.

(2) A superannuation account-freezing notice that has been set aside is taken not to have been given.

Judicial enforcement of superannuation account-freezing notices

(1) If the Court is satisfied that the trustee of an eligible superannuation plan has breached, or is proposing to breach, a superannuation account-freezing notice, the Court may, on application of the trustee of the relevant bankrupt's estate, make any or all of the following orders:

- (a) an order directing the trustee of the plan to comply with that notice;
- (b) an order directing the trustee of the plan to pay to the trustee of the relevant bankrupt's estate an amount not exceeding the money, or the value of the property, received as a result of the transaction referred to in paragraph 128E(1)(b); or
- (c) any other order that the Court thinks appropriate.

(2) The Court may discharge or vary an order granted under this section.

(3) An order by the Court under paragraph (1)(b) is enforceable as if it were an order for the payment of money made by the Court exercising jurisdiction otherwise than under this Act.

Protection of trustee of eligible superannuation plan

(1) No criminal or civil proceedings lie against the trustee of an eligible superannuation plan because of anything done (or not done) by the trustee in good faith:

- (a) in compliance with a superannuation account-freezing notice; or
- (b) in connection with, or incidental to, the trustee's compliance with a superannuation account-freezing notice; or
- (c) in compliance with a section 139ZQ notice; or
- (d) in connection with, or incidental to, the trustee's compliance with a section 139ZQ notice; or
- (e) in compliance with a section 139ZU order; or

- (f) in connection with, or incidental to, the trustee's compliance with a section 139ZU order; or
 - (g) in compliance with a subsection 139ZT(2) order; or
 - (h) in connection with, or incidental to, the trustee's compliance with a subsection 139ZT(2) order; or
 - (i) in compliance with a paragraph 128K(1)(b) order; or
 - (j) in connection with, or incidental to, the trustee's compliance with a paragraph 128K(1)(b) order.
- (2) Anything done (or not done) by the trustee of a regulated superannuation fund, or the trustee of an approved deposit fund in good faith:
- (a) in compliance with a superannuation account-freezing notice; or
 - (b) in connection with, or incidental to, the trustee's compliance with a superannuation account-freezing notice; or
 - (c) in compliance with a section 139ZQ notice; or
 - (d) in connection with, or incidental to, the trustee's compliance with a section 139ZQ notice; or
 - (e) in compliance with a section 139ZU order; or
 - (f) in connection with, or incidental to, the trustee's compliance with a section 139ZU order; or
 - (g) in compliance with a subsection 139ZT(2) order; or
 - (h) in connection with, or incidental to, the trustee's compliance with a subsection 139ZT(2) order; or
 - (i) in compliance with a paragraph 128K(1)(b) order; or
 - (j) in connection with, or incidental to, the trustee's compliance with a paragraph 128K(1)(b) order;

is taken not to be in breach of:

- (k) the *Superannuation Industry (Supervision) Act 1993*; or
 - (l) any standards prescribed under that Act.
- (3) Anything done (or not done) by an RSA provider in good faith:
- (a) in compliance with a superannuation account-freezing notice; or
 - (b) in connection with, or incidental to, the RSA provider's compliance with a superannuation account-freezing notice; or
 - (c) in compliance with a section 139ZQ notice; or
 - (d) in connection with, or incidental to, the RSA provider's compliance with a section 139ZQ notice; or
 - (e) in compliance with a section 139ZU order; or
 - (f) in connection with, or incidental to, the trustee's compliance with a section 139ZU order; or
 - (g) in compliance with a subsection 139ZT(2) order; or
 - (h) in connection with, or incidental to, the trustee's compliance with a subsection 139ZT(2) order; or
 - (i) in compliance with a paragraph 128K(1)(b) order; or
 - (j) in connection with, or incidental to, the trustee's compliance with a paragraph 128K(1)(b) order;

is taken not to be in breach of:

- (k) the *Retirement Savings Accounts Act 1997*; or
- (l) any standards prescribed under that Act.

References to a member of an eligible superannuation plan

References in a provision of this Subdivision to:

- (a) a member of an eligible superannuation plan; and

(b) a bankrupt;
do not imply that the bankrupt may not be the member.

Definitions

In this Subdivision:

approved deposit fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

cached, in relation to a superannuation interest, includes app towards the provision of a pension.

contribution, in relation to an RSA, has the same meaning as the *Retirement Savings Accounts Act 1997*.

costs:

- (a) in relation to a regulated superannuation fund, an approved deposit fund or an RSA—includes:
 - (i) transaction costs; and
 - (ii) government charges; and
 - (iii) taxes and duties; and
 - (iv) charges relating to the management or investment of fund assets or RSA assets, as the case may be; or
- (b) in any other case—includes anything that, under the regulations, is taken to be costs for the purposes of this paragraph.

eligible superannuation plan means any of the following:

- (a) a regulated superannuation fund;
- (b) an approved deposit fund;
- (c) an RSA;
- (d) a public sector superannuation scheme.

family law payment split means a payment split under Part of the *Family Law Act 1975*.

member:

- (a) in relation to a regulated superannuation fund—means member of the fund; or
- (b) in relation to an approved deposit fund—means a depositor in the fund; or
- (c) in relation to an RSA—means the RSA holder; or
- (d) in relation to a public sector superannuation scheme—the meaning given by the regulations.

pension includes:

- (a) a benefit provided by a fund, if the benefit is taken, under the regulations made for the purposes of the definition of **pension** in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*, to be a pension for the purposes of the Act; and
- (b) a benefit provided by a public sector superannuation scheme, if the benefit is taken, under the regulations, to be a pension for the purposes of this definition.

public sector superannuation scheme has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*, but does not include a regulated superannuation fund.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the Retirement Savings Accounts Act 1997.

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

superannuation account-freezing notice means a notice under section 128E.

superannuation interest means an interest in an eligible superannuation plan, but does not include a reversionary interest.

trustee, in relation to an eligible superannuation plan, means

- (a) if the plan is a fund that has a trustee (within the ordinary meaning of that word)—the trustee of the plan; or
- (b) if the plan is an RSA—the RSA provider; or
- (c) if:
 - (i) none of the preceding paragraphs apply; and
 - (ii) a person is identified in accordance with the regulations as the trustee of the plan for the purposes of this definition;the person identified in accordance with the regulations;
- (d) in any other case—the person who manages the plan.

If a person who is not the trustee of an eligible superannuation plan nevertheless has the power to make payments to members of the plan, then references in this Subdivision to the trustee of the plan include references to that person.

withdrawal benefit:

- (a) in relation to a regulated superannuation fund or an approved deposit fund—has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*;
- (b) in relation to an RSA—has the same meaning as in the *Retirement Savings Accounts Regulations 1997*; or
- (c) in relation to a public sector superannuation scheme—the meaning given by the regulations.

Division 4—Realization of property

Section 128F—Trustee to take possession of property of bankrupt

- (1) The trustee shall forthwith take possession of all the property of the bankrupt capable of manual delivery, including all deeds, instruments and documents of the bankrupt.
- (2) The Court may, on the application of the trustee, enforce possession accordingly.
- (3) A person is not entitled, as against the trustee, to withhold possession of the books of account or any papers or documents of the bankrupt relating to the accounts or to any of the examined affairs of the bankrupt or to claim any lien on any such papers or documents.
- (4) If a person has in his or her possession or power any money or security that he or she is not by law entitled to retain as against the bankrupt or the trustee, he or she shall pay or deliver the money or security to the trustee.

(4A) Where:

- (a) moneys are payable to a person under a law of the Commonwealth or of a State or Territory of the Commonwealth;
- (b) that person is a bankrupt or the moneys are payable to person as the legal personal representative of a person who was at the time of his or her death a bankrupt; and
- (c) the moneys constitute property divisible amongst the creditors of the bankrupt or the deceased bankrupt, as the case may be;

those moneys shall, upon demand by the trustee, be paid to the trustee notwithstanding any provision to the contrary in that law.

(4B) A demand under subsection (4A) shall be in accordance with approved form.

(4C) A payment made in pursuance of a demand under subsection (4A) is, to the extent of the amount paid, a valid discharge to the person making the payment as against the bankrupt or the estate of the deceased bankrupt, as the case may be.

(5) A person who does not pay or deliver to the trustee any money or security that he or she is required by subsection (4) or (4A) to pay or deliver is guilty of contempt of court.

(6) If the person so failing to pay or deliver any moneys or security is a corporation, both the corporation and each officer of the corporation who is responsible for the non-compliance are guilty of contempt of court.

Time limit for realising property

(1) This section applies only to:

- (a) property (other than cash) that was disclosed in the bankrupt's statement of affairs; and
- (b) after-acquired property (other than cash) that the bankrupt discloses in writing to the trustee within 14 days after the bankrupt becomes aware that the property devolved on, or was acquired by, the bankrupt.

In this subsection, **cash** includes amounts standing to the credit of a bank account or similar account.

(2) If any such property is still vested in the trustee immediately before the revesting time, then it becomes vested in the bankrupt at the revesting time by force of this section.

(3) Initially, the **revesting time** for property is:

- (a) for property disclosed in the statement of affairs—the beginning of the day that is the sixth anniversary of the day on which the bankrupt is discharged from the bankruptcy; and
- (b) for after-acquired property that is disclosed before the bankrupt is discharged from the bankruptcy—the beginning of the day that is the sixth anniversary of the day on which the bankrupt is discharged; and
- (c) for after-acquired property that is disclosed after the bankrupt is discharged from the bankruptcy—the beginning of the day that is the sixth anniversary of the day on which the bankrupt disclosed the property to the trustee.

(4) If the trustee, before the current revesting time, gives the bankrupt a written notice (an **extension notice**) stating that a later revesting time applies to particular property, then that later time becomes the **revesting time** for that property.

time becomes the **revesting time** for that property.

- (5) There is no limit on the number of extension notices that the trustee may give (either generally or in relation to particular property).
- (6) The time specified in an extension notice must be either:
 - (a) a specified time that is not more than 3 years after the current revesting time; or
 - (b) a time that is reckoned by reference to a specified event (for example, the death of a life tenant), but is not more than 3 years after the happening of that event.
- (7) Any property that becomes vested in the bankrupt under this section thereupon ceases to be subject to section 127.

Eligible judges

- (1) A judge of the Court may, by writing, consent to be declared eligible by the Minister under subsection (2).
- (2) The Minister may, by writing, declare a judge of the Court whose consent is in force under subsection (1) to be an eligible judge for the purposes of this Act.
- (3) An eligible judge has, in relation to the power to issue a warrant under section 130, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

Warrant for seizure of property connected with the bankrupt

- (1) The trustee of a bankrupt's estate may apply to an eligible judge for the issue of a warrant under subsection (2) if the trustee has reasonable grounds for suspecting that there is on or in any premises property (in this section called **relevant property**), being:
 - (a) any of the property of the bankrupt;
 - (b) property that may be connected with, or related to, the bankrupt's examinable affairs; or
 - (c) books (including books of an associated entity of the bankrupt) relevant to any of the bankrupt's examinable affairs.
- (2) On an application under subsection (1), the judge may issue a warrant authorising a constable, together with any other persons named in the warrant:
 - (a) to enter on or into the premises, using such force as is necessary for the purpose and is reasonable in the circumstances;
 - (b) to search the premises for relevant property;
 - (c) to break open, and search for relevant property, any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, on or in the premises;
 - (d) to take possession of, or secure against interference, any relevant property found on or in the premises; and
 - (e) to deliver to the trustee, or to a person authorised in writing by the trustee for the purpose, any property of which possession is taken under the warrant.
- (3) An eligible judge shall not issue a warrant under subsection (2) unless:
 - (a) an affidavit has been furnished to the judge setting out the grounds on which the issue of the warrant is sought;
 - (b) the applicant for the warrant (or some other person) has given to the judge, either orally or by affidavit, such further

given to the judge, either orally or by affidavit, such further information (if any) as the judge requires concerning the grounds on which the issue of the warrant is sought; and

(c) the judge is satisfied that there are reasonable grounds issuing the warrant.

(4) Where an eligible judge issues a warrant under subsection (3) or she shall set out on the affidavit furnished in accordance with subsection (3):

- (a) on which of the grounds specified in the affidavit; and
- (b) on which other grounds (if any);

he or she has relied to justify the issue of the warrant.

(5) A warrant under this section shall:

- (a) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (b) specify a day, not later than 7 days after the day of issue of the warrant, on which the warrant ceases to have effect.

(6) Where, under this section, a person takes possession of property or secures property against interference, a person is not entitled, as against the trustee, to claim a lien on the property, but such lien is not otherwise prejudiced.

(7) Where, under this section, a person takes possession of books or secures books against interference, that person or any other person to whom the books are delivered under paragraph (2)(e):

- (a) may make copies of, or take extracts from, the books;
- (b) may require a person who was a party to the compilation of the books to explain to the best of the person's knowledge and belief any matter about the compilation of the books or to which the books relate;
- (c) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies or extracts from, the books to be made or taken, by or on behalf of the trustee; and
- (d) during that period shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the first-mentioned person or the trustee to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(8) The powers conferred by this section are in addition to, and in derogation of, any other powers conferred by law.

Passing and transfer of property

(1) Subject to this section, and to section 158, where a trustee is appointed by the creditors, the property of the bankrupt passes to and vests in the trustee so appointed on the day on which the appointment takes effect.

(2) Subject to this section, the property of the bankrupt passes to the trustee and vests in the trustee for the time being of his or her continuance in office or, if the Official Trustee becomes the trustee, in the Official Trustee, without any conveyance, assignment or transfer.

(3) Where a law of the Commonwealth or of a State or Territory requires the transmission of property to be registered, and enables the trustee to be registered as the owner of any such property that is part of the property of the bankrupt,

property, notwithstanding that it vests in equity in the trustee virtue of this section, does not vest in the trustee at law until the requirements of that law have been complied with.

Disclaimer of onerous property

(1AA) Where any part of the property of the bankrupt consists of:

- (a) land of any tenure burdened with onerous covenants; or
- (b) property (including land) that is unsaleable or is not readily saleable;

subsection (1) applies.

(1AB) Where:

- (a) any part of the property of the bankrupt consists of property, being neither land nor an interest in land; and
- (b) it may reasonably be expected that the costs, charges and expenses that the trustee would incur in realising the property would exceed the proceeds of realising the property;

subsection (1) applies.

(1) Subject to this section, the trustee may, notwithstanding that he or she has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation to it and notwithstanding, in the case of property the transfer of which is required by a law of the Commonwealth or of a State or Territory of the Commonwealth to be registered, that he or she has not become the registered owner of that property, by writing signed by him or her, at any time disclaim the property.

(1A) Subject to this section, the trustee may at any time, by writing signed by him or her, disclaim any contract that forms part of the property of the bankrupt whether or not the trustee has endeavoured to assign the property or exercised any rights in relation to it.

(2) A disclaimer under subsection (1) or (1A) operates to determine forthwith the rights, interests and liabilities of the bankrupt as to his or her property in or in respect of the property disclaimed, and discharges the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him or her, but does not, except so far as is necessary for the purpose of releasing the bankrupt and his or her property and the trustee from liability, affect the rights or liabilities of any other person.

(3) If a trustee disclaims property whose transfer must be registered under a law of the Commonwealth or of a State or Territory of the Commonwealth, the trustee must give notice of the disclaimer as soon as practicable to the officer who has the function of registering the transfer.

(4) A trustee is not entitled to disclaim a lease without the leave of the Court unless:

- (a) the trustee has given to the lessor and, if the bankrupt has sub-let the whole or any part of the leased property or has mortgaged the lease, to each sub-lessee or mortgagee, 28 days' written notice of his or her intention to disclaim the lease; and
- (b) no person to whom the trustee has given such a notice within 28 days after it was given to the person, by written notice given to the trustee, required the trustee to apply to the Court for leave to disclaim the lease.

(5) The Court may, in relation to an application for leave to disclaim a lease under this section:

- (a) impose such terms as a condition of granting the leave;
- (b) make such orders with respect to fixtures, improvements and other matters arising out of the lease;

as the Court considers just and equitable.

(5A) A trustee is not entitled to disclaim a contract (other than an unprofitable contract) without the leave of the Court.

(5B) The Court may, in relation to an application for leave to disclaim a contract under this section:

- (a) impose such terms as a condition of granting the leave;
- (b) make such orders with respect to matters arising out of the contract;

as the Court considers just and equitable.

(6) Where:

- (a) an application in writing has been made to the trustee or a person interested in property requiring him or her to decide whether he or she will disclaim the property or not; and
- (b) the trustee has, for a period of 28 days after the receipt of the application, or such extended period as is allowed by the Court, declined or neglected to disclaim the property;

the trustee is not entitled to disclaim the property under this section and, in the case of a contract, he or she shall be deemed to have adopted it.

(7) The Court may, on the application of a person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court considers just and equitable.

(8) Damages so payable may be proved as a debt in the bankruptcy.

(9) The Court may, on application by a person either claiming an interest in, or being under a liability not discharged by this Act in respect of, disclaimed property, and after hearing such person if it thinks fit, make an order, on such terms as the Court considers just and equitable, for the vesting of the property in, or delivery of the property to, a person entitled to it or a person in whom, or in whom, it seems to the Court to be just and equitable that it should be vested or delivered, or a trustee for that person.

(10) Subject to subsection (11), where an order vesting property in a person is made under subsection (9), the property to which it relates vests forthwith in the person named in the order for that purpose without any conveyance, transfer or assignment.

(11) Where:

- (a) the property to which such an order relates is property the transfer of which is required by a law of the Commonwealth or of a State or Territory of the Commonwealth to be registered; and

(b) that law enables the registration of such an order;
the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of that law have been complied with.

(12) A person aggrieved by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the

section shall be deemed to be a creditor of the bankrupt to the extent of any loss he or she has suffered by reason of the disclosure and may prove the loss as a debt in the bankruptcy.

(13) In this section:

mortgage includes charge.

mortgagee includes the person entitled to the benefit of a charge.

Powers exercisable at discretion of trustee

(1) Subject to this Act, the trustee may do all or any of the following things:

(a) sell all or any part of the property of the bankrupt;

(aa) accept, without terms or conditions, or subject to terms or conditions, a sum of money payable at a future time as the whole or part of the consideration or part of the consideration for the sale of any property of the bankrupt;

(ab) lease any property of the bankrupt;

(ac) divide among the creditors, in its existing form and according to its estimated value, property that, by reason of its peculiar nature or other special circumstances, cannot reasonably or advantageously be sold;

(b) carry on a business of the bankrupt so far as may be necessary to dispose of it or wind it up for the benefit of creditors;

(c) postpone the winding-up of the estate;

(d) prove in respect of any debt due to the bankrupt;

(da) mortgage or charge any of the property of the bankrupt for the purpose of raising money for the payment of the debts provable in the bankruptcy;

(e) compromise any debt claimed to be due to the bankrupt or any claim by the bankrupt;

(f) make a compromise with a creditor or a person claiming to be a creditor in respect of a debt provable, or claimed to be provable, in the bankruptcy;

(g) make a compromise in respect of any claim arising out of the administration of the estate of the bankrupt, whether the claim is made by or against the trustee;

(h) deal with property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt could deal with it if he or she were not a bankrupt;

(i) obtain such advice or assistance as he or she considers desirable relating to the administration of the estate or to the conduct or affairs of the bankrupt;

(ia) refer any dispute to arbitration;

(j) bring, institute or defend any action or other legal proceeding relating to the administration of the estate;

(k) execute powers of attorney, deeds or other instruments for the purpose of carrying the provisions of this Act into effect and

(m) employ the bankrupt:

(i) to superintend the management of the whole, or any part, of the property of the bankrupt;

(ii) to carry on the bankrupt's trade or business for the benefit of the bankrupt's creditors; or

(iii) to assist in any other way in administering the property of the bankrupt;

and, in consideration of the bankrupt's services, make

allowance to the bankrupt out of the estate as the trustee considers reasonable;

(ma) make such allowance out of the estate as he or she thinks just to the bankrupt, the spouse or de facto partner of the bankrupt or the family of the bankrupt;

Note: See also subsection 5(6).

(n) superintend the management of the whole, or a part, of property of the bankrupt;

(o) administer the property of the bankrupt in any other way.

(1A) An allowance made to the bankrupt in pursuance of paragraph (m) may be reduced by the Court upon the application of an interested person.

(3) Subject to this Act, the trustee may use his or her own discretion in the administration of the estate.

Right to pay off mortgages

(1) Where any property of the bankrupt is subject to a mortgage, the trustee may, upon giving 6 months' notice in writing to the mortgagee of his or her intention to do so or upon paying 6 months' interest in lieu of notice, require the mortgagee to discharge the mortgage notwithstanding that the due time for payment of the moneys owing under the mortgage has not arrived and, upon tender of the moneys secured by the mortgage and, if appropriate, interest in lieu of notice, the mortgagee is bound to execute such documents as are necessary in consequence of the payment.

(2) The rights conferred on the trustee by subsection (1) are in addition to any rights to pay off the whole or part of the money secured by the mortgage before the due time conferred on the mortgagor by the mortgage instrument or by a law of a State or Territory of the Commonwealth.

Right of trustee to inspect goods held as security

(1) Where goods of a bankrupt are held by a person by way of security, the trustee may, after giving notice in writing of his or her intention to do so, inspect the goods.

(2) Where notice has been given under subsection (1), the person holding the goods is not entitled to realize his or her security until he or she has given the trustee a reasonable opportunity of inspecting the goods and of exercising his or her right of redemption if he or she thinks fit to do so.

(3) Nothing in this section affects the rights or title of a bona fide purchaser for value who purchased, or entered into an agreement to purchase, goods held by way of security without notice of the fact that the person from whom the goods were purchased or to whom the agreement to purchase the goods was made had received a notice under this section.

Limitation of trustee's power in respect of copyright, patents etc.

(1) Where:

(a) the property of a bankrupt includes rights in respect of industrial property; and

(b) the bankrupt is liable to pay royalties or a share of profits to a person in respect of those rights;

the trustee is not entitled:

- (c) to exercise those rights except upon condition that he or she pays to that person such sums by way of royalty or share of profits as would have been payable by the bankrupt; or
- (d) without the consent of that person or of the Court, to assign or transfer, or grant any licence or permission in respect of those rights, except upon terms that will secure to that person payments by way of royalty or share of profits at a rate not less than that at which the bankrupt was liable to pay.

(2) In this section:

industrial property means:

- (a) the copyright in any work;
- (b) a patent in respect of an invention;
- (c) a registered trade mark; or
- (d) the copyright in a registered design.

registered design means a design registered under a law of the Commonwealth relating to industrial designs.

registered trade mark means a trade mark registered under a law of the Commonwealth relating to trade marks.

Protection of trustee from personal liability in certain cases

(1) Where:

- (a) the trustee has seized or disposed of any goods in the possession or on the premises of a bankrupt without notice of any claim by any person in respect of those goods; and
- (b) the goods were not, at the date of the bankruptcy, the property of the bankrupt;

the trustee is not personally liable for any loss or damage arising from the seizure or disposal, or for the costs of proceedings taken in respect of the seizure or disposal, unless the court in which claim is made is of the opinion that the trustee has been guilty of negligence in respect of the seizure or disposal.

(2) The trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory of the Commonwealth upon or in respect of property forming part of the estate of the bankrupt, being rates, land tax or municipal or other statutory charges that fall due on or after the date of the bankruptcy, except to the extent, if any, of the rents and profits received by the trustee in respect of that property on or after the date of the bankruptcy.

(3) Where a trustee of the estate of a bankrupt carries on a business previously carried on by the bankrupt, he or she is not personally liable for any payment in respect of long service leave or extended leave for which the bankrupt was liable or for any payment in respect of long service leave or extended leave to which a person employed by him or her in his or her capacity as trustee of the estate of the bankrupt, or the legal personal representative of a person, becomes entitled after the date of the bankruptcy.

(4) This section does not affect any liability of the trustee of the estate of a bankrupt other than personal liability.

Section 4A—Orders in relation to property of entity controlled by bankrupt or from which bankrupt derived a benefit

Trustee may apply to Court

The trustee of a bankrupt's estate may, at any time within 6 months after the date of the bankruptcy, apply to the Court for an order under this Division in relation to an entity (in this Division called the **respondent entity**).

Application to be served on respondent entity

An applicant under section 139A:

- (a) shall serve the application on the respondent entity; and
- (b) may serve the application on any other person or entity.

Who may appear at hearing

At the hearing of an application under section 139A:

- (a) the respondent entity may; and
- (b) any other person or entity may, with the leave of the Court, appear, adduce evidence and make submissions.

Definition of *examinable period*

- (1) For the purposes of this Division, the **examinable period** is
 - (a) in the case of an application for an order in relation to a related entity of the bankrupt—the period beginning:
 - (i) if, at a time or times during the period of 1 year beginning 5 years before the commencement of the bankruptcy, the bankrupt became insolvent—at that time or at the first of those times, as the case may be; or
 - (ii) in any other case—4 years before the commencement of the bankruptcy;and ending on the day on which the application is made;
 - (b) in any other case—the period beginning:
 - (i) if, at a time or times during the period of 3 years beginning 5 years before the commencement of the bankruptcy, the bankrupt became insolvent—at that time or at the first of those times, as the case may be; or
 - (ii) in any other case—2 years before the commencement of the bankruptcy;and ending on the day on which the application is made;
- (2) For the purposes of subparagraphs (1)(a)(i) and (b)(i), a rebuttable presumption arises that a bankrupt became insolvent at a time during the period referred to in the relevant subparagraph if it is established that the bankrupt:
 - (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the transferor and as sufficiently disclose the transferor's business transactions and financial position; or
 - (b) having kept such books, accounts and records, has not preserved them.

Order relating to property of entity other than a natural person

- (1) Where, on an application under section 139A for an order in relation to a respondent entity other than a natural person, the Court is satisfied that:
 - (a) the bankrupt supplied personal services to, or for or on behalf of, the respondent entity at a time or times, during the examinable period and before the end of the bankruptcy, the bankrupt controlled the entity in relation to the supply of those services;

- (b) either:
 - (i) the bankrupt received for those services no remuneration in money or other property; or
 - (ii) the remuneration in money or other property that bankrupt received for those services was substantially in amount or value than a person supplying those services in similar circumstances might reasonably be expected to have received if the person had dealt with the entity at arm's length in relation to the supply of those services;
 - (c) during the examinable period, the entity acquired an estate in particular property as a direct or indirect result of, or connected with, matters including, the supply by the bankrupt of those services;
 - (d) the bankrupt used, or derived (whether directly or indirectly) a benefit from, the property at a time or times during the examinable period when the bankrupt controlled the entity in relation to the property; and
 - (e) the entity still has an estate in the property;
- subsections (2) and (3) have effect, whether or not the bankrupt has ever had an estate in the property.

- (2) The Court may, by order, vest in the applicant:
 - (a) the entity's estate in the whole, or in a specified part, of the property; or
 - (b) a specified estate in the whole, or in a specified part, of the property, being an estate that could, by virtue of the entity's estate in the property, be so vested by or on behalf of the entity.
- (3) The Court may make an order directing:
 - (a) the execution of an instrument;
 - (b) the production of documents of title; or
 - (c) the doing of any other act or thing;

in order to give effect to an order under this section made on the application.

Order relating to property of natural person

If, on an application under section 139A for an order in relation to a respondent entity that is a natural person, the Court is satisfied that:

- (a) during the examinable period, the entity acquired an estate in particular property as a direct or indirect result of financial contributions made by the bankrupt during that period; and
 - (b) the bankrupt used, or derived (whether directly or indirectly) a benefit from, the property at a time or times during the examinable period; and
 - (c) the entity still has the estate in the property;
- the Court may make an order of a kind referred to in subsections 139D(2) and (3), whether or not the bankrupt has had an estate in the property.

Order relating to net worth of entity other than a natural person

- (1) Where, on an application under section 139A for an order in relation to a respondent entity other than a natural person, the Court is satisfied that:
 - (a) the bankrupt supplied personal services to, or for or on behalf of, the respondent entity at a time or times, during

examinable period and before the end of the bankruptcy, the bankrupt controlled the entity in relation to the supply of those services;

(b) either:

(i) the bankrupt received for those services no remuneration in money or other property; or

(ii) the remuneration in money or other property that the bankrupt received for those services was substantially in amount or value than a person supplying those services in similar circumstances might reasonably be expected to have received if the person had dealt with the entity at arm's length in relation to the supply of those services;

(c) the entity's net worth at a particular time during the examinable period exceeded by a substantial amount what might reasonably be expected to have been the entity's net worth at the last-mentioned time if those services had not been supplied;

subsection (2) has effect.

(2) The Court may by order direct:

(a) if the entity is a partnership—a partner or partners in the partnership; or

(b) in any other case—the entity;

to pay to the applicant a specified amount not exceeding the amount referred to in paragraph (1)(c).

Order relating to increase in value of property of natural person

If, on an application under section 139A for an order in relation to a respondent entity that is a natural person, the Court is satisfied that:

(a) during the examinable period, the value of the entity's interest in particular property increased as a direct or indirect result of financial contributions made by the bankrupt during that period; and

(b) the bankrupt used, or derived (whether directly or indirectly) a benefit from, the property at a time or times during the examinable period;

the Court may, by order, direct the entity to pay to the applicant a specified amount not exceeding the amount by which the value of the entity's interest in the property increased as a result of the financial contributions made by the bankrupt.

Court to take account of interests of other persons

(1) In considering whether or not to make under section 139D or 139DA a particular order relating to property in which the respondent entity has an estate, the Court shall take account of

(a) the nature and extent of any estate that any other person or entity has in the property and any hardship that the order might cause that other person or entity; and

(b) the respondent entity's current net worth and any hardship the order might cause the respondent entity's creditors.

(2) In considering whether or not to make a particular order under section 139E or 139EA, the Court shall take account of the respondent entity's current net worth and any hardship the order might cause the entity's creditors.

Giving effect to orders under this Division

giving effect to orders under this Division

- (1) Where:
 - (a) the Court makes an order under section 139D or 139DA vesting in a person an estate in property; and
 - (b) a law of the Commonwealth, of a State, or of a Territory or the Commonwealth, requires the creation, transfer or transmission of estates in that property to be registered; that estate vests in equity in the person by virtue of the order does not so vest at law until the requirements of that law have complied with.
- (2) Where the Court makes under section 139D or 139DA an order directing the execution of an instrument and:
 - (a) a person has refused or failed to comply with the direction or
 - (b) for any other reason, the Court thinks it necessary to exercise its powers under this subsection;the Court may, by order, appoint the Registrar:
 - (c) to execute the instrument in the name of a person; and
 - (d) to do all acts and things necessary to give effect to the instrument.
- (3) An order by the Court under section 139E or 139EA is enforceable as if it were an order for the payment of money made by the Court when exercising jurisdiction otherwise than under this Act.

Entity entitled to claim in bankruptcy

- (1) Where, on an application under section 139A, the Court makes an order under section 139D or 139DA vesting in the applicant an estate in property, or an order under section 139E or 139EA directing the payment of a specified amount to the applicant, the respondent entity may claim for dividend in the bankruptcy in respect of the value of that property as at the making of the order or in respect of the specified amount, as the case may be.
- (2) A claim under subsection (1) shall be postponed until all claims of the other creditors (including claims for interest on interest-bearing debts in respect of a period after the date of the bankruptcy but not including claims under subsection 120(4)) have been satisfied.

Division 4B—Contribution by bankrupt and recovery of property

Division A—Preliminary

Objects of Division

The objects of this Division are:

- (a) to require a bankrupt who derives income during the bankruptcy to pay contributions towards the bankrupt's estate and
- (b) to enable the recovery of certain money and property for the benefit of the bankrupt's estate.

Division B—Interpretation

Definitions

In this Division, unless the contrary intention appears:

actual income threshold amount, at the time an assessment

base income threshold amount, at the time an assessment

made in relation to a contribution assessment period, means:

- (a) if the bankrupt does not have any dependants at that time—the base income threshold amount; or
- (b) if the bankrupt has one dependant at that time—the base income threshold amount increased by 18%; or
- (c) if the bankrupt has 2 dependants at that time—the base income threshold amount increased by 27%; or
- (d) if the bankrupt has 3 dependants at that time—the base income threshold amount increased by 32%; or
- (e) if the bankrupt has 4 dependants at that time—the base income threshold amount increased by 34%; or
- (f) if the bankrupt has more than 4 dependants at that time—the base income threshold amount increased by 36%.

assessment, in relation to a contribution assessment period, means the original assessment or a subsequent assessment in respect of that period.

base income threshold amount, at the time when an assessment is made in relation to a contribution assessment period, means:

- (a) for a contribution assessment period of one year—3.5 times the amount that, at that time, is specified in column 3, item 1064-B1, Pension Rate Calculator A, in the *Social Security Act 1991*; or
- (b) for a contribution assessment period less than one year—a proportionally smaller amount based on the number of whole days in the period.

contribution assessment period, in relation to a bankrupt, means a period that:

- (a) begins on the day the bankrupt becomes a bankrupt or the anniversary of that day during the bankruptcy; and
- (b) ends one year after that day or anniversary, as the case requires, or if the bankrupt is discharged or the bankruptcy annulled within that year, ends upon the discharge or annulment.

dependant, in relation to a bankrupt in relation to a contribution assessment period, means a person who satisfies all the following conditions:

- (a) the person resides with the bankrupt;
- (b) the person is wholly or partly dependent on the bankrupt for economic support;
- (c) the income derived (or likely to be derived) by the person during the contribution assessment period is not more than the amount prescribed by the regulations for the purposes of this paragraph.

For the purposes of this definition, **income** has its ordinary meaning.

derived means earned, derived or received from any source, whether within or outside Australia.

income, in relation to a bankrupt, has the meaning given by section 139L.

income tax includes Medicare levy.

original assessment, in relation to a contribution assessment period, means the assessment made by the trustee under subsection 139W(1) in respect of that period.

spouse, in relation to a bankrupt, includes a de facto partner of a bankrupt.

subsequent assessment, in relation to a contribution assessment period, means an assessment made by the trustee under subsection 139W(2) in respect of that period.

value, in relation to property referred to in a notice, means the market value of the property when the notice is given.

Division C—Income

Meaning of income

(1) In this Division:

income, in relation to a bankrupt, has its ordinary meaning, subject to the following qualifications:

(a) the following are income in relation to a bankrupt (whether or not they come within the ordinary meaning of “income”):

(i) an annuity or pension paid to the bankrupt from a provident, benefit, superannuation, retirement or approved deposit fund;

(ia) an annuity or pension paid to the bankrupt from a superannuation fund or a registered superannuation plan (RSA);

(ii) a payment to the bankrupt in consequence of a termination of any office or employment;

(iii) an amount of annuity or pension received by the bankrupt under a policy of life insurance or endowment insurance;

(iv) an amount received by the bankrupt as a beneficiary under a trust to the extent that the amount was paid out of the income of the trust;

(v) the value of a benefit that:

(A) is provided in any circumstances by any person (the **provider**) to the bankrupt; and

(B) is a benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986* as in force at the beginning of 1 July 1992 (other than a benefit that would be an exempt benefit for the purposes of that Act if the provider were the employer of the bankrupt as an employee and the provider had provided the benefit in respect of the employment of the bankrupt);

being that value as worked out in accordance with the provisions of that Act but subject to any modifications made by any provisions of that Act made by the regulations under this Act;

(vi) the value of a loan made to the bankrupt by an associated entity of the bankrupt, including:

(A) a loan under which the loan money is not paid to the bankrupt, but is paid or applied at the direction of the bankrupt’s direction; and

(B) a loan that is not enforceable at law or in equity;

(vii) the amount of any money, or the value of any other consideration, received by a person other than the bankrupt from another person as a result of work done or services performed by the bankrupt, less any expense (other than expenses of a capital nature) necessarily incurred by the first-mentioned person in connection with the work or services.

the work of services;

(b) the following are not income in relation to a bankrupt (if they come within the ordinary meaning of “income”):

(i) an amount paid to the bankrupt:

(A) from the Child Support Account established under the *Child Support (Registration and Collection) Act 1988*; or

(B) from another source for the maintenance of children of whom the bankrupt has custody; or

(iv) a payment to the bankrupt under:

(A) a legal aid scheme or service established under a law of the Commonwealth or of a State or Territory of the Commonwealth; or

(B) a legal aid scheme or service approved by the Attorney-General for the purposes of paragraph

(a) of the Federal Court of Australia Regulation

(C) any other legal aid scheme or service established to provide assistance to people on low incomes;

(v) a payment or amount that the regulations provide is not income of the bankrupt.

pension includes a pension within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

(2) For the purposes of the application of the definition of **income** in subsection (1) to Subdivision HA, a reference in that definition to **bankrupt** includes a reference to a person who has been discharged from bankruptcy.

Note: Subdivision HA deals with the supervised account regime.

Derivation of income

(1) Income is taken to be derived by a bankrupt for the purpose of this Division even though it is not actually received by the bankrupt because:

(a) an amount is deducted from it, or it is wholly or partly otherwise applied, under a law of the Commonwealth, of a State or of a Territory; or

(b) it is reinvested, accumulated or capitalised; or

(c) it is dealt with on behalf of the bankrupt or as the bankrupt directs.

(2) A reference in this Division to the income that a bankrupt is likely to derive during a contribution assessment period includes a reference to income that the bankrupt has derived during that period.

(3) A reference in this Division to income derived by a bankrupt during a contribution assessment period includes a reference to income so derived in respect of work done or services performed by the bankrupt before that period or work to be done or services to be performed by the bankrupt after that period.

Income varied by income tax payments and refunds and child support payments

(1) The income that is likely to be derived, or was derived, by a bankrupt during a contribution assessment period:

(a) is taken to be reduced by:

(i) any amount that the bankrupt pays or is likely to be liable to pay, or paid or was liable to pay, as the case

liable to pay, or paid or was liable to pay, as the case may be, during that period in respect of income tax (but not including any amount that is in respect of a provable claim) and

(iii) if the bankrupt pays or is likely to be liable to pay, or paid or was liable to pay, as the case may be, during that period an amount for the support of a child pursuant to a maintenance agreement entered into under the *Family Law Act 1975* or under a maintenance order—so much of that amount as does not exceed the maximum amount that, for that agreement or order, the bankrupt could be, or could have been, liable to pay during that period in respect of child support under the *Child Support (Assessment) Act 1989*; and

(b) is taken to be increased by any amount that the bankrupt receives or is likely to receive, or received or was entitled to receive, as the case may be, during that period as a refund of income tax.

(2) A refund is not taken into account under paragraph (1)(b) if it relates to a year of income that ended before the date of the bankruptcy.

(3) If a refund relates to a year of income that commenced before but ended after, the date of the bankruptcy, then it is taken into account under paragraph (1)(b) only to the extent that the refund is attributable to the part of the year of income after the date of the bankruptcy. For this purpose, the refund is apportioned on a time basis.

Division D—Liability of bankrupt to pay contributions

Liability of bankrupt to pay contribution

(1) Subject to section 139Q, if the income that a bankrupt is likely to derive during a contribution assessment period as assessed by the trustee under an original assessment exceeds the actual income threshold amount applicable in relation to the bankrupt when that assessment is made, the bankrupt is liable to pay to the trustee a contribution in respect of that period.

(2) Subject to section 139Q, if the income that a bankrupt is likely to derive during a contribution assessment period as assessed by the trustee under an original assessment does not exceed the actual income threshold amount applicable in relation to the bankrupt when that assessment is made, the bankrupt is not liable to, but may if he or she so wishes, pay to the trustee a contribution in respect of that period.

Change in liability of bankrupt

(1) If the income that a bankrupt is likely to derive, or derived, during a contribution assessment period as assessed by the trustee under a subsequent assessment exceeds the actual income threshold amount applicable in relation to the bankrupt when that subsequent assessment is made, the bankrupt is liable to pay to the trustee a contribution in respect of that period.

(2) The liability of the bankrupt under subsection (1) in respect of a contribution assessment period is in substitution for any liability of the bankrupt in respect of that period under subsection 139P(1) or under any previous application of subsection (1) of this section and has effect despite subsection 139P(2).

(3) If the income that a bankrupt is likely to derive, or derived, during a contribution assessment period as assessed by the trustee under a subsequent assessment does not exceed the actual income threshold amount applicable in relation to the bankrupt when the subsequent assessment is made:

- (a) the bankrupt is not liable to, but may if he or she so wishes, pay to the trustee a contribution in respect of that income;
- (b) any liability that the bankrupt had under subsection 139P or under subsection (1) of this section to pay a contribution in respect of that period is extinguished.

Liability not affected by subsequent discharge

Any liability of a bankrupt under section 139P or 139Q is not affected by his or her discharge from bankruptcy after the making of the assessment that gave rise to the liability.

Contribution payable by bankrupt

The contribution that a bankrupt is liable to pay in respect of a contribution assessment period is the amount worked out in accordance with the formula:

$$\frac{\text{Assessed income} - \text{Actual income threshold amount}}{2}$$

where:

Assessed income means the amount assessed by the trustee to be the income that the bankrupt is likely to derive, or derived, during the contribution assessment period.

Actual income threshold amount means the actual income threshold amount assessed by the trustee to be applicable in relation to the bankrupt when the assessment is made.

Determination of higher income threshold in cases of hardship

(1) If:

- (a) the trustee has made an assessment of a contribution to which the bankrupt is liable to pay to the trustee for a contribution assessment period; and
- (b) the bankrupt considers that, if required to pay that contribution, he or she will suffer hardship for a reason or reasons set out in subsection (2);

the bankrupt may apply in writing to the trustee for the making of a determination under this section for that period.

(2) The reasons are as follows:

- (a) the bankrupt or a dependant of the bankrupt suffers from illness or disability that requires on-going medical attention and the supply of medicines, and the bankrupt is required to meet a substantial proportion of the costs of that medical attention or those medicines from his or her income;
- (b) the bankrupt is required to make payments from his or her income to meet the cost of child day-care to enable the bankrupt to continue in employment or other work;
- (c) the bankrupt is living in rented accommodation that is provided by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) an authority of the Commonwealth, a State or a Territory; or

- (iii) a local government authority;
 - and the bankrupt is required to pay the cost of that accommodation wholly or mainly from his or her income;
 - (d) the bankrupt incurs substantial expense in travelling to or from the bankrupt's place of employment or other work, whether by public transport or otherwise;
 - (e) the spouse of the bankrupt, or another person residing with the bankrupt, who ordinarily contributes to the costs of maintaining the bankrupt's household has become unable to contribute to those costs because of unemployment, illness or injury;
 - (f) any other reason prescribed by the regulations.
- (3) The trustee must not make a determination under this section unless the bankrupt provides satisfactory evidence of the bankrupt's income and expenses, and any other matters on which the bankrupt relies to establish the reasons for the application.
 - (4) The trustee must decide the application as soon as practical and in any event not later than 30 days, after the day on which the application is received.
 - (5) If the trustee does not make a decision on the application within that period of 30 days, the trustee is taken to have made a decision at the end of that period refusing the application.
 - (6) If the trustee is satisfied that the bankrupt will suffer hardship if required to pay the contribution, the trustee may determine that, for the purposes of the application of section 139S in relation to the bankrupt in respect of the contribution assessment period, the actual income threshold amount that was applicable in relation to the bankrupt when the assessment was made is taken to have increased to such amount as the trustee determines.
 - (7) If the trustee is not satisfied that the bankrupt will suffer hardship if required to pay the contribution, the trustee must refuse the application.
 - (8) If the trustee makes a determination under subsection (6), the trustee must make such assessment under section 139W as is necessary to give effect to the determination.
 - (9) The trustee must give written notice to the bankrupt:
 - (a) setting out the trustee's decision on the application; and
 - (b) referring to the evidence or other material on which the decision was based; and
 - (c) giving the reasons for the decision.
 - (10) The notice must include a statement to the effect that the bankrupt may request the Inspector-General to review the decision.
 - (11) A contravention of subsection (10) in relation to a decision does not affect the validity of the decision.
 - (12) The trustee's decision under this section is reviewable under Subdivision G in the same way as an assessment made by the trustee.

Division E—Provision of information to trustee

Bankrupt to provide evidence of income

- (1) A bankrupt must, as soon as practicable, and in any event not later than 21 days, after the end of a contribution assessment period, give to the trustee:

- (a) a statement:
 - (i) setting out particulars of all the income that was derived by the bankrupt during that contribution assessment period; and
 - (ia) setting out particulars of all the income that was derived by each dependant of the bankrupt during the contribution assessment period; and
 - (ii) indicating what income (if any) the bankrupt expects to derive during the next contribution assessment period; and
 - (iii) indicating what income (if any) the bankrupt expects each dependant of the bankrupt to derive during the next contribution assessment period; and
- (b) such books evidencing the derivation of the income referred to in subparagraph (a)(i) as are in the possession of the bankrupt or the bankrupt can readily obtain.

Penalty: Imprisonment for 6 months.

- (2) The particulars that a bankrupt is required to include in a statement given to the trustee under subparagraphs (1)(a)(i) and (ia) are all the particulars that are known to the bankrupt and particulars that the bankrupt can readily obtain.
- (3) Without limiting the generality of paragraph (1)(b), the books that a bankrupt is required to give to the trustee under that paragraph in respect of a contribution assessment period include
 - (a) if the bankrupt received from his or her employer one or more pay slips or other documents evidencing salary or wages paid to him or her by that employer during that period—those documents or each of those documents; and
 - (b) any copy of a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in the possession of the bankrupt that relates in whole or in part to that period; and
 - (c) any statement provided to the bankrupt by an ADI or other financial institution that shows periodic payments made during that period to an account kept by the bankrupt (either alone or jointly with any other person) with that institution; and
 - (d) any notice of assessment issued to the bankrupt under the *Income Tax Assessment Act 1936* in respect of a year of income in which that period is included; and
 - (e) if the bankrupt is in receipt of a pension, allowance or other benefit under a law of the Commonwealth, of a State or of a Territory—any letter or other document sent or given to the bankrupt by the Department or authority that administers that legislation or scheme under which the benefit is provided.

Power of trustee to require bankrupt to provide additional evidence

If the trustee has reasonable grounds to suspect that:

- (a) any particulars set out in the statement given by the bankrupt under subsection 139U(1) are false or misleading in a material respect; or
- (b) any material particulars have been omitted from that statement;

then, for the purpose of enabling the trustee to decide whether the particulars set out in the statement are correct, the trustee, by written notice given to the bankrupt, may require the bankrupt to give to the trustee within a specified period of not less than 14

such information or books as are specified in the notice.

Division F—Assessments of income and contribution

Assessment of bankrupt's income and contribution

- (1) As soon as practicable after the start of each contribution assessment period in relation to a bankrupt, the trustee is to make an assessment of the income that is likely to be derived, or was derived, by the bankrupt during that period, of the actual income threshold amount that is applicable in relation to the bankrupt when the assessment is made and of the contribution (if any) that the bankrupt is liable to pay in respect of that period under section 139S.
- (2) If at any time, whether during or after a contribution assessment period, any one or more of the following paragraphs applies or apply:
 - (a) the trustee is satisfied that the income that is likely to be derived, or was derived, by the bankrupt during that period, or was greater or less than the amount of that income as assessed by the last preceding assessment in respect of that period;
 - (b) the base income threshold amount increased or decreased after the making of the last preceding assessment in respect of that period and before the end of that period;
 - (c) the trustee is satisfied that the number of the bankrupt's dependants increased or decreased after the making of the last preceding assessment and before the end of that period;the trustee is to make a fresh assessment of the income that is likely to be derived, or was derived, by the bankrupt during that period, of the actual income threshold amount that is applicable in relation to the bankrupt when the assessment is made and of the contribution (if any) that the bankrupt is liable to pay in respect of that period.
- (3) The powers of the trustee under subsection (2) may be exercised on the trustee's own initiative or at the bankrupt's request, but the trustee is not required to consider whether to exercise those powers at the bankrupt's request unless the bankrupt satisfies the trustee that there are reasonable grounds for the trustee to do so.
- (4) As soon as practicable after the making of an assessment the trustee must give to the bankrupt written notice setting out the particulars of the assessment and informing the bankrupt about the possibility of a variation under section 139T.

No time limit on making assessment

- (1) An assessment under section 139W (including a fresh assessment referred to in subsection 139W(2)) for a contribution assessment period may be made at any time, including:
 - (a) a time after the end of the contribution assessment period or
 - (b) a time after the bankrupt is discharged.
- (2) For the purpose of applying subsection (1), a reference in this Division to a bankrupt includes a reference to a former bankrupt.

Basis of assessments

- (1) In making an assessment of the income that is likely to be derived, or was derived, by a bankrupt during a contribution assessment period the trustee may have regard to any information

assessment period the trustee may have regard to any information provided by the bankrupt or any other information in the trustee's possession.

- (2) If the trustee considers that any information provided by the bankrupt is or may be incorrect, the trustee may disregard that information and may make an assessment on the basis of what the trustee considers to be the correct information.

Trustee may regard bankrupt as receiving reasonable remuneration

(1) If:

- (a) the bankrupt is engaging or has engaged during a contribution assessment period in employment or other work or in activities that resemble employment or other work; and
- (b) the bankrupt does not receive or did not receive any remuneration in respect of the employment, work or activities or receives or received remuneration that is less than the remuneration (in this subsection called the **reasonable remuneration**) that:
 - (i) in the case of employment where an industrial instrument prescribes rates or minimum rates of salaries or wages for the employment—might reasonably be expected to be or to have been received by the bankrupt in respect of the employment by virtue of the industrial instrument; or
 - (ii) in any other case—might reasonably be expected to be or to have been received by a person who engaged in similar employment, work or activities where there was no relationship or other connection between that person and the person for whom the employment, work or activities were carried out;

then, for the purpose of making an assessment, the trustee may determine that the bankrupt receives or received the reasonable remuneration in respect of the employment, work or activities.

(2) If:

- (a) the bankrupt enters or entered during a contribution assessment period into any transaction that might reasonably be expected to produce or to have produced income; and
- (b) the bankrupt does not derive or did not derive any income from the transaction or derives or derived income that is less than the income (in this subsection called the **reasonable income**) that might reasonably be expected to be or to have been derived if the transaction were or had been entered into at arm's length;

then, for the purpose of making an assessment, the trustee may determine that the bankrupt derives or derived the reasonable income from the transaction.

If bankrupt claims not to be in receipt of income

(1) If a bankrupt:

- (a) does not provide information about whether he or she is likely to derive, or derived, income or a particular class of income during a contribution assessment period; or
- (b) claims not to be likely to derive, or not to have derived, income or a particular class of income during a contribution assessment period;

but the trustee has reasonable grounds for believing that the

bankrupt is likely to derive, or derived, income, or income of that class, during that period, then, for the purpose of making an assessment, the trustee may determine that the bankrupt is likely to derive, or derived, income, or income of that class, during that period and may also determine the amount of that income.

- (2) Without limiting the matters that a trustee may take into account for the purpose of making an assessment as mentioned in subsection (1) in respect of a contribution assessment period, the trustee may have regard to any employment or other work or income-producing activities that were engaged in by the bankrupt before that period and may determine whether the bankrupt is likely to engage, or to have engaged, in similar employment, work or other income-producing activities during that period.

Division G—Review of assessment

Internal review of assessment

- (1) The Inspector-General may review a decision of a trustee to make an assessment:
- (a) on the Inspector-General's own initiative; or
 - (b) if requested to do so by the bankrupt for reasons that appear to the Inspector-General to be sufficient to justify a review.
- (2) The Inspector-General must review such a decision if requested to do so by the Ombudsman.
- (3) A request by the bankrupt to the Inspector-General for the review of such a decision must:
- (a) be in writing and given to the Inspector-General not later than 60 days after the day on which the bankrupt is notified of the trustee's assessment; and
 - (b) be accompanied by:
 - (i) a copy of the notice of assessment; and
 - (ii) any documents on which the bankrupt relies in support of the request.
- (5) Within 60 days after the request is received, the Inspector-General must:
- (a) decide whether to review the decision; and
 - (b) if the Inspector-General decides to review the decision, make his or her decision on the review.

Inspector-General may request further information

- (1) For the purposes of the exercise of powers under this Subdivision, the Inspector-General may:
- (a) ask the bankrupt to provide such further information, either orally or in writing, in support of the request as the Inspector-General specifies; and
 - (b) ask the trustee to provide such information, either orally or in writing, about the decision to make the assessment and the reasons for the decision as the Inspector-General specifies.
- (2) If any information is provided orally, the Inspector-General must record it in writing.

Decision on review

On a review of a decision, the Inspector-General has all the powers of the trustee and may either:

- (a) confirm the decision; or
- (b) set aside the decision and make a fresh assessment under subsection 139W(2).

Inspector-General to notify bankrupt and trustee of decision

- (1) If the Inspector-General:
 - (a) reviews a decision; or
 - (b) refuses a request by a bankrupt for a review of a decision, the Inspector-General must give written notice, to the bankrupt or the trustee, of the Inspector-General's decision on the review of the request, as the case may be.
- (2) The notice must:
 - (a) set out the decision; and
 - (b) refer to the evidence or other material on which the decision was based; and
 - (c) give the reasons for the decision.
- (3) In the case of a decision reviewing the trustee's decision to make an assessment, the notice must also include a statement to the effect that, if the bankrupt or the trustee, is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.
- (4) In the case of a decision refusing a request to review the trustee's decision to make an assessment, the notice to the bankrupt must also include a statement to the effect that, if the bankrupt is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for a review of the decision.
- (5) A contravention of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.
- (6) If, within 60 days after lodgment of a request by a bankrupt for the review of the trustee's decision to make an assessment, the Inspector-General has not given written notice to the bankrupt of his or her decision in accordance with subsection (1), the Inspector-General is taken to have reviewed the trustee's decision and confirmed it under paragraph 139ZD(a).
- (7) If the Inspector-General makes a fresh assessment, the Inspector-General must, as soon as practicable, give to the bankrupt written notice setting out particulars of the fresh assessment.
- (8) This Division, apart from this Subdivision, applies to an assessment made by the Inspector-General as if it had been made by the trustee under subsection 139W(2).

Review of assessment decisions

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision of the Inspector-General on the review of a decision by a trustee to make an assessment; or
- (b) a decision by the Inspector-General refusing a request to review a decision by a trustee to make an assessment.

Division H—When contribution payable

Payment of contribution

- (1) Subject to subsection 139ZI(3), a contribution that a person is liable to pay under subsection 139P(1) or 139Q(1) is payable at such time as the trustee determines or, if the trustee permits, the contribution to be paid by instalments, at such times and in such amounts as the trustee determines.
- (2) The liability of a person to pay a contribution under subsection 139P(1) or 139Q(1) is not affected by:
 - (a) the making of an application by the person to the trustee under subsection 139T(1); or
 - (b) the making by the person of a request to the Inspector-General for a review of the decision of the trustee to make the assessment that gave rise to the liability; or
 - (c) the making of an application to the Administrative Appeals Tribunal for review of the decision of the Inspector-General.
- (3) The total of any contributions or instalments that are not paid by the bankrupt is recoverable by the trustee as a debt due to the estate of the bankrupt.
- (4) The trustee may, in connection with proceedings to recover the debt:
 - (a) sign a certificate setting out the nature and the amount of the debt; and
 - (b) file the certificate in the court in which the proceedings have been instituted.
- (5) In such proceedings, the certificate is *prima facie* evidence of the existence of the debt and the amount of the debt.

If excess contribution paid

- (1) If:
 - (a) a person has paid an amount in respect of the contribution that the person was assessed to be liable to pay in respect of the contribution assessment period; and
 - (b) as a result of a subsequent assessment:
 - (i) the person is not liable to pay a contribution in respect of that period; or
 - (ii) the amount referred to in paragraph (a) exceeds the amount of the contribution that the person is liable to pay in respect of that period;the person is not entitled to a refund of the amount paid or of the excess, as the case may be.
- (2) If a person has paid in respect of a contribution assessment period an amount that, because of a subsequent assessment in respect of that period, the person was not liable to pay, the trustee is to apply that amount in or towards any contribution that the person is liable to pay in respect of a later contribution assessment period.

Notice of determinations

- (1) If the trustee makes a determination under section 139ZG in respect of a person, the trustee must give to the person written notice setting out particulars of the determination.
- (2) A notice given to a person under subsection (1) may be contained in a notice of assessment.

- (3) The time at which a payment is to be made by a person as a result of a determination made under section 139ZG must not be earlier than 14 days after notice in relation to the determination is given to the person under subsection (1) of this section.

Division HA—Supervised account regime

Objects

The objects of this Subdivision are:

- (a) to improve the likelihood that a bankrupt will have sufficient money to pay contributions or instalments of contribution and
- (b) to ensure that all monetary income received by the bankrupt is deposited to a single account (the **supervised account**) and
- (c) to enable the trustee to supervise withdrawals from the supervised account.

Definitions

In this Subdivision:

bankrupt includes a person who has been discharged from bankruptcy.

bankrupt to whom the supervised account regime applies means a bankrupt in respect of whom a determination under subsection 139ZIC(1) is in force.

constructive income receipt arrangement means an arrangement the effect of which is that income derived by a bankrupt is not actually received by the bankrupt because it is

- (a) reinvested, accumulated or capitalised; or
- (b) dealt with on behalf of the bankrupt or as the bankrupt directs.

contribution means a contribution that a bankrupt is liable to pay under subsection 139P(1) or 139Q(1).

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

non-monetary income receipt arrangement means an arrangement the effect of which is that income derived by a bankrupt is not actually received by the bankrupt in monetary form because it is derived in a non-monetary form.

reviewable decision means a decision of the trustee of a bankrupt's estate:

- (a) to make a subsection 139ZIC(1) determination; or
- (b) to refuse to revoke a subsection 139ZIC(1) determination or
- (c) to specify a period in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ii); or
- (d) to refuse to specify a period in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ii); or
- (e) to specify requirements in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ix); or
- (f) to refuse to exercise the powers conferred by subsection 139ZIEA(1); or
- (g) to refuse to give a consent under subsection 139ZIG(3)

139ZIH(5), 139ZIHA(5) or 139ZII(3); or

(h) to vary a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3); or

(i) to refuse to vary a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3); or

(j) to revoke a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3).

supervised account, in relation to a bankrupt to whom the supervised account regime applies, means an account maintained by the bankrupt in accordance with a supervised account notice that is in force in relation to the bankrupt.

supervised account notice has the meaning given by subsection 139ZIE(1).

withdraw, in relation to an account, includes:

- (a) transfer out of; and
- (b) draw a cheque on; and
- (c) do any other thing that results in a debit from.

Trustee may determine that the supervised account regime applies to the bankrupt

- (1) The trustee of a bankrupt's estate may, by written notice given to the bankrupt, determine that the supervised account regime applies to the bankrupt.
- (2) The trustee must not make a determination under subsection (1) in relation to the bankrupt unless, at the time the determination is made:
 - (a) the bankrupt is liable to pay a contribution; and
 - (b) either:
 - (i) if the trustee has made a determination under subsection 139ZG permitting the contribution to be paid in instalments—the bankrupt has not paid the whole of a contribution instalment at or before the time when it became payable; or
 - (ii) if the trustee has made a determination under subsection 139ZG requiring the bankrupt to pay the contribution at a specified time—the bankrupt has not paid the whole of the contribution at or before the time when it became payable.
- (3) A notice under subsection (1) must be in the approved form.
- (4) A notice under subsection (1) must be accompanied by:
 - (a) a supervised account notice relating to the bankrupt concerned; and
 - (b) a statement setting out:
 - (i) the effect of sections 139ZIE to 139ZIT; and
 - (ii) such other information (if any) as is specified in the regulations.

Revocation of determination

- (1) If a determination is in force under subsection 139ZIC(1) in relation to a bankrupt, the trustee may, by written notice given to the bankrupt, revoke the determination.
- (2) The trustee must not revoke the determination unless the trustee is satisfied, having regard to:
 - (a) the past payment record of the bankrupt; and

(b) any other relevant matters;
that the bankrupt will pay the whole of any current or future contributions or instalments of contributions at or before the time when they become payable.

(3) The power conferred on the trustee by subsection (1) may be exercised:

- (a) on his or her own initiative; or
- (b) on the application of the bankrupt.

(4) If, following the bankrupt's application, the trustee refuses to revoke the determination, the trustee must give the bankrupt written notice of the refusal.

(5) A notice under subsection (1) must be in the approved form

A When determination ceases to be in force

Annulment

(1) If:

- (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
- (b) the bankruptcy is annulled;

the determination ceases to be in force on the date of the annulment.

Discharge—no liability to pay contributions

(2) If:

- (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
- (b) the bankrupt is discharged from the bankruptcy; and
- (c) at the time of the discharge, the bankrupt is not liable to pay a contribution;

the determination ceases to be in force at the time of the discharge.

Discharge—continuing liability to pay contributions

(3) If:

- (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
- (b) the bankrupt is discharged from the bankruptcy; and
- (c) at the time of the discharge, the bankrupt is liable to pay a contribution;

the determination ceases to be in force when the bankrupt is no longer liable to pay a contribution.

Bankrupt must open and maintain supervised account

Supervised account notice

(1) For the purposes of this Subdivision, a **supervised account notice** is a written notice that is issued by the trustee of a bankrupt's estate and that:

- (a) requires the bankrupt, within:
 - (i) 10 business days after the notice is given to the bankrupt; or
 - (ii) such longer period (if any) as is specified in the notice, to open an account (a **supervised account**) that complies with the following requirements:
 - (iii) the account is kept with an ADI;

- (iv) the account is kept in Australia;
- (v) the account is denominated in Australian currency;
- (vi) the account is held solely in the name of the bankrupt;
- (vii) deposits may be made to, and withdrawals may be made from, the account;
- (viii) the account is designed not to have a debit balance;
- (ix) such other requirements (if any) as are specified in the notice; and

(b) requires the bankrupt to inform the ADI, when opening the account, that the account is a supervised account; and

(c) requires the bankrupt, after the account is opened, to maintain the account for so long as the notice is in force.

(2) A supervised account notice must be in the approved form.

Compliance with supervised account notice

(3) A bankrupt to whom the supervised account regime applies must comply with a supervised account notice in force in relation to the bankrupt.

When supervised account notice ceases to be in force

(4) A supervised account notice relating to a bankrupt ceases to be in force if the bankrupt ceases to be a bankrupt to whom the supervised account regime applies.

Note: A supervised account notice may be revoked under subsection 139ZIEA(1).

Trustee to be notified of account details

(5) A bankrupt to whom the supervised account regime applies must, within 2 business days after opening a supervised account, give written notice to the trustee setting out the following information about the supervised account:

- (a) the name of the ADI concerned;
- (b) the name in which the account is held;
- (c) the account number;
- (d) the BSB number concerned.

Offence

(6) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (5) or (5); and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

A New supervised account

(1) If a bankrupt is a bankrupt to whom the supervised account regime applies, the trustee may:

- (a) by written notice given to the bankrupt, revoke a supervised account notice relating to the bankrupt; and
- (b) issue a fresh supervised account notice relating to the bankrupt, and give the fresh notice to the bankrupt; and
- (c) by written notice given to the bankrupt, require the bankrupt, immediately after the account is opened in accordance with the fresh notice, to transfer:

(i) the balance (if any) of the account maintained in

(i) the balance (if any) of the account maintained in accordance with the revoked notice;

to:

(ii) the account opened in accordance with the fresh notice.

(2) The revocation under paragraph (1)(a) of the supervised account notice takes effect when the bankrupt opens the account in accordance with the fresh supervised account notice.

(3) Notices under paragraphs (1)(a) and (c) may be set out in the same document.

(4) The powers conferred on the trustee by subsection (1) may be exercised:

- (a) on his or her own initiative; or
- (b) on the application of the bankrupt.

(5) If, following the bankrupt's application, the trustee refuses to exercise the powers conferred by subsection (1), the trustee must give the bankrupt written notice of the refusal.

Offence

(6) A person commits an offence if:

- (a) the person is subject to a requirement under paragraph (c); and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

Bankrupt's monetary income to be deposited to supervised account

(1) A bankrupt to whom the supervised account regime applies must ensure that all monetary income actually received by the bankrupt after the opening of the supervised account is deposited to the supervised account:

- (a) if the income is received in the form of cash or cheque—within 5 business days of its receipt; or
- (b) in any other case—upon its receipt.

Cash refunds

(2) For the purposes of subsection (1), if:

- (a) the bankrupt receives an amount of income in the form of cash; and
- (b) before the paragraph (a) amount is deposited to the supervised account, the bankrupt uses a part of that amount to make a refund;

the amount that the bankrupt must deposit to the supervised account is the paragraph (a) amount reduced by the part used to make a refund mentioned in paragraph (b).

(3) For the purposes of subsection (1), if:

- (a) the bankrupt receives an amount of income in the form of cash; and
- (b) before the paragraph (a) amount is deposited to the supervised account, the bankrupt uses the whole of that amount to make a refund;

the bankrupt is taken not to have received the paragraph (a) amount.

amount.

Offence

- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for a term not exceeding 12 months.

Trustee to supervise withdrawals from supervised account

General prohibition on withdrawals

- (1) A bankrupt to whom the supervised account regime applies must not:
- (a) make a withdrawal from the supervised account; or
 - (b) authorise the making of a withdrawal from the supervised account.

Exceptions

- (2) Subsection (1) does not apply if the withdrawal is made:
- (a) in accordance with the consent of the trustee under subsection (3); or
 - (b) to pay a contribution or an instalment of a contribution to a creditor; or
 - (c) to transfer an amount as required by a notice under paragraph 139ZIEA(1)(c); or
 - (d) to make a refund; or
 - (e) to reverse a credit previously made to the account where the credit arose from an error or the dishonour of a cheque; or
 - (f) to discharge any of the bankrupt's tax liabilities (within the meaning of the *Taxation Administration Act 1953*); or
 - (g) to discharge the bankrupt's liability to pay a tax (however described) imposed by or under a law of the Commonwealth, a State or a Territory; or
 - (h) to recover from the bankrupt an amount equal to an amount of tax (however described) that the ADI concerned has paid or is liable to pay in connection with the operation of the account; or
 - (i) to discharge a liability of the bankrupt to pay a fee or charge in connection with the operation of the account.

Trustee may consent to withdrawals

- (3) The trustee may, by written notice given to the bankrupt, consent to any of the following withdrawals from the supervised account:
- (a) a specified withdrawal;
 - (b) withdrawals included in a specified class of withdrawals;
 - (c) withdrawals up to a daily, weekly, fortnightly or monthly limit ascertained in accordance with the notice.
- (4) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (5) The powers conferred on the trustee by subsections (3) and (4) may be exercised:
- (a) on his or her own initiative; or
 - (b) on the application of the bankrupt.

- (6) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (3) or (4), the trustee must give the bankrupt written notice of the refusal.

Offence

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3) and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 12 months.

Garnishee powers not affected

- (8) This section does not affect the exercise of powers conferred by:
- (a) section 139ZL of this Act; or
 - (b) section 260-5 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (c) a similar provision in:
 - (i) any other law of the Commonwealth; or
 - (ii) a law of a State or a Territory.

Constructive income receipt arrangements

Bankrupt not to enter into new arrangements

- (1) A bankrupt to whom the supervised account regime applies must not enter into a constructive income receipt arrangement.
- (2) Subsection (1) does not apply if the bankrupt enters into the constructive income receipt arrangement in accordance with the consent of the trustee under subsection (5).

Bankrupt not to participate in existing arrangements

- (3) If a bankrupt was participating in a constructive income receipt arrangement immediately before becoming a bankrupt to whom the supervised account regime applies, the bankrupt must, as soon as practicable after becoming such a bankrupt, cease to participate in the arrangement.
- (4) Subsection (3) does not apply if the bankrupt continues to participate in the constructive income receipt arrangement in accordance with the consent of the trustee under subsection (5).

Consent

- (5) The trustee may, by written notice given to the bankrupt:
- (a) consent to the bankrupt entering into:
 - (i) a specified constructive income receipt arrangement; or
 - (ii) constructive income receipt arrangements including a specified class of constructive income receipt arrangements; or
 - (b) consent to the bankrupt continuing to participate in:
 - (i) a specified constructive income receipt arrangement; or
 - (ii) constructive income receipt arrangements including a specified class of constructive income receipt arrangements.

- (6) The trustee may, by written notice given to the bankrupt, vary

revoke a consent.

(7) The powers conferred on the trustee by subsections (5) and may be exercised:

- (a) on his or her own initiative; or
- (b) on the application of the bankrupt.

(8) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (5) or (6), the trustee must give the bankrupt written notice of the refusal.

Offence

(9) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (5) or (3); and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 12 months.

A Non-monetary income receipt arrangements

Bankrupt not to enter into new arrangements

(1) A bankrupt to whom the supervised account regime applies must not enter into a non-monetary income receipt arrangement.

(2) Subsection (1) does not apply if the bankrupt enters into the non-monetary income receipt arrangement in accordance with the consent of the trustee under subsection (5).

Bankrupt not to participate in existing arrangements

(3) If a bankrupt was participating in a non-monetary income receipt arrangement immediately before becoming a bankrupt to whom the supervised account regime applies, the bankrupt must, as soon as practicable after becoming such a bankrupt, cease to participate in the arrangement.

(4) Subsection (3) does not apply if the bankrupt continues to participate in the non-monetary income receipt arrangement in accordance with the consent of the trustee under subsection (5).

Consent

(5) The trustee may, by written notice given to the bankrupt:

- (a) consent to the bankrupt entering into:
 - (i) a specified non-monetary income receipt arrangement; or
 - (ii) non-monetary income receipt arrangements including a specified class of non-monetary income receipt arrangements; or
- (b) consent to the bankrupt continuing to participate in:
 - (i) a specified non-monetary income receipt arrangement; or
 - (ii) non-monetary income receipt arrangements including a specified class of non-monetary income receipt arrangements.

(6) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.

(7) The powers conferred on the trustee by subsections (5) and

may be exercised:

- (a) on his or her own initiative; or
- (b) on the application of the bankrupt.

(8) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (5) or (6), the trustee must give the bankrupt written notice of the refusal.

Offence

- (9) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (5) or (3); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 12 months.

Cash income

- (1) A bankrupt to whom the supervised account regime applies does not receive income in the form of cash.
- (2) Subsection (1) does not apply if the income was received in accordance with the consent of the trustee under subsection (3).

Consent

- (3) The trustee may, by written notice given to the bankrupt, consent to the bankrupt receiving in the form of cash:
- (a) a specified item of income; or
 - (b) items of income included in a specified class of items of income.
- (4) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (5) The powers conferred on the trustee by subsections (3) and (4) may be exercised:
- (a) on his or her own initiative; or
 - (b) on the application of the bankrupt.

(6) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (3) or (4), the trustee must give the bankrupt written notice of the refusal.

Offence

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 12 months.

A Keeping of books

If:

- (a) a person is a bankrupt to whom the supervised account regime applies; and
- (b) the person has been discharged from the bankruptcy; section 277A applies in relation to the person as if:

(c) the person were a bankrupt within the meaning of that section; and

(d) the person had been discharged from the bankruptcy to which the person ceases to be a bankrupt to whom the supervised account regime applies.

Injunctions

Restraining injunctions

(1) If a bankrupt has engaged, is engaging or is proposing to engage in any conduct in contravention of this Subdivision, the Court may, on the application of the trustee, grant an injunction:

- (a) restraining the bankrupt from engaging in the conduct in contravention of this Subdivision;
- (b) if, in the Court's opinion, it is desirable to do so—requiring the bankrupt to do something.

Performance injunctions

(2) If:

- (a) a bankrupt has refused or failed, or is refusing or failing to do an act or thing, or is proposing to refuse or fail, to do an act or thing; and
- (b) the refusal or failure was, is or would be a contravention of this Subdivision;

the Court may, on the application of the trustee, grant an injunction requiring the bankrupt to do that act or thing.

Interim injunctions

Grant of interim injunction

(1) If an application is made to the Court for an injunction under section 139ZIJ, the Court may, before considering the application, grant an interim injunction restraining a bankrupt from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

(2) The Court is not to require an applicant for an injunction under section 139ZIJ, as a condition of granting an interim injunction, to give any undertakings as to damages.

Discharge etc. of injunctions

The Court may discharge or vary an injunction granted under this Subdivision.

Certain limits on granting injunctions not to apply

Restraining injunctions

(1) The power of the Court under this Subdivision to grant an injunction restraining a bankrupt from engaging in conduct of a particular kind may be exercised:

- (a) if the Court is satisfied that the bankrupt has engaged in conduct of that kind—whether or not it appears to the Court that the bankrupt intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Court that, if an injunction is not granted, it is likely that the bankrupt will engage in conduct of that kind—whether or not the bankrupt has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the bankrupt engages in conduct of that kind.

Performance injunctions

- (2) The power of the Court to grant an injunction requiring a bankrupt to do an act or thing may be exercised:
- (a) if the Court is satisfied that the bankrupt has refused or failed to do that act or thing—whether or not it appears to the Court that the bankrupt intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the bankrupt will refuse or fail to do that act or thing—whether or not the bankrupt has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the bankrupt refuses or fails to do that act or thing.

Other powers of the Court unaffected

The powers conferred on the Court under this Subdivision are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

Inspector-General may review trustee's decision

Reviewable decisions

- (1) The Inspector-General may review a reviewable decision:
- (a) on the Inspector-General's own initiative; or
 - (b) if requested to do so by the bankrupt for reasons that appear to the Inspector-General to be sufficient to justify so.
- (2) Subject to subsection (2A), the Inspector-General must review a reviewable decision if requested to do so by the Ombudsman.

Interaction with Insolvency Practice Rules

- (2A) The Inspector-General may refuse to review a reviewable decision if the Court is exercising powers, under section 45-1, 90-5, 90-10 or 90-15 of Schedule 2, in relation to the decision.
- (2B) If:
- (a) the Inspector-General is reviewing a reviewable decision and
 - (b) the Court begins to exercise powers, under section 45-1, 90-5, 90-10 or 90-15 of Schedule 2, in relation to the decision,
- the period referred to in subsection (5) of this section is extended by one day for each day during the period:
- (c) beginning when the Court begins to exercise powers as referred to in paragraph (b); and
 - (d) ending when the Court ceases to exercise those powers.

Request by bankrupt

- (3) A request by the bankrupt to the Inspector-General for the review of a reviewable decision must:
- (a) be in writing and given to the Inspector-General not later than 60 days after the day on which the decision first came to the notice of the bankrupt; and
 - (b) be accompanied by:
 - (i) a copy of any relevant documents issued or given to the trustee under this Subdivision; and
 - (ii) any other documents on which the bankrupt relies in support of the request.

support of the request.

Time limit for review

- (5) Within 60 days after the request is received, the Inspector-General must:
- (a) decide whether to review the decision; and
 - (b) if the Inspector-General decides to review the decision make his or her decision on the review.

Inspector-General may request further information

- (1) For the purposes of the exercise of powers in relation to a review, or a request for a review, of a reviewable decision, the Inspector-General may:
- (a) ask the bankrupt to provide such further relevant information, either orally or in writing, as the Inspector-General specifies; and
 - (b) ask the trustee to provide such information, either orally or in writing, about the decision and the reasons for the decision as the Inspector-General specifies.
- (2) If any information is provided orally, the Inspector-General must record it in writing.

Inspector-General's decision on review

- (1) On a review of a reviewable decision, the Inspector-General may exercise all the powers of the trustee and may:
- (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision; or
 - (d) set aside the decision and make a decision in substitution for the decision so set aside.

Application of this Subdivision to Inspector-General's decision

- (2) This Subdivision (apart from sections 139ZIO to 139ZIT), applies to a decision made by the Inspector-General as if it had been made by the trustee under this Subdivision.

Inspector-General to notify bankrupt and trustee of decision

- (1) If the Inspector-General:
- (a) reviews a reviewable decision; or
 - (b) refuses a request by a bankrupt for a review of a reviewable decision;
- the Inspector-General must give written notice to:
- (c) the bankrupt; and
 - (d) the trustee;
- of the Inspector-General's decision on the review or on the refusal, as the case may be.
- (2) The notice must:
- (a) set out the decision; and
 - (b) give the reasons for the decision.

Notification of right of review by AAT

- (3) In the case of a decision on the review of a reviewable decision, the notice must also include a statement to the effect that, if the bankrupt or the trustee is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals*

Tribunal Act 1975, be made to the Administrative Appeals Tribunal for review of the decision.

- (4) In the case of a decision refusing a request to review a reviewable decision, the notice to the bankrupt must also include a statement to the effect that, if the bankrupt is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for a review of the decision.
- (5) A breach of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.

Inspector-General taken to have reviewed and confirmed decision

- (6) If, within 60 days after lodgment of a request by a bankrupt for the review of a reviewable decision, the Inspector-General has given written notice to the bankrupt of his or her decision in accordance with subsection (1), the Inspector-General is taken to have reviewed the trustee's decision and confirmed it under paragraph 139ZIR(1)(a).

AAT review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision of the Inspector-General on the review of a reviewable decision; or
- (b) a decision by the Inspector-General refusing a request to review a reviewable decision.

Division I—Collection of money or property by Official Receiver from person other than the bankrupt

Definition

In this Subdivision:

bankrupt includes a person who has been discharged from bankruptcy.

Persons to whom Subdivision applies

- (1) This Subdivision applies to a person:
- (a) from whom any money is due or accruing, or may become due, to a bankrupt; or
 - (b) who holds, or may subsequently hold, money for or on account of a bankrupt; or
 - (c) who holds, or may subsequently hold, money on account of some other person for payment to or on behalf of a bankrupt; or
 - (d) who has authority from some other person to pay money or on behalf of a bankrupt; or
 - (e) who is liable to pay money or transfer property wholly or principally in consideration of personal services supplied to a bankrupt after the commencement of the bankruptcy, whether the services were supplied to the first-mentioned person or to some other person; or
 - (f) who has received money or property wholly or principally in consideration of personal services supplied by a bankrupt after the commencement of the bankruptcy, whether the services were supplied to the first-mentioned person or to some other person.

(2) In subsection (1):

personal services, in relation to a bankrupt, means personal services as defined by subsection 5(1), whether or not supplied for the payment of money, or the provision of other consideration to the bankrupt.

(3) If, apart from this subsection, money would not be due, or would not be repayable on demand, to a person, or the obligation to transfer property to a person would not arise, unless a condition were fulfilled, then, for the purposes of this section, the money is taken to be due or to be repayable on demand, or the obligation to transfer the property to the person is taken to arise, as the case may be, even though the condition has not been fulfilled.

Official Receiver may require persons to make payments

(1) If a bankrupt is liable to pay to the trustee a contribution under section 139P or 139Q, the Official Receiver:

- (a) if the Official Trustee is the trustee—on the initiative of the Official Receiver; or
- (b) if a registered trustee is the trustee—on application by the trustee;

may require a person to whom this Subdivision applies, by written notice given to the person, to make a payment or payments to the trustee in accordance with this section in or towards the discharge of the liability of the bankrupt to make the contribution.

(2) The notice must set out the facts and circumstances, and in particular must specify the money or property, because of which the Official Receiver considers that this Subdivision applies to the person to whom the notice is given.

(3) The notice may either:

- (a) require payment of so much of the money, or of the value of the property, as does not exceed the amount, or the total amounts, of the contribution that the bankrupt is liable to pay; or
- (b) in the case of a person who is liable to pay money to or on behalf of the bankrupt, require the person, out of each payment that the person becomes liable from time to time to make, to pay such amount as is set out in the notice until the liability of the bankrupt to pay the contribution has been discharged.

(4) The notice may either:

- (a) require a payment to be made immediately the money becomes due or is held, the authority becomes exercisable, the liability arises or the money or property is received, as the case requires; or
- (b) require a payment to be made at a time or within a period set out in the notice, not being a time that occurs, or a period that commences, before the money becomes due or is held, the authority becomes exercisable, the liability arises or the money or property is received, as the case requires.

(5) After the Official Receiver has given a notice to a person under subsection (1), the Official Receiver may at any time, by a further notice given to the person, revoke or amend the first-mentioned notice.

(6) If the Official Receiver gives a notice under this section, the Official Receiver must send a copy of the notice to the bankrupt.

Official Receiver must send a copy of the notice to the bankrupt, and, if a registered trustee is the trustee, to the trustee.

- (7) A notice to be given under this section to the Commonwealth, State or a Territory, or to an authority of the Commonwealth, State or of a Territory, is taken to be duly given if it is given to a person who, by any law, regulation, appointment or authority, has the function of paying, or in fact pays, money on behalf of a Department of the Commonwealth, of that State or of that Territory, or on behalf of that authority, as the case may be.
- (8) If a person is required by a notice under this section to pay to a trustee the value of any property, the requirement is taken to be complied with if the property is transferred to the trustee.
- (9) A person making a payment or transferring property in accordance with this section is taken to have been acting under the authority of the bankrupt and of all other persons concerned and is entitled to be indemnified out of the estate of the bankrupt in respect of the payment or transfer.
- (10) An amount payable by a person to the trustee under this section is recoverable by the trustee as a debt by action against the person in a court of competent jurisdiction.

Power of Court to set aside notice

- (1) If the Court, on application by a person to whom a notice has been given under section 139ZL or by any other interested person, is satisfied that this Subdivision does not apply to the person on the basis of the alleged facts and circumstances set out in the notice, the Court may make an order setting aside the notice.
- (1A) The application must be made:
 - (a) not later than 60 days after the day the notice under section 139ZL was given to the applicant; or
 - (b) if the applicant is another interested person—not later than 60 days after the day the applicant became aware that the notice has been given.
- (2) A notice that has been set aside is taken not to have been given.

Charge over property

- (1) If a notice under section 139ZL is given to a person to whom this Subdivision applies because the person is liable to transfer, or has received, any property as mentioned in paragraph 139ZK(1)(e), the property is charged with the liability of the person to make payments as required by the notice:
 - (a) the property is charged with the liability of the person to make payments as required by the notice; and
 - (b) if the person makes the payments or transfers the property to the trustee, the property ceases to be subject to the charge.
- (2) Subject to subsection (3), a charge under subsection (1) has priority over any existing or subsequent mortgage, lien, charge or other encumbrance over the property in favour of an associated entity of the bankrupt, and has that priority despite any other law of the Commonwealth or any law of a State or Territory.
- (3) A charge under subsection (1) does not have priority over a mortgage, lien, charge or other encumbrance in favour of an associated entity of the bankrupt if that entity satisfies the Court that that mortgage, lien, charge or other encumbrance arose from a transaction that was entered into at arm's length and for value and adequate consideration provided by that entity.

- (4) If any property being land is subject to a charge under subsection (1), the Official Receiver may certify by signed writ that the land is subject to a charge under that subsection and lodge the certificate with the Registrar-General, Registrar of T or other proper officer of the State or Territory in which the la situated.
- (5) The officer with whom the certificate is lodged may register charge as nearly as practicable in the way in which mortgages land are registered under the law in force in the State or Terr in which the land is situated.
- (6) The trustee has power to sell any property over which a cha exists under subsection (1) and, if the property is so sold, then subject to any charges that have priority over the first-mention charge, the proceeds of the sale are, to the extent of the charg be applied in or towards the discharge of the liability to make payment or payments to the trustee of the person to whom the notice was given.

Failure to comply with notice

- (1) A person who refuses or fails to comply with a notice under section 139ZL commits an offence punishable upon conviction imprisonment for a period not exceeding 6 months.
- (2) If a person is convicted of an offence against subsection (1) in relation to the refusal or failure of the convicted person or another person to comply with a notice under section 139ZL, the court that convicted the person may, in addition to imposing a penalty on the convicted person, order that person to pay to the trustee an amount not exceeding the amount, or the total of the amounts, that the convicted person or the other person, as the case may be, refused or failed to pay to the trustee in accordance with the notice.

Employer not to dismiss or injure bankrupt because of giving of notice

- (1) If a notice under section 139ZL is given to the employer of a bankrupt, the employer must not dismiss the bankrupt, injure the bankrupt in his or her employment, or alter the position of the bankrupt to the bankrupt's prejudice, because of the giving of the notice.

Penalty: Imprisonment for 6 months.

- (2) In a prosecution for an offence against subsection (1), it is not necessary for the prosecutor to prove that the defendant's reason for the action charged was the giving of the notice but it is a defence to the prosecution if the defendant proves that the action was not taken because of the giving of the notice.
- (3) If an employer is convicted of an offence against subsection (1) constituted by dismissing a bankrupt, the court that convicted the employer may order the employer:
 - (a) to reinstate the bankrupt to the position that the bankrupt occupied immediately before the dismissal or a position not less favourable than the first-mentioned position; and
 - (b) to pay to the bankrupt the whole or part of the wages lost by the bankrupt because of the dismissal.

Division J—Collection of money or property by Official Receiver from party to transaction that is void against the trustee

Official Receiver may require payment

- (1) If a person has received any money or property as a result of a transaction that is void against the trustee of a bankrupt under Division 3, the Official Receiver:
 - (a) if the Official Trustee is the trustee—on the initiative of the Official Receiver; or
 - (b) if a registered trustee is the trustee—on application by the trustee;may require the person, by written notice given to the person, to pay to the trustee an amount equal to whichever of the following is applicable:
 - (c) if:
 - (i) the transaction is void against the trustee under section 128B or 128C; and
 - (ii) the transaction is by way of a contribution to an eligible superannuation plan for the benefit of a person (the **beneficiary**) who may or may not be the bankrupt; and
 - (iii) the beneficiary is a member of the eligible superannuation plan;whichever is the lesser of the following:
 - (iv) the money or the value of the property received;
 - (v) the beneficiary's withdrawal benefit in relation to the eligible superannuation plan;
 - (d) in any other case—the money or the value of the property received.
- (2) The notice must set out the facts and circumstances because of which the Official Receiver considers that the transaction is void against the trustee.
- (3) The notice may:
 - (a) require the amount to be paid at a time or within a period set out in the notice; or
 - (b) require the amount to be paid at such times, and in such instalments, as are set out in the notice.
- (4) After the Official Receiver has given a notice to a person under subsection (1), the Official Receiver may at any time, by a further notice given to the person, revoke or amend the first-mentioned notice.
- (5) If the Official Receiver gives a notice under this section, the Official Receiver must send a copy of the notice to the bankrupt, and, if a registered trustee is the trustee, to the trustee.
- (6) A notice to be given under this section to the Commonwealth, a State or a Territory, or to an authority of the Commonwealth, a State or of a Territory, is taken to be duly given if it is given to a person who, by any law, regulation, appointment or authority, has the function of paying, or in fact pays, money on behalf of a Department of the Commonwealth, of that State or of that Territory, or on behalf of the authority, as the case may be.
- (7) If a person is required by a notice under this section to pay to the trustee the value of any property, the requirement is taken to be complied with if the property is transferred to the trustee.
- (8) An amount payable by a person to the trustee under this section is recoverable by the trustee as a debt by action against the person.

is recoverable by the trustee as a debt by action against the person in a court of competent jurisdiction.

- (9) For the purposes of subparagraph (1)(c)(ii), disregard a benefit that is payable in the event of the death of a person.

- (10) In this section:

contribution has the same meaning as in Subdivision B of Division 3.

eligible superannuation plan has the same meaning as in Subdivision B of Division 3.

member of an eligible superannuation plan has the same meaning as in Subdivision B of Division 3.

withdrawal benefit has the same meaning as in Subdivision B of Division 3.

Charge over property

- (1) If a notice under section 139ZQ is given to a person in respect of any property:
- (a) the property is charged with the liability of the person to make payments to the trustee as required by the notice; and
 - (b) if the person makes the payments or transfers the property to the trustee, the property ceases to be subject to the charge.
- (2) Subject to subsection (3), a charge under subsection (1) has priority over any existing or subsequent mortgage, lien, charge or other encumbrance over the property in favour of an associate or entity of the bankrupt, and has that priority despite any other law of the Commonwealth or any law of a State or Territory.
- (3) A charge under subsection (1) does not have priority over a mortgage, lien, charge or other encumbrance in favour of an associated entity of the bankrupt if that entity satisfies the Court that that mortgage, lien, charge or other encumbrance arose from a transaction that was entered into at arm's length and for value and adequate consideration provided by that entity and is not against the trustee under Division 3.
- (4) If any property being land is subject to a charge under subsection (1), the Official Receiver may certify by signed writ that the land is subject to a charge under that subsection and lodge the certificate with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated.
- (5) The officer with whom the certificate is lodged may register the charge as nearly as practicable in the way in which mortgages of land are registered under the law in force in the State or Territory in which the land is situated.
- (6) The trustee has power to sell any property over which a charge exists under subsection (1) and, if the property is so sold, then subject to any charges that have priority over the first-mentioned charge, the proceeds of the sale are, to the extent of the charge, to be applied in or towards the discharge of the liability to make payment or payments to the trustee of the person to whom the notice was given.

Power of Court to set aside notice

- (1) If the Court, on application by a person to whom a notice has been given under section 139ZQ or by any other interested person,

is satisfied that this Subdivision does not apply to the person on the basis of the alleged facts and circumstances set out in the notice, the Court may make an order setting aside the notice.

(1A) The application must be made:

- (a) not later than 60 days after the day the notice under section 139ZQ was given to the applicant; or
- (b) if the applicant is another interested person—not later than 60 days after the day the applicant became aware that the notice has been given.

(2) A notice that has been set aside is taken not to have been given.

Failure to comply with notice

(1) A person who refuses or fails to comply with a notice under section 139ZQ commits an offence punishable upon conviction by imprisonment for a period not exceeding 6 months.

(2) If a person is convicted of an offence against subsection (1) in relation to the refusal or failure of the convicted person or another person to comply with a notice under section 139ZQ, the court convicting the person may, in addition to imposing a penalty on the convicted person, order that person to pay to the trustee an amount not exceeding the amount, or the total of the amounts, that the convicted person or the other person, as the case may be, refused or failed to pay to the trustee in accordance with the notice.

Division K—Rolled-over superannuation interests etc.

Order relating to rolled-over superannuation interests etc.

(1) If, on application by the trustee of a bankrupt's estate, the Court is satisfied that:

- (a) a transaction is void against the trustee of the bankrupt's estate under section 128B or 128C; and
- (b) the transaction was by way of a contribution to an eligible superannuation plan (the **first plan**) for the benefit of a person (the **beneficiary**) who may or may not be the bankrupt; and
- (c) the beneficiary's withdrawal benefit in relation to the first plan falls short of the amount of the money, or the value of the property, received as a result of the transaction; and
- (d) the beneficiary has a superannuation interest in another eligible superannuation plan; and
- (e) the superannuation interest referred to in paragraph (d) is attributable, in whole or in part, to the roll-over or transfer after the transaction referred to in paragraph (a) happened, of the whole or a part of the beneficiary's superannuation interest in the first plan;

the Court may, by order, direct the trustee of the other eligible superannuation plan to pay to the trustee of the bankrupt's estate a specified amount not exceeding whichever is the lesser of the following:

- (f) the amount of the shortfall referred to in paragraph (c);
- (g) the beneficiary's withdrawal benefit in relation to the other eligible superannuation plan.

(2) The Court must not make an order under subsection (1) unless it is satisfied that it is in the interests of the creditors of the bankrupt to do so.

(3) For the purposes of paragraph (1)(e), it is immaterial whether

- (3) For the purposes of paragraph (1)(a), it is immaterial whether the transaction occurred before, at or after the commencement of this section.
- (4) For the purposes of paragraph (1)(b), disregard a benefit that is payable in the event of the death of a person.
- (5) For the purposes of paragraph (1)(c), if the beneficiary does not have a superannuation interest in an eligible superannuation plan, the beneficiary is taken to have a nil withdrawal benefit in relation to the plan.
- (6) For the purposes of paragraph (1)(e), it is immaterial whether the roll-over or transfer occurred directly or indirectly through one or more interposed eligible superannuation plans.
- (7) An applicant under subsection (1) must give a copy of the application to:
- (a) the trustee of the other eligible superannuation plan; and
 - (b) the beneficiary.
- (8) At the hearing of an application under subsection (1):
- (a) the trustee of the other eligible superannuation plan; and
 - (b) the beneficiary.
- may appear, adduce evidence and make submissions.
- (9) For the purposes of sections 128E, 128F and 128J, an order made under this section is taken to relate to:
- (a) the transaction referred to in paragraph (1)(a) of this section; and
 - (b) the beneficiary's superannuation interest referred to in paragraph (1)(d) of this section.

Enforcement of order

An order by the Court under section 139ZU is enforceable as if it were an order for the payment of money made by the Court while exercising jurisdiction otherwise than under this Act.

Definitions

In this Subdivision:

contribution has the same meaning as in Subdivision B of Division 3.

eligible superannuation plan has the same meaning as in Subdivision B of Division 3.

superannuation interest has the same meaning as in Subdivision B of Division 3.

trustee of an eligible superannuation plan has the same meaning as in Subdivision B of Division 3.

withdrawal benefit has the same meaning as in Subdivision B of Division 3.

Division 5—Distribution of property

Declaration and distribution of dividends

- (1) The trustee of the estate of a bankrupt shall, subject to this section, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

- (2) Subject to the retention of such sums as are necessary to meet the costs of administration or to give effect to the provisions of

the costs of administration or to give effect to the provisions of the Act, the trustee shall distribute as dividend all moneys in hand

- (3) Before declaring the first dividend, the trustee must give written notice of the trustee's intention to declare the dividend to any person who the trustee knows of who claims, or might claim, to be a creditor but has not lodged a proof of debt.
- (4) The trustee shall, in a notice published or sent in pursuance of subsection (3), specify a reasonable period within which creditors may lodge their proofs of debts.
- (5) The trustee shall, before declaring a dividend (other than the first dividend or the final dividend) send notice of his or her intention to do so to each person who, to his or her knowledge, claims to be, or might claim to be, a creditor but has not lodged a proof of debt and has not been sent a notice under this section in relation to the declaration of a previous dividend.
- (6) The trustee shall, in a notice sent in pursuance of subsection (3), specify a reasonable period within which creditors may lodge proofs of debts.
- (7) Where the trustee has sent a notice in pursuance of subsection (3) or (5) of this section in relation to the declaration of a dividend, the trustee shall not declare the dividend until after the expiration of 21 days after the expiration of the period specified in the notice.
- (8) Subject to subsections (9) and (10), where the trustee declares a dividend, he or she shall pay each creditor who has proved his or her debt the amount due to the creditor and send the creditor a statement in accordance with the approved form in relation to the realization and distribution of the estate.
- (9) Where, but for this subsection, the amount due to a creditor in respect of a dividend would be less than \$10 or, if a greater amount is, as at the beginning of the day on which the dividend is declared, prescribed by the regulations for the purposes of this subsection, that greater amount, the trustee need not pay that dividend to the creditor.
- (10) Where a creditor has furnished to the trustee an authority in writing to pay a dividend due to the creditor to another person, a dividend payable to the creditor may be paid, and the statement to be sent to the creditor in pursuance of subsection (8) may be sent to that person.
- (11) This section has effect subject to an order under section 90S or 114 of the *Family Law Act 1975* (which deal with interlocutory injunctions).

Joint and separate dividends

Where one partner of a firm becomes bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm or any of them shall not receive a dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Apportionment of expenses of administration of joint and separate estates

Where joint and separate estates are being administered, the expenses of and incidental to the administration of the estates shall be fairly apportioned by the trustee between the joint and sep

estates, having regard to the work done for, and the benefit received by, each estate.

Provision to be made for creditors residing at a distance etc.

In the calculation and distribution of a dividend, the trustee make provision for:

- (a) debts provable in bankruptcy appearing from the bankrupt's statement of affairs or otherwise to be due to persons residing in places so distant from the place where the trustee is acting that in the ordinary course of communication those persons would not have had sufficient time to lodge their proofs of debt; and
- (b) debts provable in bankruptcy in respect of which proofs of debt have been lodged but have not been admitted.

Right of creditor who has not proved debt before declaration of dividend

A creditor who has not proved his or her debt before the declaration of a dividend is entitled to be paid, out of any available money for the time being in the hands of the trustee, dividend money if he or she has failed to receive before that money is applied to payment of a future dividend, but he or she is not entitled to disturb the distribution of a dividend declared before he or she proved his or her debt.

Final dividend

- (1) Subject to this section, when the trustee of the estate of a bankrupt has realized all the property of the bankrupt, or so much of it as can, in his or her opinion, be realized without needless protracting the trusteeship, he or she shall declare and distribute a final dividend.
- (2) The trustee shall distribute as the final dividend all moneys realized and not previously distributed and shall distribute the dividend without regard to any debt that had not been proved at the time when he or she declared the final dividend.
- (3) The trustee shall, before declaring the final dividend, give notice in the manner prescribed by the regulations, to each person who, to his or her knowledge, claims to be, or might claim to be, a creditor but has not proved his or her debt that, if the person does not prove his or her debt within the period specified in the notice, the trustee will proceed to declare a final dividend without regard to his or her claim.
- (4) The trustee shall, in a notice sent to a person in pursuance of subsection (3), allow a reasonable period within which the person may prove his or her debt.
- (5) The Court may, on the application of a person claiming to be a creditor, extend the period within which the person may prove his or her debt.
- (6) Where the trustee has sent a notice in pursuance of subsection (3) in relation to the declaration of the final dividend, the trustee shall not declare the dividend until after the expiration of 21 days after the expiration of the period specified in the notice, or, if the Court, under subsection (5), extends the period within which a person may prove his or her debt, until after the expiration of 21 days after the expiration of that extended period.

distribution of dividends where bankrupt fails to file statement of affairs

Where a bankrupt has failed to file a statement of his or her affairs as required by this Act, the Court may, on the application of the trustee, upon such terms as it thinks fit, order that distribution of dividends amongst the creditors who have proved their debts shall proceed in accordance with this Division as if the bankrupt had filed a statement of his or her affairs and those creditors had been stated to be creditors in it.

Action for dividend

- (1) An action for a dividend does not lie against the trustee of the estate of a bankrupt but, if the trustee neglects or refuses to pay a dividend to a creditor, the Court, on the application of the creditor, may, if it thinks fit, order the trustee to pay the dividend and may also order that the trustee pay interest on the dividend for the period that it is withheld and the costs of the application.
- (2) Where the Court orders the trustee of the estate of a bankrupt to pay interest on a dividend or to pay the costs of an application under subsection (1), the trustee is personally liable for, and is entitled to be reimbursed by the estate in respect of, the payment of that interest or those costs.

Part VII—Discharge and annulment

Division 1—Preliminary

Misleading conduct by bankrupt

For the purposes of this Part, a bankrupt is taken to have engaged in misleading conduct in relation to a person in respect of a particular amount (in this section called the **relevant amount**) if

- (a) the bankrupt, either alone or jointly with any other person, obtained credit to the extent of the relevant amount from the first-mentioned person without informing that person that he or she was an undischarged bankrupt; or
- (b) the bankrupt, either alone or jointly with any other person, obtained goods or services from the first-mentioned person
 - (i) by giving a bill of exchange or cheque drawn, or a promissory note made, by the bankrupt, either alone or jointly with another person, being a bill, cheque or note under which the relevant amount is payable; or
 - (ii) by giving 2 or more such instruments under which the total of the amounts payable is equal to the relevant amount; without informing the first-mentioned person that he or she was an undischarged bankrupt; or
- (c) the bankrupt, either alone or jointly with any other person, entered into a hire-purchase agreement with the first-mentioned person, or entered into an agreement for the leasing or hiring of any goods from the first-mentioned person, being a hire-purchase agreement or agreement for the leasing or hiring of goods under which the total of the amounts payable is equal to the relevant amount, without informing the first-mentioned person that he or she was an undischarged bankrupt; or
- (d) the bankrupt, either alone or jointly with any other person, obtained goods or services from the first-mentioned person promising to pay that person or another person the relevant amount;

promising to pay that person or another person the relevant amount, or amounts the total of which is equal to the relevant amount, without informing the first-mentioned person that he or she was an undischarged bankrupt; or

(e) the bankrupt, either alone or jointly with any other person, obtained the relevant amount, or amounts the total of which is equal to the relevant amount, from the first-mentioned person by promising to supply goods to, or render services for, that person or another person without informing the first-mentioned person that he or she was an undischarged bankrupt; or

(f) the bankrupt carried on business under an assumed name in the name of another person or, either alone or in partnership, under a firm name and:

(i) in the course of the carrying on of that business the bankrupt, or, if the bankrupt carried on the business in partnership under a firm name, the partnership, dealt with the first-mentioned person; and

(ii) the bankrupt did not inform the first-mentioned person that he or she was an undischarged bankrupt.

Part 2—Discharge by operation of law

Division A—Discharge after certain period

Automatic discharge

(1) Subject to section 149A, a bankrupt is, by force of this subsection, discharged from bankruptcy in accordance with this section.

(2) If:

(a) the bankrupt became a bankrupt before the commencement of section 27 of the *Bankruptcy Amendment Act 1991*; and

(b) immediately before the commencement of that section, either:

(i) paragraph 149(3)(c) of the *Bankruptcy Act 1966* as amended applied in relation to the bankrupt; or

(ii) an order under subsection 149(8) or (12) of the *Bankruptcy Act 1966* as amended was in force in relation to the bankrupt;

the bankrupt is discharged at the end of the period of 3 years

(c) the date on which the bankrupt filed his or her statement of affairs; or

(d) the date of commencement of that section;

whichever is the later.

(3) If the bankrupt became a bankrupt before the commencement of section 27 of the *Bankruptcy Amendment Act 1991*, and subsection (2) does not apply in relation to the bankrupt, the bankrupt is discharged at:

(a) the end of the period of 3 years from the date on which the bankrupt filed his or her statement of affairs; or

(b) the commencement of that section;

whichever is the later.

(4) If the bankrupt becomes a bankrupt after the commencement of section 27 of the *Bankruptcy Amendment Act 1991*, the bankrupt is discharged at the end of the period of 3 years from the date on which the bankrupt filed his or her statement of affairs.

Bankruptcy extended when objection made

- (1) If an objection to the discharge of a bankrupt has taken effect in accordance with section 149G, then, unless the objection is withdrawn or cancelled, the reference in whichever of subsections 149(2), (3) and (4) applies in relation to the bankrupt to the period of 3 years from the date on which the bankrupt filed his or her statement of affairs is taken to be a reference to the prescribed number of years from the prescribed date.
- (2) For the purposes of subsection (1):
 - (a) the prescribed number of years is:
 - (i) if the objection was made on a ground, or on grounds, that included a ground, referred to in paragraph 149I(1)(ab), (ac), (ad), (d), (da), (e), (f), (g), (h), (ha), (ia), (k) or (ma)—8 years; or
 - (ii) in any other case—5 years; and
 - (b) the prescribed date is:
 - (i) if the objection was made on a ground, or on grounds, that included a ground, referred to in paragraph 149I(1)(a) or (h)—the date on which the bankrupt returned to Australia; or
 - (ii) in any other case—the date on which the bankrupt filed his or her statement of affairs.
- (3) If the objection is withdrawn or cancelled:
 - (a) the objection is taken never to have been made; and
 - (b) if:
 - (i) the period specified in whichever of subsections 149(2), (3) and (4) applies in relation to the bankrupt has ended; and
 - (ii) no other objection against the discharge of the bankrupt is in effect;the bankrupt is taken to be discharged under section 149 immediately the objection is withdrawn or cancelled.

Division B—Objections

Objection to discharge

- (1) Subject to the following provisions of this Subdivision, at any time before a bankrupt is discharged from bankruptcy under section 149, the trustee may file with the Official Receiver a written notice of objection to the discharge.
- (2) The trustee of a bankrupt's estate must file a notice of objection to the discharge if the trustee believes:
 - (a) that doing so will help make the bankrupt discharge a debt that the bankrupt has not discharged; and
 - (b) that there is no other way for the trustee to induce the bankrupt to discharge any duties that the bankrupt has not discharged.

Form of notice of objection

- (1) A notice of objection must:
 - (a) set out the ground or each of the grounds of objection, being a ground or grounds set out in subsection 149D(1) but not being a ground or grounds of a previous objection to the discharge that was cancelled; and
 - (b) refer to the evidence or other material that, in the opinion of the trustee, establishes that ground or each of those grounds.

and

- (c) state the reasons of the trustee for objecting to the discharge on that ground or those grounds.

(1A) Paragraph (1)(c) does not apply to a ground specified in paragraph 149D(1)(ab), (d), (da), (e), (f), (g), (h), (ha), (ia), (k) (ma).

- (2) A notice of objection is not invalid merely because it does not state the ground or grounds of objection precisely as set out in subsection 149D(1) provided that the ground or grounds can reasonably be identified from the terms of the notice.

Grounds of objection

- (1) The grounds of objection that may be set out in a notice of objection are as follows:

- (a) the bankrupt has, whether before, on or after the date of the bankruptcy, left Australia and has not returned to Australia;

- (aa) any transfer is void against the trustee in the bankruptcy because of section 120 or 122;

- (ab) any transfer is void against the trustee in the bankruptcy because of section 121;

- (ac) any transfer is void against the trustee in the bankruptcy because of section 128B;

- (ad) any transfer is void against the trustee in the bankruptcy because of section 128C;

- (b) after the date of the bankruptcy, the bankrupt contravened section 206A of the *Corporations Act 2001* (disqualification from managing corporations);

- (c) after the date of the bankruptcy the bankrupt engaged in misleading conduct in relation to a person in respect of an amount that, or amounts the total of which, exceeded \$3,000;

- (d) the bankrupt, when requested in writing by the trustee to provide written information about the bankrupt's property, income or expected income, failed to comply with the request;

- (da) after the date of the bankruptcy, the bankrupt intentionally provided false or misleading information to the trustee;

- (e) the bankrupt failed to disclose any particulars of income or expected income as required by a provision of this Act referred to in subsection 6A(1) or by section 139U;

- (f) the bankrupt failed to pay to the trustee an amount that the bankrupt was liable to pay under section 139ZG;

- (g) at any time during the period of 5 years immediately before the commencement of the bankruptcy, or at any time during the bankruptcy, the bankrupt:

- (i) spent money but failed to explain adequately to the trustee the purpose for which the money was spent; or

- (ii) disposed of property but failed to explain adequately to the trustee why no money was received as a result of the disposal or what the bankrupt did with the money received as a result of the disposal;

- (h) while the bankrupt was absent from Australia he or she was requested by the trustee to return to Australia by a particular date or within a particular period but the bankrupt failed to return by that date or within that period;

- (ha) the bankrupt intentionally failed to disclose to the trustee the liability of the bankrupt that existed at the date of the bankruptcy;

- (i) the bankrupt has failed, whether intentionally or not, to disclose to the trustee a liability of the bankrupt that exists at the date of the bankruptcy;
- (ia) the bankrupt failed to comply with subparagraph 77(1)(ii);
- (j) the bankrupt failed to comply with paragraph 77(1)(bb) or subsection 80(1);
- (k) the bankrupt refused or failed to sign a document after being lawfully required by the trustee to sign that document;
- (l) the bankrupt failed to attend a meeting of his or her creditors without having first obtained written approval of the trustee not to attend or without having given to the trustee a reasonable explanation for the failure;
- (m) the bankrupt failed to attend an interview or examination for the purposes of this Act without having given a reasonable explanation to the trustee for the failure;
- (ma) the bankrupt intentionally failed to disclose to the trustee the bankrupt's beneficial interest in any property;
- (n) the bankrupt failed, whether intentionally or not, to disclose to the trustee the bankrupt's beneficial interest in any property.

(2) This section has effect subject to section 304A.

Copy of notice of objection to be given to bankrupt

- (1) As soon as practicable after a notice of objection is filed by the trustee, the trustee must give a copy of the notice to the bankrupt together with a notice to the effect that the bankrupt may request the Inspector-General to review the decision of the trustee to give the notice of objection.
- (2) A notice given to the bankrupt under subsection (1) must have the effect of subsection 149K(3).
- (3) A contravention of this section does not affect the validity of the objection.

Date of effect of objection

An objection takes effect at the beginning of the day on which details of the notice of objection are entered in the National Personal Insolvency Index.

Trustee ceasing to object on some grounds

- (1) If at any time before a bankrupt is discharged the trustee ceases to object to the discharge on a particular ground, the trustee must give the Official Receiver a notice specifying the ground and give the bankrupt a copy of the notice.
- (3) If there is no longer an objection on any ground, the objection ceases to have effect at the beginning of the last day when details of a notice under subsection (1) are entered in the National Personal Insolvency Index.
- (4) If one or more grounds of objection remain, the objection continues to have effect on the remaining ground or grounds.

Withdrawal of objection

- (1) If at any time before a bankrupt is discharged the trustee withdraws the objection, the trustee must give the Official Receiver a notice of the withdrawal of the objection and give the bankrupt a copy of the notice.

copy of the notice.

- (3) The withdrawal takes effect at the beginning of the day when details of a notice under subsection (1) are entered in the National Personal Insolvency Index.

Division C—Review of objection

Internal review of objection

- (1) The Inspector-General may review a decision of the trustee on a notice of objection:
- (a) on the Inspector-General's own initiative; or
 - (b) if requested to do so by the bankrupt for reasons that appear to the Inspector-General to be sufficient to justify a review.
- (2) The Inspector-General must review such a decision if requested to do so by the Ombudsman.
- (3) A request by the bankrupt to the Inspector-General for the review of such a decision must:
- (a) be in writing and given to the Inspector-General not later than 60 days after the day on which the bankrupt is notified of the trustee's objection; and
 - (b) be accompanied by:
 - (i) a copy of the notice of objection; and
 - (ii) any documents on which the bankrupt relies in support of the request.
- (5) Within 60 days after the request is received, the Inspector-General must:
- (a) decide whether to review the decision; and
 - (b) if the Inspector-General decides to review the decision, make his or her decision on the review.

Inspector-General may request further information

- (1) For the purposes of the exercise of powers under this Subdivision, the Inspector-General may:
- (a) ask the bankrupt to provide such further information, either orally or in writing, in support of the request as the Inspector-General specifies; and
 - (b) ask the trustee who filed the notice of objection to provide such information, either orally or in writing, about the decision to file the notice and the reasons for the decision as the Inspector-General specifies.
- (2) If any information is provided orally, the Inspector-General must record it in writing.

Decision on review

- (1) On a review of a decision, if the Inspector-General is satisfied that:
- (a) the ground or grounds on which the objection was made is not a ground or were not grounds specified in subsection 149D(1); or
 - (b) there is insufficient evidence to support the existence of a ground or grounds of objection; or
 - (c) the reasons given for objecting on that ground or those grounds do not justify the making of the objection; or
 - (d) a previous objection that was made on that ground or those grounds has been reviewed and the objection was not allowed.

grounds, or on grounds that included that ground or those grounds, was cancelled;

the Inspector-General must cancel the objection.

- (1A) An objection must not be cancelled under subsection (1) if:
- (a) the objection specifies at least one special ground; and
 - (b) there is sufficient evidence to support the existence of least one special ground specified in the objection; and
 - (c) the bankrupt fails to establish that the bankrupt had a reasonable excuse for the conduct or failure that constituted the special ground.

For this purpose, **special ground** means a ground specified in paragraph 149D(1)(ab), (d), (da), (e), (f), (g), (h), (ha), (ia), (k) (ma).

- (1B) In applying subsection (1A), no notice is to be taken of any conduct of the bankrupt after the time when the ground concerned first commenced to exist.

- (2) The cancellation does not take effect until:
- (a) the end of the period within which an application may be made to the Administrative Appeals Tribunal for the review of the decision of the Inspector-General; or
 - (b) if such an application is made—the decision of the Tribunal is given.

- (3) If the Inspector-General is not satisfied as mentioned in subsection (1), the Inspector-General must confirm the decision.

Inspector-General to notify bankrupt and trustee of decision

- (1) If the Inspector-General:
- (a) reviews a decision; or
 - (b) refuses a request by a bankrupt for a review of a decision,
- the Inspector-General must give written notice to the bankrupt, the trustee and to the Official Receiver, of the Inspector-General's decision on the review or on the request, as the case may be.
- (2) The notice must:
- (a) set out the decision; and
 - (b) refer to the evidence or other material on which the decision was based; and
 - (c) give the reasons for the decision.
- (3) In the case of a decision reviewing the decision to file a notice of objection, the notice must also include a statement to the effect that, if the bankrupt, or the trustee, is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.
- (4) In the case of a decision refusing a request to review the decision to file a notice of objection, the notice to the bankrupt must also include a statement to the effect that, if the bankrupt is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for a review of the decision.
- (5) A contravention of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.
- (6) If, within 60 days after lodgment of a request by a bankrupt for the review of the trustee's decision to file a notice of objection,

the review of the trustee's decision to file a notice of objection. If the Inspector-General has not given written notice to the bankrupt of his or her decision in accordance with subsection (1), the Inspector-General is taken to have reviewed the decision and confirmed it under subsection 149N(3).

Review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision of the Inspector-General on the review of a decision of the trustee to file a notice of objection; or
- (b) a decision of the Inspector-General refusing a request to review a decision of the trustee to file a notice of objection.

Part 4—Provisions applicable to all discharges

Discharged bankrupt to give assistance

A discharged bankrupt must, even though discharged, give such assistance as the trustee reasonably requires in the realization and distribution of such of his or her property as is vested in the trustee.

Penalty: Imprisonment for 6 months.

Effect of discharge

- (1) Subject to this section, where a bankrupt is discharged from bankruptcy, the discharge operates to release him or her from debts (including secured debts) provable in the bankruptcy, whether or not, in the case of a secured debt, the secured creditor has surrendered his or her security for the benefit of creditors generally.

Note: The operation of this section in relation to accumulated HEC debt and semester debts under the *Higher Education Funding Act 1988* is affected by section 106YA of that Act.

- (2) The discharge of a bankrupt from a bankruptcy does not:
 - (a) release the bankrupt from:
 - (i) a debt on a recognizance; or
 - (ii) a debt with which the bankrupt is chargeable at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of a person prosecuted for an offence against a law of the Commonwealth or of a State or Territory of the Commonwealth; or
 - (aa) release the bankrupt from liability to pay an amount to the trustee under subsection 139ZG(1); or
 - (b) release the bankrupt from a debt incurred by means of fraud or a fraudulent breach of trust to which he or she was a party or a debt of which he or she has obtained forbearance by fraud; or
 - (c) subject to any order of the Court made under subsection (2A), release the bankrupt from any liability under a maintenance agreement or maintenance order;

Note: A discharged bankrupt remains liable under any pecuniary penalty because such liabilities are not provable in bankruptcy, see subsection 82(3A).

- (2A) The Court may order that the discharge of a bankrupt from bankruptcy shall operate to release the bankrupt, to such extent and subject to such conditions as the Court thinks fit, from liability to pay damages due under a maintenance agreement or maintenance order.

to pay arrears due under a maintenance agreement or maintenance order.

(3) The discharge of a bankrupt from a bankruptcy does not affect the right of a secured creditor, or any person claiming through him or her, to realize or otherwise deal with his or her security:

(a) if the secured creditor has not proved in the bankruptcy any part of the secured debt—for the purpose of obtaining payment of the secured debt; or

(b) if the secured creditor has proved in the bankruptcy for the part of the secured debt—for the purpose of obtaining payment of the part of the secured debt for which he or she has not proved in the bankruptcy;

and, for the purposes of enabling the secured creditor or a person claiming through or under him or her so to realize or deal with his or her security, but not otherwise, the secured debt, or the part of the secured debt, as the case may be, shall be deemed not to have been released by the discharge of the bankrupt.

(4) The discharge of a bankrupt from a bankruptcy does not release from any liability a person who, at the date on which the bankrupt became a bankrupt:

(a) was a partner or a co-trustee with the bankrupt or was jointly bound or had made a joint contract with the bankrupt or

(b) was surety or in the nature of a surety for the bankrupt;

(5) Where a bankrupt has been discharged from a bankruptcy, proceedings taken in or in respect of the bankruptcy shall be deemed to have been validly taken.

Section 5—Annulment of bankruptcy

Annulment on payment of debts

(1) If the trustee is satisfied that all the bankrupt's debts have been paid in full, the bankruptcy is annulled, by force of this subsection on the date on which the last such payment was made.

(1A) In determining whether there has been full payment of a debt that bears interest, the interest must be reckoned up to and including the date on which the debt (including interest) is paid.

(2) The trustee must, before the end of the period of 2 days beginning on that date, give to the Official Receiver a written certificate setting out the former bankrupt's name and bankruptcy number and the date of the annulment.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) For the purposes of this section, if a debt has been proved by a creditor but the creditor cannot be found or cannot be identified, the debt may be paid to the Official Receiver and, if so paid, is taken for the purposes of this section to have been paid in full to the creditor.

(4A) Money received by the Official Receiver under subsection (4) is received on behalf of the Commonwealth.

(5) If money is paid to the Official Receiver under subsection (4)

(5) If money is paid to the Official Receiver under subsection (1), the provisions of subsections 254(3) to (9) apply in relation to that money as if it had been paid to the Commonwealth by a trustee under subsection 254(2).

(6) In this section:

bankrupt's debts means all debts that have been proved in the bankruptcy and includes interest payable on such of those debts as bear interest, and the costs, charges and expenses of the administration of the bankruptcy, including the remuneration and expenses of the trustee.

Annulment by Court

(1) If the Court is satisfied that a sequestration order ought not to have been made or, in the case of a debtor's petition, that the petition ought not to have been presented or ought not to have been accepted by the Official Receiver, the Court may make an order annulling the bankruptcy.

(2) In the case of a debtor's petition, the order may be made whether or not the bankrupt was insolvent when the petition was presented.

(3) The trustee must, before the end of the period of 2 days beginning on the day the trustee becomes aware of the order, deliver to the Official Receiver a written certificate setting out the former bankrupt's name and bankruptcy number and the date of the annulment.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Effect of annulment

(1) If the bankruptcy of a person (in this section called the **former bankrupt**) is annulled under this Division:

- (a) all sales and dispositions of property and payments duly made, and all acts done, by the trustee or any person acting under the authority of the trustee or the Court before the annulment are taken to have been validly made or done; and
- (b) the trustee may apply the property of the former bankrupt still vested in the trustee in payment of the costs, charges and expenses of the administration of the bankruptcy, including remuneration and expenses of the trustee; and
- (c) subject to subsections (3), (6) and (7), the remainder (if any) of the property of the former bankrupt still vested in the trustee reverts to the bankrupt.

(2) If the property of the former bankrupt referred to in paragraph (1)(b) is insufficient to meet the costs, charges and expenses referred to in that paragraph, the amount of the deficiency is a debt due by the former bankrupt to the trustee and is recoverable by the trustee by action against the former bankrupt in a court of competent jurisdiction.

(3) If an application is made to the Court by a person claiming an interest in property referred to in paragraph (1)(c), the Court, hearing such persons as it thinks fit, may make an order, either unconditionally or on such conditions as the Court considers just and equitable, for the vesting of the property in, or delivery of the property to, a person in whom, or to whom, it seems to the Court

property to, a person in whom, or to whom, it seems to the Court to be just and equitable that it should be vested or delivered, or to the trustee for that person.

(4) Subject to subsection (5), if an order vesting property in a person is made under subsection (3), the property vests immediately in that person without any conveyance, transfer or assignment.

(5) If:

(a) the property to which such an order relates is property the transfer of which is required by a law of the Commonwealth, a State or of a Territory to be registered; and

(b) that law enables the registration of such an order; the property, even though it vests in equity in the person named in the order, does not vest in that person at law until the requirements of that law have been complied with.

(6) The Court may make an order directing the trustee not to part with or transfer the property, or a specified part of the property, referred to in paragraph (1)(c) to the former bankrupt if:

(a) an application is made for an order under this subsection by a person mentioned in subsection (6A); and

(b) the Court is satisfied that:

(i) proceedings are pending under a proceeds of crime law; and

(ii) property of the former bankrupt may:

(A) become subject to a forfeiture order or an interstate forfeiture order made in the proceedings; or

(B) be required to satisfy a pecuniary penalty order or interstate pecuniary penalty order made in the proceedings.

(6A) For the purposes of paragraph (6)(a), the application may be made by:

(a) in the case of pending proceedings in relation to a forfeiture order or a pecuniary penalty order under the *Proceeds of Crime Act 2002*—the Commonwealth proceeds of crime authority that is, or that is proposed to be, the responsible authority for the application for the order under that Act;

(b) in the case of pending proceedings under a corresponding law—a person who is entitled to apply for an interstate confiscation order under the corresponding law.

(7) The Court, on application made to it, may vary or revoke an order made under subsection (6).

VIII—Trustees

Division 1—Appointment and official name

Section 1—Consent to act as trustee

(1) A registered trustee may, by instrument signed by him or her and filed with the Official Receiver, consent to act:

(a) as the trustee of the estate of the debtor specified in the instrument in the event that the debtor becomes a bankrupt;

(b) as the trustee of the joint and separate estates of such debtors specified in the instrument, being members of a partnership or joint debtors who are not in partnership with one another, as may become bankrupts, or, if only one of the debtors becomes a bankrupt, as the trustee of the estate of

that debtor.

(2) An instrument under subsection (1) shall be in accordance with the approved form.

(3) Where:

(a) at the time when a debtor becomes a bankrupt, a registered trustee has, under subsection (1), consented to act as the trustee of the estate of the debtor and the consent has not been revoked, the registered trustee becomes, at that time by force of this subsection, the trustee of the estate of the bankrupt; and

(b) at the time when 2 or more debtors, being members of a partnership or joint debtors who are not in partnership with one another, become bankrupts, a registered trustee has, under subsection (1), consented to act as the trustee of the joint and separate estates of those debtors and the consent has not been revoked, the registered trustee becomes, at that time by force of this subsection, the trustee of the joint and separate estates of those bankrupts.

Appointment of trustees

(1) Where a debtor becomes a bankrupt, the creditors may, if the Official Trustee is the trustee of the estate of the bankrupt, by resolution, at a meeting of creditors, appoint a registered trustee to the office of trustee of the estate of the bankrupt in place of the Official Trustee.

(2) The person (in this section referred to as the **relevant trustee**) who is the trustee of the estate of a bankrupt at the time of an appointment, under subsection (1), of a registered trustee as the trustee, or as one of the trustees, of the estate shall, as early as practicable, notify the registered trustee, in writing, that he or she has been so appointed.

(3) If the registered trustee appointed under subsection (1) informs the relevant trustee in writing, within 10 days after he or she is notified by the relevant trustee of his or her appointment, that he or she accepts the office, the Official Receiver shall issue to him or her a certificate of appointment.

(4) The appointment of a trustee under subsection (1) takes effect from and including the date of the certificate of appointment issued by the Official Receiver.

(5) If the registered trustee appointed under subsection (1) does not so inform the relevant trustee within 10 days after he or she is notified by the relevant trustee of his or her appointment, he or she shall be deemed to have declined the appointment, and the relevant trustee shall, unless the resolution of creditors has made provision for the contingency, convene another meeting of creditors as soon as practicable for the purpose of appointing, under subsection (1), another registered trustee to the office of trustee.

Appointment of more than one trustee etc.

(1) The creditors may, if they think fit, appoint 2 or more registered trustees jointly, or jointly and severally, to the office of trustee of the estate of a bankrupt. In either such case the property of the bankrupt vests in those registered trustees as joint tenants.

(2) The creditors may, if they think fit, appoint registered trustees to act as trustees in succession in the event of one or more of the

registered trustees appointed declining to act or ceasing for a reason to hold the office of trustee.

- (3) In this section, a reference to a registered trustee, in relation to the appointment of a trustee of the estate of a bankrupt, includes a reference to a registered trustee who is, by virtue of subsection 156A(3), the trustee of the estate of the bankrupt.

Vacancy in office of trustee

- (1) The creditors may, at a meeting of the creditors, fill any vacancy in the office of trustee.
- (2) An Official Receiver shall, on the requisition of a creditor, summon a meeting of creditors for the purpose of filling such vacancy.
- (3) For the purposes of this section, an office of trustee shall be deemed to be vacant notwithstanding that it is for the time being filled by the Official Trustee by reason of the operation of section 160.
- (4) The provisions of sections 157 and 158 apply, so far as they are capable of application, to and in relation to the appointment of a new trustee under this section.

Official Trustee to be trustee when no registered trustee is trustee

If at any time there is no registered trustee who is the trustee of the estate of a bankrupt, the Official Trustee shall, by force of this section, be the trustee of the estate.

Trustee may act in official name

- (1) The trustee of the estate of a bankrupt may sue and be sued in the prescribed official name and may, by that name, hold, dispose of or acquire property of every description, make contracts, enter into engagements binding on the trustee and his or her successors in office and do all other acts and things necessary or expedient to be done in the execution of his or her office.
- (2) For the purposes of subsection (1), the prescribed official name is “The Trustee (*or* Trustees) of the Property of (*name of bankrupt*), Bankrupt”.
- (3) This section applies to proceedings under the *Family Law Act 1975* in a corresponding way to the way in which it applies to proceedings in a suit.
- (4) If:
- (a) a person (the **first trustee**) ceases to be the trustee of the bankrupt’s estate; and
 - (b) proceedings to which the first trustee was a party were pending under the *Family Law Act 1975* immediately before the cessation; and
 - (c) another person (the **second trustee**) becomes the first trustee’s successor in office;
- the second trustee is, by force of this subsection, substituted for the first trustee as a party to the proceedings.

Division 2—Remuneration and costs of the Official Trustee and Official Receiver

Remuneration of the Official Trustee

(1) The Official Trustee is to be remunerated as determined by Minister by legislative instrument.

(2) An amount equal to each amount of remuneration received by the Official Trustee shall be paid to the Commonwealth.

Note: The remuneration may be in respect of work the Official Trustee does as trustee of the estate of a bankrupt or in respect of work done in any situation under this Act (such as where the Official Trustee acts as a trustee as a result of a personal insolvency agreement).

Costs and expenses of Official Receiver

(1) If any Official Receiver exercises any power under this Act in relation to a bankrupt, the costs and expenses of the Official Receiver in connection with the exercise of the power are taken to be costs and expenses of the administration of the estate of the bankrupt.

(2) If any Official Receiver exercises any power under this Act at the request of the trustee of the estate of a bankrupt, the trustee is to pay to the Official Receiver the fee determined by the Minister by legislative instrument.

(3) Money received by the Official Receiver under subsection (2) is to be received on behalf of the Commonwealth.

Division 5—Vacation of office

Resignation of trustee

The Court may, subject to such terms and conditions as it thinks fit, accept the resignation of a registered trustee from the office of trustee of an estate.

Streamlined method for replacing trustee

(1) The current trustee of a bankrupt's estate may, with the written consent of another trustee (either a registered trustee or the Official Trustee), nominate the other trustee as the new trustee of the estate.

(2) The current trustee must give notice of the nomination to all creditors who are entitled to receive notice of a meeting of creditors.

(3) The notice must:

(a) specify a date (at least 10 days after the notice is given) from which it is proposed that the new trustee will become trustee of the estate; and

(b) state that any creditor may, by written notice to the trustee, at least 2 days before the specified date, object to the nomination taking effect without there being a meeting of creditors.

(4) If no creditor lodges a written notice of objection with the current trustee at least 2 days before the specified date, then the new trustee replaces the current trustee as trustee of the estate from the date specified in the notice.

(5) For the purposes of this Act, the new trustee is treated as having been appointed by the creditors.

(6) A certificate signed by the new trustee stating any matter relating to the replacement of the former trustee under this section is prima facie evidence of the matter.

Release of registered trustee by the Court

- (1) A trustee may apply to the Court for an order of release from trusteeship of an estate.
- (2) Where the Court is satisfied that the trustee:
 - (a) has realized all the property of the bankrupt or so much as can be realized without unduly protracting the trusteeship or has distributed a final dividend;
 - (b) has ceased to act by reason of the approval of a composition or scheme of arrangement under Division 6 of Part IV; or
 - (c) has resigned or has been removed from office;the Court may make the order sought.
- (3) In hearing the application, the Court must also consider any objection to the order sought that is made by the Inspector-General, the Official Receiver, a creditor or any other interested person.
- (4) An order of release under this section:
 - (a) discharges the trustee from all liability in respect of an act done or default made by him or her in the administration of the estate of the bankrupt; and
 - (b) if the trustee has not already resigned or been removed from office, operates to remove him or her from office.
- (5) An order of release under this section may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment of a material fact.
- (6) Where a trustee has died, the person administering the estate of the trustee may apply to the Court for an order releasing the trustee's estate from any claims arising out of the trustee's administration of an estate of which he or she was trustee and upon such an application, the Court may make such order as it thinks proper in the circumstances.
- (7) This section does not apply in relation to the Official Trustee.

Release of registered trustee by operation of law after 7 years

- (1) If the trustee of the estate of a bankrupt:
 - (a) is a registered trustee; and
 - (b) has not already been released from being trustee of the estate under section 183;the trustee is released at the end of 7 years from the date on which the Official Receiver entered in the National Personal Insolvency Index the fact that the administration of the estate was finalised.
- (3) The release of a trustee from the trusteeship of an estate by operation of this section has the same effect as an order of release under section 183.

Release of the Official Trustee

- (1) Where the Official Trustee becomes the trustee of the estate of a bankrupt upon the release of a registered trustee under section 183 or 184, the Official Trustee does not become personally liable, by reason of its so becoming the trustee, in respect of an act done or default made or liability incurred by a prior trustee.
- (2) The Official Trustee is released from being trustee of the estate of a bankrupt at the end of 7 years from the date on which the

X—Debt agreements

Part 1—Introduction

Definitions

In this Part, unless the contrary intention appears:

account-freezing notice means a notice under subsection 186LB(2).

adequate and appropriate fidelity insurance has a meaning affected by section 185A.

adequate and appropriate professional indemnity insurance has a meaning affected by section 185A.

affected creditor means:

- (a) in relation to a proposal to vary or terminate a debt agreement—a creditor who is a party (as creditor) to the agreement; or
- (b) in relation to a debt agreement proposal—a creditor who would be a party to the proposed debt agreement if it were made.

applicable deadline:

- (a) in relation to a debt agreement proposal, means:
 - (i) if Official Receiver accepted the proposal for processing in December—the end of the 42nd day after acceptance; or
 - (ii) otherwise—the end of the 35th day after the Official Receiver accepted the proposal for processing; or
- (b) in relation to a proposal to vary a debt agreement, means:
 - (i) if the proposal was given to the Official Receiver in December—the end of the 42nd day after the proposal was given; or
 - (ii) otherwise—the end of the 35th day after the proposal was given to the Official Receiver; or
- (c) in relation to a proposal to terminate a debt agreement means:
 - (i) if the proposal was given to the Official Receiver in December—the end of the 21st day after the proposal was given; or
 - (ii) otherwise—the end of the 14th day after the proposal was given to the Official Receiver.

basic eligibility test has the meaning given by section 186A.

Chapter 5 body corporate has the same meaning as in the *Corporations Act 2001*.

debt agreement activities of a company means the activities of the company in connection with:

- (a) debt agreement proposals for which the company is to be the administrator; and
- (b) debt agreements for which the company is the administrator.

designated 6-month arrears default has the meaning given by subsection 185LC(3).

frozen debt means a debt that:

- (a) is owed by a debtor who has given a debt agreement proposal that has been accepted by the Official Receiver for processing; and
- (b) would be a provable debt in relation to the proposed debt agreement if it were made;

but does not include a debt arising under a maintenance agreement or maintenance order (whenever entered into or made).

proposed administrator, in relation to a debt agreement proposal, means the person specified under paragraph 185C(2).

provable debt, in relation to a debt agreement, means a debt that would have been provable in bankruptcy if the debtor had become a bankrupt when the acceptance of the relevant debt agreement proposal for processing was recorded in the National Personal Insolvency Index.

registered debt agreement administrator means a person who is registered under section 186D as a debt agreement administrator.

Adequate and appropriate professional indemnity and fidelity insurance

The Inspector-General may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity insurance, and adequate and appropriate fidelity insurance, in relation to either or both of the following:

- (a) specified circumstances;
- (b) one or more specified classes of registered debt agreement administrators.

Part 2—Debt agreement proposals

Giving a debt agreement proposal to the Official Receiver

Giving a debt agreement proposal

- (1) A debtor who is insolvent may give the Official Receiver a written proposal for a debt agreement.

Requirements for a debt agreement proposal

- (2) A debt agreement proposal must:
 - (aa) be in the approved form; and
 - (a) identify the debtor's property that is to be dealt with under the agreement; and
 - (b) specify how the property is to be dealt with; and
 - (c) authorise a specified person (being a person who is the Official Trustee, a registered trustee or a registered debt agreement administrator and who is not the debtor) to deal with the identified property in the way specified; and
 - (d) provide that:
 - (i) all provable debts in relation to the agreement rank equally; and
 - (ii) if the total amount paid by the debtor under the agreement in respect of those provable debts is insufficient to meet those provable debts in full, those provable debts are to be paid proportionately; and
 - (e) provide that a creditor is not entitled to receive, in respect of a provable debt, more than the amount of the debt; and
 - (f) provide that the amount of a provable debt in relation to

- (f) provide that the amount of a provable debt in relation to the agreement is to be ascertained as at the time when the acceptance of the proposal for processing is recorded on the National Personal Insolvency Index; and
- (g) if a creditor is a secured creditor—provide that, if the creditor does not realise the creditor's security while the agreement is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the agreement, to be a creditor only to the extent (if any) by which the amount of the provable debt exceeds the value of the creditor's security; and
- (h) if a creditor is a secured creditor—provide that, if the creditor realises the creditor's security while the agreement is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the agreement, to be a creditor only to the extent of any balance due to the creditor after deducting the net amount realised; and
- (i) be signed by the debtor; and
- (j) specify the date on which the debtor signed the proposal.

(2AA) A debt agreement proposal must not provide for the debtor to make payments under the agreement, in respect of provable debts in relation to the agreement, after:

- (a) 3 years beginning on the day the agreement is made; or
- (b) if subsection (2AB) applies to the debtor—5 years beginning on the day the agreement is made.

Note: Section 185H deals with when a debt agreement is made.

(2AB) This subsection applies to the debtor if at the time the debtor gives the debt agreement proposal to the Official Receiver the debtor has an interest in real property in Australia that is a dwelling and is the debtor's principal place of residence, being an interest:

- (a) that is an interest under a long-term lease; or
- (b) that is any other legal or equitable estate or interest, except:
 - (i) an interest under a lease (other than a long-term lease); or
 - (ii) an interest under a licence; or
 - (iii) a life interest; or
 - (iv) an interest in an easement; or
 - (v) an interest held on trust for another person; or
 - (vi) an interest of a kind determined in an instrument under subsection (2AD) for the purposes of this subparagraph.

(2AC) If, in accordance with subsections (2AA) and (2AB), a debt agreement proposal provides for the debtor to make payments under the agreement, in respect of provable debts in relation to the agreement, after 3, but not after 5, years beginning on the day the agreement is made, the property identified under paragraph (b) must not include any interest covered by subsection (2AB).

(2AD) The Minister may, by legislative instrument, determine a kind of interest for the purposes of subparagraph (2AB)(b)(vi).

(2A) A debt agreement proposal must not provide for the transfer of property (other than money) to a creditor.

(2B) A debt agreement proposal given to the Official Receiver must be accompanied by an explanatory statement in the approved form containing such information as the form requires.

(2C) The debtor's subsection (2B) statement may be set out in the same document as the debtor's debt agreement proposal.

(2D) The debt agreement proposal given to the Official Receiver must be accompanied by a certificate signed by the proposed administrator:

(a) stating that the proposed administrator consents to being set out as specified under paragraph (2)(c); and

(b) stating that the proposed administrator has given the creditor the information prescribed by the regulations; and

(c) if subsection (4C) does not apply to the debtor—stating having regard to:

(i) the circumstances in existence at the time when the debtor's statement of affairs was signed by the debtor;

(ii) any other relevant matters;

the proposed administrator has reasonable grounds to believe that the debtor is likely to be able to discharge the obligations created by the agreement as and when they fall due; and

(d) stating that the proposed administrator has reasonable grounds to believe that all information required to be set out in the debtor's statement of affairs has been set out in that statement; and

(e) stating that the proposed administrator has reasonable grounds to believe that all information required to be set out in the debtor's subsection (2B) statement has been set out in that statement; and

(f) if a person (the **broker**) referred the debtor to the proposed administrator—setting out details of the relationship between the broker and the proposed administrator and details of any payments made, or to be made, to the broker by the proposed administrator in connection with that referral; and

(g) if, at the time a person became an affected creditor, that person was a related entity of the proposed administrator specifying the name of the affected creditor and the nature of the relationship between the affected creditor and the proposed administrator.

(2DA) If subsection (4C) applies to the debtor, the debt agreement proposal given to the Official Receiver must also be accompanied by the certificate under paragraph (4C)(b).

(2E) A debt agreement proposal must not be given jointly by 2 or more debtors.

(2F) If a debt agreement proposal is expressed to be subject to the occurrence of a specified event within a specified period after the debt agreement proposal is accepted, the specified period must not be longer than 7 days.

What a debt agreement proposal may include

(3) A debt agreement proposal may provide for any matter relating to the debtor's financial affairs.

If the proposed administrator is not the Official Trustee, the proposal may also provide for the remuneration of the proposed administrator.

Remuneration of administrator

(3A) If a debt agreement proposal provides for the remuneration of the proposed administrator, the debt agreement proposal must

proposed administrator, the debt agreement proposal must:

- (a) provide that the total remuneration of the proposed administrator is an amount equal to a specified percentage (the **overall remuneration percentage**) of the total amount payable by the debtor under the agreement in respect of provable debts; and
- (b) provide that, if the debtor pays an amount (the **individual debt repayment amount**) under the agreement in respect of those provable debts:
 - (i) the debtor must also pay to the proposed administrator an amount (the **individual remuneration amount**) ascertained in accordance with the agreement; and
 - (ii) the individual remuneration amount must not exceed the overall remuneration percentage of the individual debt repayment amount; and
 - (iii) the proposed administrator must apply the individual remuneration amount towards the discharge of the proposed administrator's entitlement to remuneration under the agreement.

Reimbursement of expenses

- (3B) A debt agreement proposal may also provide for the proposed administrator to be reimbursed expenses of a kind specified in the proposal that are incurred by the proposed administrator in administering any debt agreement resulting from the acceptance of the proposal.

When a debtor cannot give a debt agreement proposal

- (4) A debtor cannot give the Official Receiver a debt agreement proposal at a particular time (the **proposal time**) if:
- (a) at any time in the 10 years immediately before the proposal time the debtor:
 - (i) has been a bankrupt; or
 - (ii) has been a party (as debtor) to a debt agreement; or
 - (iii) has given an authority under section 188; or
 - (b) at the proposal time the debtor's unsecured debts total more than:
 - (i) the threshold amount; or
 - (ii) if the regulations prescribe a greater amount for that purpose—the amount prescribed; or
 - (c) at the proposal time, the value of the debtor's property would be divisible among creditors if the debtor were bankrupt is more than twice the threshold amount; or
 - (d) the debtor's after tax income (see subsection (5)) in the year beginning at the proposal time is likely to exceed three-quarters of the threshold amount; or
 - (e) if subsection (2AB) does not apply to the debtor—the amount worked out using the following formula (expressed as a percentage) exceeds the percentage determined in an instrument under subsection (4B) (unless subsection (4C) applies to the debtor):

$$\frac{\text{Total of the payments that the debtor would be required to make under the agreement} + \text{Low income debtor amount (see subsection (5))}}{\text{The debtor's after tax income (see subsection (5)) in the year beginning at the proposal time}}$$

- (4A) Subparagraph (4)(a)(i) does not apply in relation to a bankrupt that has been annulled under section 153B.

- (4B) The Minister may, by legislative instrument, determine the

following:

- (a) a percentage for the purposes of paragraph (4)(e) (which may exceed 100%);
- (b) an amount for the purposes of the definition of **low income debtor amount** in subsection (5).

(4C) This subsection applies to the debtor if:

- (a) the amount worked out using the formula under paragraph (4)(e) (expressed as a percentage) exceeds the percentage determined in an instrument under subsection (4B); and
- (b) the proposed administrator gives to the debtor a certificate signed by the proposed administrator stating that, having regard to:

- (i) the circumstances in existence at the time when the debtor's statement of affairs was signed by the debtor;
- (ii) any other relevant matters;

the proposed administrator is satisfied that the debtor is likely to be able to discharge the obligations created by the agreement as and when they fall due.

(4D) A person commits an offence of strict liability if:

- (a) the person gives a certificate under paragraph (4C)(b);
- (b) before giving the certificate, the person did not:
 - (i) make reasonable inquiries about the debtor's financial situation; or
 - (ii) take reasonable steps to verify the debtor's financial situation.

Note: See also section 277B (about infringement notices).

Penalty: 60 penalty units.

(5) In this section:

after tax income, in relation to a debtor and a year, means the amount that is likely to be the taxable income of the debtor for that year less the income tax and the medicare levy imposed on that taxable income (worked out treating the year as a year of income if it is not actually a year of income).

Note: For the purposes of this definition, **taxable income**, **income tax** and **year of income** have the same meanings as in the *Income Tax Assessment Act 1936*, and **medicare levy** means the levy imposed by the *Medicare Levy Act 1986*.

lease includes a sublease.

long-term lease means a lease granted by the Commonwealth, a State or a Territory for a term (including any extension or renewal) that is reasonably likely, at the time the lease is granted, to exceed 20 years.

low income debtor amount means the amount determined in an instrument under subsection (4B) for the purposes of this definition.

threshold amount, in relation to a particular time, means 7 times the amount that, at that time, is specified in column 3, item 2, B, point 1064-B1, Pension Rate Calculator A, in the *Social Security Act 1991*.

unsecured debt includes the amount by which the value of a debt exceeds the value of a security given for the debt.

Statement of affairs to be given with a debt agreement proposal

- (1) A debtor who gives the Official Receiver a debt agreement proposal must give the Official Receiver a statement of the debtor's affairs with the proposal.

Note: Section 6A sets out requirements for statements of affairs.

- (2) The debtor or an affected creditor may, without fee and either personally or by an agent:
 - (a) inspect the statement of affairs; and
 - (b) obtain a copy of, or make extracts from, the statement of affairs.
- (3) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, the Official Receiver must ensure that the information is not made available under this section to a person other than the debtor (or an agent of the debtor).
- (4) The Official Receiver may refuse to allow a person access under this section to particular information in a debtor's statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.
- (5) The debtor's statement of affairs may be set out in the same document as the debtor's subsection 185C(2B) statement.
- (6) This section does not limit subsection 185C(2B).

Accepting a debt agreement proposal for processing

- (2) If a debtor gives the Official Receiver a debt agreement proposal, the Official Receiver may accept the proposal for processing if:
 - (a) the Official Receiver is satisfied that subsections 185C(2AA), (2AC), (2A), (2B), (2D), (2DA), (2E) and (4) have been complied with; and
 - (c) if the debt agreement proposal is expressed to be subject to the occurrence of a specified event within a specified period after the debt agreement proposal is accepted—the Official Receiver is satisfied that subsection 185C(2F) has been complied with; and
 - (d) if the proposal provides for the remuneration of the person specified under paragraph 185C(2)(c)—the Official Receiver is satisfied that subsection 185C(3A) has been complied with; and
 - (e) the Official Receiver is satisfied that the statement of affairs accompanying the proposal is in order.
- (2AA) The Official Receiver must not accept a debt agreement proposal for processing unless the proposal was given to the Official Receiver within 14 days after the day on which the debtor signed the proposal.
- (2AB) The Official Receiver may refuse to accept a debt agreement proposal for processing if the Official Receiver reasonably believes that complying with the agreement would cause undue hardship to the debtor.
- (3) The Official Receiver must not accept a debt agreement proposal for processing if the Official Receiver thinks that the creditors' interests would be better served by not accepting the proposal for processing.
- (4) A debtor who gives the Official Receiver a debt agreement

- (4) A debtor who gives the Official Receiver a debt agreement proposal may apply to the Administrative Appeals Tribunal for review of the Official Receiver's decision on whether to accept proposal for processing.
- (5) If the Official Receiver accepts a debt agreement proposal for processing, the Official Receiver must process the proposal in accordance with section 185EA.

Processing of debt agreement proposal

Processing of proposals by the Official Receiver

- (1) If the Official Receiver is required by subsection 185E(5) to process a debt agreement proposal, the Official Receiver must write to each of the affected creditors who is known to the Official Receiver, asking each affected creditor to indicate whether the proposal should be accepted.

Writing to creditors to deal with a proposal

- (2) When writing to each affected creditor under subsection (1) about a debt agreement proposal, the Official Receiver must:
- (a) provide the creditor with a copy of:
 - (i) the debt agreement proposal; and
 - (ii) the debtor's subsection 185C(2B) statement; and
 - (iii) the certificate under subsection 185C(2D), and an certificate under paragraph 185C(4C)(b), that accompanied the debt agreement proposal; and
 - (b) ask the creditor to give a written statement setting out whether or not the debt agreement proposal should be accepted; and
 - (c) inform the creditor of the person to whom the statement should be given and of the need to give the statement before the applicable deadline.
- (3) The paragraph (2)(b) statement must be in the approved form.
- (4) Paragraphs (2)(b) and (c) do not apply in relation to an affected creditor who:
- (a) is the proposed administrator; or
 - (b) was, on becoming an affected creditor, a related entity of the proposed administrator.

Inspection of creditor's statement

If an affected creditor gives a paragraph 185EA(2)(b) statement:

- (a) the debtor; or
 - (b) any other affected creditor;
- may, without fee and either personally or by an agent:
- (c) inspect the statement; and
 - (d) obtain a copy of, or make extracts from, the statement.

Acceptance of a debt agreement proposal

Acceptance in writing

- (1) A debt agreement proposal is accepted if:
- (a) the Official Receiver writes to affected creditors of a debt agreement proposal under section 185EA; and
 - (b) a majority in value of the creditors who reply before the applicable deadline state that the proposal should be accepted.
- (1A) For the purposes of paragraph (1)(b), disregard an affected

creditor who:

- (a) is the proposed administrator; or
- (b) was, on becoming an affected creditor, a related entity of the proposed administrator.

Timing of acceptance

- (2) A debt agreement proposal that is accepted under subsection (1) is taken to be accepted at the applicable deadline.

Value of a creditor

- (3) In assessing, for the purposes of paragraph (1)(b), the value of a creditor who is a related entity of the debtor, any debt that was assigned to the creditor is taken to have a value equal to the value of the consideration that the creditor gave for the assignment.
- (4) For the purposes of paragraph (1)(b), the value of a creditor is to be assessed as at the time when the acceptance of the debt agreement proposal for processing was recorded on the National Personal Insolvency Index.
- (5) For the purposes of paragraph (1)(b), a secured creditor is taken to be a creditor only to the extent (if any) by which the amount of the debt owing to the creditor exceeds the value of the creditor's security.

Offence

- (6) A person commits an offence if:
- (a) the person is the proposed administrator in relation to the debt agreement proposal; and
 - (b) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and
 - (c) the person does so with the intention of securing the affected creditor's acceptance or non-acceptance of the proposal.

Penalty for contravention of this subsection: Imprisonment for 6 months.

Cancellation of acceptance of debt agreement proposal for processing

Scope

- (1) This section applies if:
- (a) the Official Receiver has accepted a debt agreement proposal for processing; and
 - (b) the applicable deadline has not arrived.

Cancellation

- (2) The Official Receiver may cancel the acceptance of the debt agreement proposal for processing if:
- (a) the Official Receiver becomes aware that one or more affected creditors were not disclosed in the debtor's statement of affairs; or
 - (b) the Official Receiver becomes aware that:
 - (i) the debtor's statement of affairs; or
 - (ii) the debtor's subsection 185C(2B) statement; orwas deficient because it omitted a material particular or because it was incorrect in a material particular; or
 - (c) the Official Receiver becomes aware of a material change in the debtor's financial position.

the debtor's circumstances that:

- (i) was not foreshadowed in the debtor's subsection 185C(2B) statement or the debtor's statement of affairs; and
 - (ii) in the opinion of the Official Receiver, is capable of affecting an affected creditor's decision whether or not to accept the proposal; or
- (d) the Official Receiver becomes aware of a matter that, if it had been known to the Official Receiver at the time of acceptance of the debt agreement proposal for processing, would have resulted in a refusal of acceptance on the ground that subsection 185C(4) had not been complied with.

Notification of cancellation

- (3) If the Official Receiver cancels the acceptance of a debt agreement proposal for processing, the Official Receiver must give written notice of the cancellation, and the reasons for it, to:
- (a) the debtor; and
 - (b) affected creditors who are known to the Official Receiver.

Review

- (4) If the Official Receiver decides to cancel the acceptance of a debt agreement proposal for processing, the debtor may apply to the Administrative Appeals Tribunal for review of the decision.

Effect of accepting a debt agreement proposal for processing

- (1) After acceptance of a debt agreement proposal for processing is recorded in the National Personal Insolvency Index:
- (a) a creditor cannot apply for enforcement of, or enforce, a remedy against the debtor's person or property in respect of a frozen debt; and
 - (b) a sheriff must not take action, or further action, to execute or sell property under, any process issued by a court to enforce payment of a frozen debt owed by the debtor; and
 - (c) a person who is entitled under a law of the Commonwealth or of a State or Territory of the Commonwealth, to retain or deduct money from money that is or will be owing or payable to the debtor must not retain or deduct money;
- until any of the following events occurs:
- (d) in a case where:
 - (i) the applicable deadline arrives; and
 - (ii) the proposal has not been accepted;the arrival of the applicable deadline;
 - (e) in a case where:
 - (i) the proposal is accepted; and
 - (ii) the proposal is not expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted; and
 - (iii) details of the debt agreement are entered on the National Personal Insolvency Index;the entry of those details on the National Personal Insolvency Index;
 - (f) in the case where:
 - (i) the proposal is accepted; and
 - (ii) the proposal is expressed to be subject to the

occurrence of a specified event within a specified period after the proposal is accepted; and

(iii) that event occurs within that period; and

(iv) details of the debt agreement are entered on the National Personal Insolvency Index;

the entry of those details on the National Personal Insolvency Index;

(g) in the case where:

(i) the proposal is accepted; and

(ii) the proposal is expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted; and

(iii) that event does not occur within that period; the end of that period;

(h) in a case where the Official Receiver cancels the acceptance of the proposal for processing—the cancellation of the acceptance;

(i) in a case where the proposal lapses—the lapse of the proposal.

(2) Subsection (1) does not prevent a creditor from:

(a) starting a legal proceeding in respect of a frozen debt;

(b) taking a fresh step in such a proceeding (except to enforce a judgment).

(3) Subsection (1) does not prevent a creditor from applying for enforcement of, or enforcing, a remedy against the debtor's person or property in respect of a liability under a proceeds of crime law.

Lapsing of a debt agreement proposal

A debt agreement proposal lapses if:

(b) the Official Receiver accepts the proposal for processing and writes to affected creditors about it, but no replies are received before the applicable deadline; or

(c) the debtor dies after giving the proposal to the Official Receiver but before a debt agreement is made on the basis of the proposal.

Note: Section 185H deals with the making of a debt agreement.

Part 3—Making a debt agreement

Making a debt agreement

(1) This section sets out the 2 situations in which a debt agreement is made.

Unconditional debt agreement proposals

(2) If:

(a) a debt agreement proposal is accepted; and

(b) the proposal is not expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted;

then:

(c) the Official Receiver must enter details of the debt agreement concerned on the National Personal Insolvency Index; and

(d) the debt agreement is made in the terms of the proposal when those details are so entered.

Note: Section 185FC explains how a proposal is accepted.

Note: Section 185EC explains how a proposal is accepted.

Conditional debt agreement proposals

- (3) If:
- (a) a debt agreement proposal is accepted; and
 - (b) the proposal is expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted; and
 - (c) the event occurs within that period;
- then:
- (d) the Official Receiver must enter details of the debt agreement concerned on the National Personal Insolvency Index; and
 - (e) the debt agreement is made in the terms of the proposal when those details are so entered.

Note: Section 185EC explains how a proposal is accepted.

Parties to a debt agreement

The parties to a debt agreement are:

- (a) the debtor; and
- (b) the creditors to whom the debtor owed provable debts.

Prevention of proceedings relating to debts

- (1) While a debt agreement is in force and details of it are entered on the National Personal Insolvency Index, a creditor cannot:
- (a) present a creditor's petition against the debtor; or
 - (b) proceed further with a creditor's petition that was presented against the debtor before details of the debt agreement were entered in the Index; or
 - (c) enforce a remedy against the debtor's person or property, or start or take a fresh step in legal proceedings, in respect of a provable debt.
- (2) Paragraph (1)(c) does not prevent a creditor from enforcing a remedy against the debtor or the debtor's property for a liability under one or more of the following:
- (a) a maintenance agreement;
 - (b) a maintenance order;
 - (c) a proceeds of crime law.
- (3) While a debt agreement is in force and details of it are entered on the National Personal Insolvency Index:
- (a) a sheriff must not take action, or further action, to execute or sell property under, any process issued by a court to enforce payment of a provable debt owed by the debtor; and
 - (b) a person who is entitled under a law of the Commonwealth or of a State or Territory, to retain or deduct money from money that is or will be owing or payable to the debtor must not retain or deduct money.

Division 3A—Duties of administrators

185LA Duties of an administrator—general

- (1) The duties of an administrator of a debt agreement include:
- (a) dealing with the debtor's property in the manner specified in the debt agreement; and
 - (b) giving information about the administration of the debt agreement to the debtor if the debtor makes a reasonable request.

- request for the information; and
 - (c) giving information about the administration of the debt agreement to a creditor who:
 - (i) is a party to the debt agreement; and
 - (ii) makes a reasonable request for the information; and
 - (d) considering whether the debtor has committed an offence against this Act; and
 - (e) referring to the Inspector-General or to relevant law enforcement authorities any evidence of an offence by the debtor against this Act.
- (2) An administrator of a debt agreement has a duty not to be reimbursed for expenses the administrator incurred in administering the debt agreement unless those expenses are of a kind specified in the relevant debt agreement proposal as mentioned in subsection 185C(3B).
- (3) If an administrator of a debt agreement signs a certificate under paragraph 185M(1DB)(a) or subsection 185M(1F) in relation to a proposal to vary the agreement, the administrator has a duty to ensure that the certificate is correct.

Administrator to notify creditors of a 3-month arrears default by a debtor

- (1) If a 3-month arrears default by a debtor occurs at a particular time in relation to a debt agreement, the administrator of the agreement must notify, in writing, each creditor who is a party to the debt agreement of that occurrence within 10 business days of that occurrence.
- (2) The administrator of a debt agreement is not required to give notification under subsection (1) in respect of a 3-month arrears default (the **first default**) if:
- (a) one or more other 3-month arrears defaults by the debtor have occurred in relation to the debt agreement; and
 - (b) the 3-month period to which the first default relates overlaps with the 3-month period to which any of those other 3-month arrears defaults relate; and
 - (c) a notification under subsection (1) has already been given in respect of any of those other 3-month arrears defaults.
- (3) For the purposes of this section, a **3-month arrears default** by a debtor occurs at a particular time (the **test time**) in relation to a debt agreement if:
- (a) at the beginning of the 3-month period ending immediately before the test time, one or more payments (the **due payments**) in respect of provable debts became due and payable by the debtor under the debt agreement; and
 - (b) throughout that 3-month period, the debtor was in arrears in respect of any or all of the due payments; and
 - (c) either:
 - (i) the total amount that the debtor was so in arrears exceeds \$300, or 20% of the total of all of the due payments at the beginning of that 3-month period, whichever is higher; or
 - (ii) if the total of all of the due payments at the beginning of that 3-month period was \$300 or less—no payment made in that period to reduce any of the due payments

Administrator to notify Official Receiver of a designated

6-month arrears default by a debtor

- (1) If a designated 6-month arrears default by a debtor occurs at a particular time in relation to a debt agreement, the administrator of the debt agreement must notify, in writing, the Official Receiver of that occurrence within 10 business days of that occurrence.
- (2) The administrator of a debt agreement is not required to give notification under subsection (1) in relation to the debt agreement if the administrator has already given such a notification in relation to the debt agreement.
- (3) For the purposes of this Part, a **designated 6-month arrears default** by a debtor occurs at a particular time (the **test time**) in relation to a debt agreement if:
 - (a) both of the following apply:
 - (i) before the test time, one or more payments in respect of provable debts became due and payable by the debtor under the debt agreement;
 - (ii) at no time during the 6-month period ending immediately before the test time were any obligations in respect of those payments discharged; or
 - (b) both of the following apply:
 - (i) at the test time, the obligations created by the debt agreement have not been discharged;
 - (ii) the last of those obligations should have been discharged at a time 6 months before the test time.

Administrator to maintain separate bank account

- (1) A person who is:
 - (a) either:
 - (i) a registered debt agreement administrator; or
 - (ii) a registered trustee; and
 - (b) the administrator of one or more debt agreements;must pay all money received by the person from debtors under those debt agreements to the credit of a single interest-bearing bank account that:
 - (c) bears:
 - (i) the person's own name; and
 - (ii) the words "—Debt Agreement Administration Trust Account"; and
 - (d) complies with such other requirements (if any) as are specified in the regulations.
- (2) The person must only pay into the account money received from a person from debtors under debt agreements.
- (2A) The person must not pay any money out of the account other than:
 - (a) for purposes related to the administration of debt agreements; or
 - (b) in accordance with this Act; or
 - (c) in accordance with a direction of the Court.
- (3) The person is entitled, in his or her personal capacity, to the payment of interest on the account, less an amount equal to the bank fees or charges (if any) paid or payable on the account during the period to which the interest relates.
- (4) Interest on money in the account is not subject to taxation under a law of the Commonwealth, a State or a Territory, except as

A Offence relating to the trust account

A person commits an offence of strict liability if:

- (a) the person is subject to a requirement under subsection 185LD(1), (2) or (2A); and
- (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Administrator to keep accounts etc.

(1) An administrator of a debt agreement must:

- (a) keep such accounts, books and records as are necessary to give a full and correct account of the administration of the agreement; and
- (b) if required to do so by the Inspector-General—make the accounts and records available for inspection by the Inspector-General; and
- (c) if required to do so by the Inspector-General—answer all inquiries about the debt agreement; and
- (d) cooperate with any inquiry or investigation made by the Inspector-General under paragraph 12(1)(bb).

(1A) A person commits an offence of strict liability if:

- (a) the person is subject to a requirement under paragraph (a) or (b); and
- (b) the person fails to comply with the requirement.

Penalty: 5 penalty units.

(2) If an administrator of one or more debt agreements is to be remunerated under those debt agreements, the administrator

- (a) maintain a separate record of:
 - (i) money received by the administrator from the debt in relation to those debt agreements; and
 - (ii) payments made by the administrator in relation to those debt agreements; and
 - (iii) the balance of money held by the administrator in relation to those debt agreements; and
- (b) if the administrator maintains an account under subsection 185LD(1)—at least once every 45 days, reconcile the balance held in the subsection 185LD(1) account with corresponding record maintained under paragraph (a).

A Annual return

(1) If, during a financial year, an administrator of a debt agreement administered the agreement, the administrator must, within the period of 25 business days after the end of that year, give the Inspector-General a return, in the approved form, in relation to the administration of that agreement during that year.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Succession of administrator

(1) This section applies if:

- (a) a person (the **earlier administrator**) ceases to be the administrator of a debt agreement; and
- (b) another person (the **later administrator**) becomes the administrator of the debt agreement in place of the earlier administrator.

Duty

(2) The earlier administrator must:

- (a) prepare an account of:
 - (i) money received by the earlier administrator from the debtor in relation to the debt agreement; and
 - (ii) payments made by the earlier administrator in relation to the debt agreement; and
- (b) keep a copy of the account; and
- (c) give the later administrator:
 - (i) a copy of the account; and
 - (ii) a copy of any other accounts the earlier administrator received from a person who was the administrator of the debt agreement before the earlier administrator.

Duties of an administrator in relation to debt agreements—extended meaning

(1) For the purposes of this Act, a duty of an administrator under this Act is taken to be a duty of an administrator in relation to a debt agreement, even if the duty does not relate to a particular debt agreement.

(1A) Before a person signs a certificate under paragraph 185C(4C) in relation to a debt agreement proposal, the person must:

- (a) make reasonable inquiries about the debtor's financial situation; and
- (b) take reasonable steps to verify the debtor's financial situation.

For the purposes of this Act, the requirements set out in paragraphs (a) and (b) are taken to be duties of an administrator in relation to a debt agreement.

(2) If a person signs a certificate under subsection 185C(2D) or paragraph 185C(4C)(b) in relation to a debt agreement proposal:

- (a) the person must ensure that the certificate is correct; and
- (b) for the purposes of this Act, the requirement set out in paragraph (a) is taken to be a duty of an administrator in relation to a debt agreement.

(3) For the purposes of this Act, a requirement set out in subsection 185LF(2) or 185N(5) is taken to be a duty of an administrator in relation to a debt agreement.

Part 4—Varying a debt agreement

Varying a debt agreement

Proposing to vary a debt agreement

(1) A debtor or creditor who is a party to a debt agreement may propose to the Official Receiver a written proposal to vary the agreement.

(1A) The proposal must be in the approved form.

(1B) The proposal must be accompanied by an explanatory statement

(1B) The proposal must be accompanied by an explanatory statement in the approved form containing such information as the form requires.

(1C) The subsection (1B) statement may be set out in the same document as the proposal.

(1D) The proposal must not seek to vary the agreement so that the agreement would provide for the debtor to make payments under the agreement, in respect of provable debts in relation to the agreement, after:

- (a) 3 years beginning on the day the agreement was made
- (b) if subsection (1DA) or (1DB) applies—5 years beginning on the day the agreement was made.

Note: Section 185H deals with when a debt agreement is made.

(1DA) This subsection applies if subsection 185C(2AB) applied to the debtor at the time the relevant debt agreement proposal was given to the Official Receiver.

(1DB) This subsection applies if:

- (a) the proposal given to the Official Receiver is accompanied by a certificate signed by the administrator of the agreement stating that the administrator has reasonable grounds to believe:
 - (i) that the debtor has suffered a substantial change in circumstances after the agreement was made that was not foreseen at the time the agreement was made; and
 - (ii) that the debtor is not likely to be able to discharge the obligations created by the agreement as and when they fall due because of that change; and
- (b) the proposal does not increase the total of the payments that the debtor would be required to make under the agreement.

(1E) If:

- (a) subsection 185C(2AB) did not apply to the debtor at the time (the **proposal time**) the relevant debt agreement proposal was given to the Official Receiver; and
- (b) a person did not give a certificate under paragraph 185C(4C)(b) in relation to the relevant debt agreement proposal;

the proposal under subsection (1) of this section must not seek to vary the agreement so that the amount worked out using the following formula (expressed as a percentage) exceeds the percentage in effect under an instrument under subsection 185C(4B) at the proposal time:

$$\frac{\text{Total of the payments that the debtor would be required to make under the agreement (as proposed to be varied)}}{\text{The debtor's after tax income (within the meaning of section 185C) in the year beginning at the proposal time}} + \frac{\text{Low income debtor amount (within the meaning of section 185C) at the proposal time}}{100}$$

(1F) The proposal given to the Official Receiver must be accompanied by a certificate signed by the administrator of the agreement stating that, having regard to:

- (a) the circumstances in existence at the time the administrator signs the certificate; and
- (b) any other relevant matters;

the administrator has reasonable grounds to believe that the debtor is likely to be able to discharge the obligations created by the agreement (as proposed to be varied) as and when they fall due.

agreement (as proposed to be varied) as and when they fall due.

Processing a proposal to vary a debt agreement

- (2) The Official Receiver must process the proposal in accordance with section 185MA if the Official Receiver is satisfied that subsections (1A), (1B), (1D), (1E) and (1F) of this section have complied with.
- (2A) However, the Official Receiver is not required by subsection 185MA to process the proposal if:
- (a) the Official Receiver reasonably believes that complying with the agreement (as proposed to be varied) would cause undue hardship to the debtor; or
 - (b) the Official Receiver thinks that the creditors' interests would be better served by not processing the proposal.
- (2B) If the Official Receiver decides not to process the proposal because of subsection (2A), the Official Receiver must give written notice of the decision, and the reasons for it, to:
- (a) the debtor; and
 - (b) affected creditors who are known to the Official Receiver.
- (2C) If the Official Receiver decides not to process the proposal because of subsection (2A), the debtor or an affected creditor may apply to the Administrative Appeals Tribunal for review of the decision.

Varying the agreement

- (3) If the proposal is accepted, the agreement is varied in the way set out in the proposal.

Note: Section 185MC explains how a proposal is accepted.

Procedures for dealing with proposals to vary debt agreements

Processing of proposals by the Official Receiver

- (1) If the Official Receiver is required by subsection 185M(2) to process a proposal to vary a debt agreement, the Official Receiver must write to each of the affected creditors who is known to the Official Receiver, asking each affected creditor to indicate whether the proposal should be accepted.

Writing to creditors to deal with a proposal

- (2) When writing to each affected creditor under subsection (1) about a proposal to vary a debt agreement, the Official Receiver must:
- (a) provide the creditor with a copy of:
 - (i) the proposal; and
 - (ii) the relevant subsection 185M(1B) statement; and
 - (b) ask the creditor to give a written statement setting out whether or not the proposal should be accepted; and
 - (c) inform the creditor of the person to whom the statement should be given and of the need to give the statement before the applicable deadline.
- (3) The paragraph (2)(b) statement must be in the approved form.
- (4) Paragraphs (2)(b) and (c) do not apply in relation to an affected creditor who:
- (a) is the administrator of the debt agreement; or
 - (b) was, or has become, an affected creditor, a related entity,

(b) was, on becoming an affected creditor, a related entity of the administrator.

Inspection of creditor's statement

If an affected creditor gives a paragraph 185MA(2)(b) statement:

- (a) the debtor; or
- (b) any other affected creditor;

may, without fee and either personally or by an agent:

- (c) inspect the statement; and
- (d) obtain a copy of, or make extracts from, the statement.

Acceptance of a proposal to vary a debt agreement

Acceptance in writing

(1) A proposal to vary a debt agreement is accepted if:

- (a) the Official Receiver writes to affected creditors of a debt agreement under section 185MA; and
- (b) a majority in value of the creditors who reply before the applicable deadline state that the proposal should be accepted.

(1A) For the purposes of paragraph (1)(b), disregard an affected creditor who:

- (a) is the administrator of the debt agreement; or
- (b) was, on becoming an affected creditor, a related entity of the administrator.

Timing of acceptance

(2) A proposal that is accepted under subsection (1) is taken to be accepted at the applicable deadline.

Value of a creditor

(3) In assessing, for the purposes of paragraph (1)(b), the value of a creditor who is a related entity of the debtor, any debt that was assigned to the creditor is taken to have a value equal to the value of the consideration that the creditor gave for the assignment.

(4) For the purposes of paragraph (1)(b), the value of a creditor is to be assessed as at the time when the acceptance of the relevant debt agreement proposal for processing was recorded on the National Personal Insolvency Index.

(5) For the purposes of paragraph (1)(b), a secured creditor is taken to be a creditor only to the extent (if any) by which the amount of the debt owing to the creditor exceeds the value of the creditor's security.

Offence

(6) A person commits an offence if:

- (a) the person is the administrator of a debt agreement; and
- (b) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and
- (c) the person does so with the intention of securing the affected creditor's acceptance or non-acceptance of the proposal to vary the agreement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

Withdrawal of proposal to vary a debt agreement

Scope

- (1) This section applies if:
 - (a) a proposal to vary a debt agreement is given under section 185M; and
 - (b) the applicable deadline has not arrived; and
 - (c) the proposal has not been accepted.

Withdrawal of proposal

- (2) If:
 - (a) the Official Receiver becomes aware that the relevant subsection 185M(1B) statement was deficient because it omitted a material particular or because it was incorrect in a material particular; or
 - (b) the Official Receiver becomes aware of a material change in circumstances that:
 - (i) was not foreshadowed in the relevant subsection 185M(1B) statement; and
 - (ii) in the opinion of the Official Receiver, is capable of affecting an affected creditor's decision whether or not to accept the proposal;

the Official Receiver may declare in writing that the proposal is withdrawn.

Notification of withdrawal

- (3) If the Official Receiver makes a declaration under subsection (2), the Official Receiver must give written notice of the declaration and the reasons for it, to:
 - (a) the debtor; and
 - (b) affected creditors who are known to the Official Receiver.

Review

- (4) If the Official Receiver decides to make a declaration under subsection (2), the debtor or an affected creditor may apply to the Administrative Appeals Tribunal for review of the decision.

Part 5—Ending a debt agreement

End of debt agreement on discharge of obligations under debt agreement

Time of end of debt agreement

- (1) A debt agreement ends when all the obligations that it created have been discharged, unless the agreement has been terminated earlier under section 185P, 185Q, 185QA or 185R.

Keeping surplus property that was subject to an agreement

- (2) When a debt agreement ends under subsection (1), the debtor is entitled to any property that was subject to the debt agreement that was not required by the agreement to be distributed to creditors.

Example: Rhea entered into a debt agreement that required her to sell her boat and car and to pay her creditors \$15,000 from the proceeds. The debt agreement ended when she sold her boat and car for \$16,000 and paid her creditors \$15,000. She may keep the remaining \$1,000 received from the sale.

Certificate of the end of a debt agreement

- (3) If a debt agreement ends under subsection (1), the Official

- (3) If a debt agreement ends under subsection (1), the Official Receiver must give the debtor a certificate to that effect.

Evidentiary value of certificate

- (4) The certificate is prima facie evidence of the facts stated in

Notification of end of debt agreement

- (5) If a debt agreement ends under subsection (1), the person who was the administrator of the agreement immediately before it ended must, within 5 business days after the end of the agreement, notify the Official Receiver, in writing, of the end of the agreement.
- (6) A notification under subsection (5) must be in the approved

Release of debtor from debts

Time and effect of release

- (1) When a debt agreement ends under subsection 185N(1), the debtor is released from provable debts from which the debtor would have been released if the debtor had been discharged from bankruptcy immediately after the acceptance of the relevant debt agreement proposal for processing was recorded on the National Personal Insolvency Index.

Limits on release

- (2) The release ceases to operate if the debt agreement is declared void by the Court.
- (3) The release does not:
- (a) release anyone else from a debt that he or she owes jointly with the debtor; or
 - (b) release a guarantor from the guarantee that the guarantor gave for the debtor's debt.

Terminating a debt agreement by accepting a proposal

Proposing to terminate a debt agreement

- (1) The debtor (or the debtor's personal representative if the debtor has died) or a creditor who is bound by a debt agreement may give the Official Receiver a written proposal to terminate the agreement.
- (1A) The proposal must be in the approved form.
- (1B) A proposal must be accompanied by an explanatory statement in the approved form containing such information as the form requires.
- (1C) The subsection (1B) statement may be set out in the same document as the proposal.

Processing a proposal to terminate debt agreement

- (2) The Official Receiver must process the proposal in accordance with section 185PA if the Official Receiver is satisfied that subsections (1A) and (1B) of this section have been complied with.

Termination of the debt agreement when the proposal is accepted

- (3) The debt agreement is terminated when the proposal is accepted.

Note: Section 185PC explains how a proposal is accepted.

Procedures for dealing with proposals to terminate debt

agreements

Processing of proposals by the Official Receiver

- (1) If the Official Receiver is required by subsection 185P(2) to process a proposal to terminate a debt agreement, the Official Receiver must write to each of the affected creditors who is known to the Official Receiver, asking each affected creditor to indicate whether the proposal should be accepted.

Writing to creditors to deal with a proposal

- (2) When writing to each affected creditor under subsection (1) about a proposal to terminate a debt agreement, the Official Receiver must:
 - (a) provide the creditor with a copy of:
 - (i) the proposal; and
 - (ii) the relevant subsection 185P(1B) statement; and
 - (b) ask the creditor to give a written statement setting out whether or not the proposal should be accepted; and
 - (c) inform the creditor of the person to whom the statement should be given and of the need to give the statement before the applicable deadline.
- (3) The paragraph (2)(b) statement must be in the approved form.
- (4) Paragraphs (2)(b) and (c) do not apply in relation to an affected creditor who:
 - (a) is the administrator of the debt agreement; or
 - (b) was, on becoming an affected creditor, a related entity of the administrator.

Inspection of creditor's statement

If an affected creditor gives a paragraph 185PA(2)(b) statement to:

- (a) the debtor; or
- (b) any other affected creditor;

may, without fee and either personally or by an agent:

- (c) inspect the statement; and
- (d) obtain a copy of, or make extracts from, the statement.

Acceptance of a proposal to terminate a debt agreement

Acceptance in writing

- (1) A proposal to terminate a debt agreement is accepted if:
 - (a) the Official Receiver writes to affected creditors of a debt agreement under section 185PA; and
 - (b) a majority in value of the creditors who reply before the applicable deadline state that the proposal should be accepted.
- (1A) For the purposes of paragraph (1)(b), disregard an affected creditor who:
 - (a) is the administrator of the debt agreement; or
 - (b) was, on becoming an affected creditor, a related entity of the administrator.

Timing of acceptance

- (2) A proposal that is accepted under subsection (1) is taken to be accepted at the applicable deadline.

Value of a creditor

- (3) In assessing, for the purposes of paragraph (1)(b), the value

(3) In assessing, for the purposes of paragraph (1)(b), the value of a creditor who is a related entity of the debtor, any debt that was assigned to the creditor is taken to have a value equal to the value of the consideration that the creditor gave for the assignment.

(4) For the purposes of paragraph (1)(b), the value of a creditor is to be assessed as at the time when the acceptance of the relevant debt agreement proposal for processing was recorded on the National Personal Insolvency Index.

(5) For the purposes of paragraph (1)(b), a secured creditor is taken to be a creditor only to the extent (if any) by which the amount of the debt owing to the creditor exceeds the value of the creditor's security.

Offence

(6) A person commits an offence if:

- (a) the person is the administrator of a debt agreement; and
- (b) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and
- (c) the person does so with the intention of securing the affected creditor's acceptance or non-acceptance of the proposal to terminate the agreement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

Withdrawal of proposal to terminate a debt agreement

Scope

(1) This section applies if:

- (a) a proposal to terminate a debt agreement is given under section 185P; and
- (b) the applicable deadline has not arrived; and
- (c) the proposal has not been accepted.

Withdrawal of proposal

(2) If:

- (a) the Official Receiver becomes aware that the relevant subsection 185P(1B) statement was deficient because it omitted a material particular or because it was incorrect in a material particular; or
- (b) the Official Receiver becomes aware of a material change in circumstances that:
 - (i) was not foreshadowed in the relevant subsection 185P(1B) statement; and
 - (ii) in the opinion of the Official Receiver, is capable of affecting an affected creditor's decision whether or not to accept the proposal;

the Official Receiver may declare in writing that the proposal is withdrawn.

Notification of withdrawal

(3) If the Official Receiver makes a declaration under subsection (2), the Official Receiver must give written notice of the declaration and the reasons for it, to:

- (a) the debtor; and
- (b) affected creditors who are known to the Official Receiver.

Review

- (4) If the Official Receiver decides to make a declaration under subsection (2), the debtor or an affected creditor may apply to Administrative Appeals Tribunal for review of the decision.

Terminating a debt agreement by order of the Court

Applying for an order

- (1) Any of the following persons may apply to the Court for an order terminating a debt agreement:
- (a) the debtor (or the debtor's personal representative if the debtor has died);
 - (b) a creditor of the debtor;
 - (c) the Official Receiver.

Simultaneous application for a sequestration order

- (2) A creditor may include an application for a sequestration order in an application for an order terminating a debt agreement.

Effect of applying for a sequestration order

- (3) For the purposes of this Act, making an application for a sequestration order under subsection (2) is taken to be presenting a creditor's petition against the debtor, but subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to the application.

Prerequisites for making an order terminating a debt agreement

- (4) The Court may make an order terminating a debt agreement if it is satisfied:
- (a) that the debtor (or the debtor's personal representative if the debtor has died) has failed to carry out a term of the agreement and that it is in the creditors' interest to terminate the agreement; or
 - (b) that carrying out the agreement would cause injustice or undue delay to the creditors or the debtor (or the debtor's estate if the debtor has died); or
 - (ba) that one of the following applies:
 - (i) the administrator of the agreement has contravened subsection 185EC(6) in relation to the relevant debt agreement proposal;
 - (ii) the administrator of the agreement has contravened subsection 185MC(6) in relation to the agreement, whether or not the proposal to vary the agreement was accepted;
 - (iii) the administrator of the agreement has contravened subsection 185PC(6) in relation to the agreement, whether the proposal to terminate the agreement was not accepted or
 - (c) that for any other reason the agreement should be terminated and that it is in the creditors' interest to do so.

Sequestration order

- (5) If the Court makes an order terminating a debt agreement, the Court may also make a sequestration order if a creditor applies for the sequestration order.

Terminating a debt agreement—designated 6-month arrears default

- (1) If:

- (a) the administrator of a debt agreement notifies the Official Receiver that a designated 6-month arrears default by the debtor has occurred; and
 - (b) the Official Receiver is satisfied that the designated 6-month arrears default has occurred;
- the Official Receiver must:
- (c) declare in writing that the agreement is terminated; and
 - (d) record the declaration on the National Personal Insolvency Index.

- (2) The debt agreement is terminated when the declaration is recorded on the National Personal Insolvency Index.

Terminating a debt agreement by the bankruptcy of the debtor

A debt agreement is terminated if the debtor becomes a bankrupt.

Note: Despite section 185K, there are a number of ways in which a debt agreement is a party to a debt agreement could become bankrupt. For example, a debtor could become bankrupt on a debtor's petition if the Court gave permission for the debtor to present, or join in presenting, the petition. The debtor could become bankrupt as a result of the presentation of a petition against a partnership.

Validity of things done under a debt agreement that was terminated

If a debt agreement is terminated under section 185P, 185Q, 185QA or 185R, anything that was done in good faith under the agreement by a person before the person had notice of the termination:

- (a) is valid; and
- (b) cannot be voided by a trustee under section 120, 121 or 122 (whether applying of its own force or under subsection 188A(4)).

Part 6—Voiding a debt agreement

Applying for an order declaring a debt agreement void

Persons who may apply for an order

- (1) The debtor (or the debtor's personal representative if the debtor has died), a creditor or the Official Receiver may apply to the Court for an order declaring that all, or a specified part, of a debt agreement is void.

Grounds for applying for an order

- (2) A person mentioned in subsection (1) may apply for an order on one or more of the following grounds:
 - (a) there is doubt on a specific ground that all or part of the debt agreement was not made in accordance with this Part; or
 - (b) the statement of affairs lodged with the debt agreement administrator is deficient because it omitted a material particular or because it was incorrect in a material particular;
 - (c) an administrator of the debt agreement has committed a breach of duty in relation to the agreement;
 - (d) if the administrator of the debt agreement is a registered debt agreement administrator—the administrator has breached

a condition determined in an instrument under subsection 186F(4) or 186G(2B);

- (e) if the administrator of the debt agreement is a registered trustee—the administrator has breached a condition imposed under section 20-35 of Schedule 2, to the extent that the condition relates to the administration of the debt agreement.

Time limit on applying for an order

- (3) A person cannot apply for an order declaring a debt agreement void after all the obligations created by the agreement have been discharged.

Simultaneous application for a sequestration order

- (4) A creditor may include an application for a sequestration order or an application for an order declaring all or part of a debt agreement void.

Effect of applying for a sequestration order

- (5) For the purposes of this Act, making an application for a sequestration order under subsection (4) is taken to be presenting a creditor's petition against the debtor, but subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to the application.

Making an order declaring a debt agreement void

Power to make order

- (1) On an application under section 185T, the Court may make an order declaring a debt agreement void.

Limit on declaring debt agreement void on grounds of non-compliance with this Part

- (2) The Court must not declare all or part of a debt agreement void on the ground that it does not comply with this Part if the agreement or part of the agreement complies substantially with this Part.

Declaring a debt agreement void on grounds of deficient statement of affairs

- (3) The Court must not declare all or part of a debt agreement void on the ground that the statement of affairs lodged with the debt agreement was deficient, unless the Court is satisfied that it is in the creditors' interests to declare the agreement or part of the agreement void.

Sequestration order

- (4) If the Court makes an order declaring all of a debt agreement void, the Court may also make a sequestration order if a creditor has applied for the sequestration order.

Ancillary orders

- (5) If the Court makes an order declaring all or part of a debt agreement void, the Court may make such other orders as the Court thinks fit.
- (6) An order under subsection (5) may be an order directing a person to pay another person compensation of such amount as is specified in the order. This subsection does not limit subsection

Validity of things done under a debt agreement that was declared void

If a debt agreement is declared void, anything that was done in good faith under the agreement by a person before the person received notice of the declaration:

- (a) is valid; and
- (b) cannot be voided by a trustee under section 120, 121 or 122 (whether applying of its own force or under subsection 237(1)).

Part 7—General provisions relating to debt agreements

Court directions to the Official Receiver

- (1) Any of the following persons may apply to the Court for an order directing the Official Receiver or another person how to exercise the Official Receiver's powers under this Part:
 - (a) a debtor who is a party to a debt agreement (or the debtor's personal representative if the debtor has died);
 - (b) a creditor who is a party to a debt agreement;
 - (c) the Official Receiver.
- (2) On an application under subsection (1), the Court may make an order directing the Official Receiver or another person how to exercise the Official Receiver's powers under this Part.

No stamp duty payable on a debt agreement

Stamp duty under a State or Territory law is not payable on a debt agreement or a variation of a debt agreement.

Secured creditors

Nothing in this Division affects the right of a secured creditor to realise or otherwise deal with the creditor's security.

Money received by administrator to be held on trust

If the administrator of a debt agreement receives money from a debtor under the agreement, the money is taken to have been received by the administrator on trust to be dealt with in the way specified in the debt agreement.

Remuneration of administrator

- (1) The administrator of a debt agreement may be remunerated as provided in the agreement (see subsections 185C(3) and (3A)).
- (2) Subsection (1) does not apply to the Official Trustee.

Note: For the remuneration payable to the Official Trustee, see section 185C(3).

Notification of death of administrator

- (1) If the administrator in relation to a debt agreement dies, the person (the **affected person**) administering the estate of the deceased person must, before the end of the period of 28 days beginning on the day the affected person started to administer the estate, give written notice of that death to the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

- (2) Subsection (1) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

Official Trustee to replace an administrator who dies etc.

- (1) If the administrator of a debt agreement dies, the Official Trustee becomes the replacement administrator of that debt agreement.
- (2) If:
 - (a) a person who is the administrator of a debt agreement registered under Division 8; and
 - (b) the person ceases to be so registered;then:
 - (c) the person ceases to be the administrator of that debt agreement; and
 - (d) the Official Trustee becomes the replacement administrator of that debt agreement.
- (3) If:
 - (a) a person who is the administrator of a debt agreement registered trustee; and
 - (b) the person ceases to be a registered trustee;then:
 - (c) the person ceases to be the administrator of that debt agreement; and
 - (d) the Official Trustee becomes the replacement administrator of that debt agreement.
- (5) If, under section 185ZCB, the Court removes the administrator of a debt agreement from office, the Official Trustee becomes the replacement administrator of that debt agreement.
- (6) If, under subsection (1), (2), (3) or (5), the Official Trustee becomes the replacement administrator of a debt agreement, the Official Receiver must notify the parties to the debt agreement that:
 - (a) the Official Trustee is the replacement administrator under the debt agreement; and
 - (b) (if applicable) the Official Receiver intends to appoint another person as the new administrator.

Official Receiver may appoint a new administrator

- (1) If the parties to a debt agreement have not already varied the debt agreement to appoint a new administrator, the Official Receiver may appoint another person to be the administrator of the debt agreement in place of the Official Trustee.
- (2) An appointment must be in writing.
- (3) The Official Receiver must give written notice of the appointment to the parties to the debt agreement.
- (4) The Official Receiver cannot revoke an appointment under subsection (1).
- (5) This section does not prevent the appointment of another person as administrator by variation of the debt agreement.

Court may order administrator to make good loss caused by breach of duty

- (1) This section applies if, on application by:
 - (a) the Inspector-General; or
 - (b) a creditor who is or has been a party to a debt agreement;the Court is satisfied that a person who is or has been an administrator of a debt agreement has caused a loss to the Official Receiver or a creditor by breach of duty.

administrator of the debt agreement has committed a breach of duty in relation to the debt agreement.

- (2) The Court may make any one or more of the following orders:
 - (a) an order directing the person to make good any loss the creditor has sustained because of the person's breach of duty;
 - (b) if the person is a registered debt agreement administrator, an order directing the Inspector-General to cancel the person's registration as a debt agreement administrator;
 - (c) any other order that the Court considers just and equitable in the circumstances.

3 Control of administrators by the Court

If a debt agreement is in force, the Court may, on the application of:

- (a) the Inspector-General; or
- (b) the debtor; or
- (c) a creditor;

inquire into the conduct of the administrator, and may do either or both of the following:

- (d) remove the administrator from office;
- (e) make such order as it thinks proper.

Remuneration of administrator

A person who becomes the administrator in relation to a debt agreement under section 185ZC is entitled to so much of the remuneration (if any) provided for in the agreement as has not already been paid to the previous administrator, or any of the previous administrators.

Part 8—Registration of debt agreement administrators etc.

Division A—Introduction

Basic eligibility test

Individuals

- (1) For the purposes of this Division, an individual **passes the basic eligibility test** at a particular time (the **test time**) unless:
 - (a) at any time during the 10-year period ending at the test time, the individual was an insolvent under administration;
 - (b) at any time during the 10-year period ending at the test time, the individual was convicted of an offence involving fraud or dishonesty; or
 - (c) at the test time, the individual is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;
 - (d) at any time during the 10-year period ending at the test time, the individual's registration as a liquidator was cancelled under the *Corporations Act 2001* (other than in response to a written request by the individual to have the registration cancelled); or
 - (e) at any time during the 10-year period ending at the test time, the individual's registration as a trustee was cancelled (other than in response to a written request by the individual to have the registration cancelled); or
 - (f) at any time during the 10-year period ending at the test time, the individual's registration as a debt agreement

administrator was cancelled under section 186K on the grounds that:

- (i) the individual contravened a condition that applied in relation to that registration; or
- (ii) the individual failed to properly carry out the duties of an administrator in relation to a debt agreement; or
- (g) at any time during the 10-year period ending at the test time, the individual's registration as a debt agreement administrator was cancelled as a result of an order under section 185ZCA; or
- (h) at any time during the 10-year period ending at the test time, a declaration was made under former section 186M in relation to the individual; or
- (i) at any time during the 10-year period ending at the test time, a determination in relation to the individual was made under subregulation 9.06(3) of the *Bankruptcy Regulations 1996* as in force before the commencement of this section.

- (2) Paragraph (1)(a) does not apply in relation to a bankruptcy that has been annulled under section 153B.

Companies

- (3) For the purposes of this Division, a company ***passes the basic eligibility test*** at a particular time (the ***test time***) unless:

- (a) at any time during the 10-year period ending at the test time, the company was a Chapter 5 body corporate; or
- (b) at any time during the 10-year period ending at the test time, the company was convicted of an offence involving fraud or dishonesty; or
- (c) at any time during the 10-year period ending at the test time, the company's registration as a debt agreement administrator was cancelled under section 186L on the grounds that:
 - (i) the company contravened a condition that applied in relation to that registration; or
 - (ii) the company failed to properly carry out the duties of an administrator in relation to a debt agreement; or
- (d) at any time during the 10-year period ending at the test time, the company's registration as a debt agreement administrator was cancelled as a result of an order under section 185ZCA; or
- (e) at any time during the 10-year period ending at the test time, a declaration was made under former section 186M in relation to the company; or
- (f) at the test time, a director of the company does not pass the basic eligibility test; or
- (g) at any time during the 10-year period ending at the test time, a determination in relation to the company was made under subregulation 9.06(3) of the *Bankruptcy Regulations 1996* as in force before the commencement of this section.

Division B—Registration of debt agreement administrators

Application for registration as a debt agreement administrator

- (1) An individual or company may apply to the Inspector General

- (1) An individual or company may apply to the Inspector-General to be registered as a debt agreement administrator.
- (2) The application must:
- (a) be in the approved form; and
 - (b) be accompanied by such information and documents (if any) as are specified in the regulations; and
 - (c) if the application is not by way of renewal—be accompanied by the fee determined by the Minister by legislative instrument; and
 - (d) if the application is by way of renewal—be made before the expiry of the applicant's existing registration as a debt agreement administrator.

Inspector-General must approve or refuse to approve registration application

- (1A) For the purposes of considering an application made under section 186B, the Inspector-General must interview the applicant as soon as practicable after receiving the application.
- (1) Within 45 business days after interviewing the applicant, the Inspector-General must:
- (a) approve the application; or
 - (b) refuse to approve the application.

Approval of application made by an individual

- (2) If:
- (a) the applicant is an individual; and
 - (b) the application is not by way of renewal;
- the Inspector-General must approve the application if the Inspector-General is satisfied that the applicant:
- (c) passes the basic eligibility test; and
 - (d) has the ability (including the knowledge) to satisfactorily perform the duties of an administrator in relation to debt agreements; and
 - (e) has such qualifications and experience (if any) as are prescribed by the regulations; and
 - (f) has produced evidence in writing to the Inspector-General that the applicant has taken out:
 - (i) adequate and appropriate professional indemnity insurance; and
 - (ii) adequate and appropriate fidelity insurance; andagainst the liabilities that the applicant may incur while acting as a registered debt agreement administrator; and
 - (g) is a fit and proper person.

Otherwise the Inspector-General must refuse to approve the application.

- (3) If:
- (a) the applicant is an individual; and
 - (b) the application is by way of renewal;
- the Inspector-General must approve the application if the Inspector-General is satisfied that the applicant:
- (c) has produced evidence in writing to the Inspector-General that the applicant maintains:
 - (i) adequate and appropriate professional indemnity insurance; and
 - (ii) adequate and appropriate fidelity insurance;

- against the liabilities that the applicant may incur working as a registered debt agreement administrator; and
- (d) does not owe more than the prescribed amount of notified estate charges.

Otherwise the Inspector-General must refuse to approve the application.

Note: For **notified estate charge**, see subsection (5A).

Approval of application made by a company

(4) If:

- (a) the applicant is a company; and
- (b) the application is not by way of renewal;

the Inspector-General must approve the application if the Inspector-General is satisfied that:

- (c) the applicant passes the basic eligibility test; and
- (d) the applicant has the ability to satisfactorily perform the duties of an administrator in relation to debt agreements;
- (e) the applicant has produced evidence in writing to the Inspector-General that the applicant has taken out:
 - (i) adequate and appropriate professional indemnity insurance; and
 - (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered debt agreement administrator; and
- (f) the applicant is a fit and proper person; and
- (g) each director of the company is a fit and proper person

Otherwise the Inspector-General must refuse to approve the application.

(5) If:

- (a) the applicant is a company; and
- (b) the application is by way of renewal;

the Inspector-General must approve the application if the Inspector-General is satisfied that:

- (c) the applicant has produced evidence in writing to the Inspector-General that the applicant maintains:
 - (i) adequate and appropriate professional indemnity insurance; and
 - (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered debt agreement administrator; and
- (d) the applicant does not owe more than the prescribed amount of notified estate charges.

Otherwise the Inspector-General must refuse to approve the application.

Note: For **notified estate charge**, see subsection (5A).

When a notified estate charge is owed

(5A) A person owes a **notified estate charge** if:

- (a) the person owes either of the following:
 - (i) a charge under the *Bankruptcy (Estate Charges) Act 1997* (the **estate charge**);
 - (ii) a penalty under section 281 (late payment penalty) of this Act in respect of that charge; and
- (b) the Inspector-General notified the person of the unpaid estate charge at least 1 month and 10 business days before

person's registration as a debt agreement administrator ceases to be in force.

Guidelines

- (6) In deciding whether to approve an application made under section 186B, the Inspector-General must have regard to any relevant guidelines in force under section 186Q.

Notice of decision

- (7) If the Inspector-General refuses to approve an application made under section 186B, the Inspector-General must give the applicant a written notice of the refusal, and the reasons for it.

Review

- (8) If the Inspector-General decides to refuse to approve an application made under section 186B, the applicant may apply to the Administrative Appeals Tribunal for review of the decision.

Conditions of registration

- (9) If the Inspector-General approves an application under section 186B, the Inspector-General may decide that, if the applicant is registered as a debt agreement administrator under section 186D, the applicant's registration as a debt agreement administrator is subject to specified conditions.
- (10) If the Inspector-General makes a decision under subsection (9), the Inspector-General must give the applicant a written notice of the decision and the reasons for it.
- (11) If the Inspector-General makes a decision under subsection (9), the applicant may apply to the Administrative Appeals Tribunal for review of the decision.
- (12) In subsection (11):

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Registration as a debt agreement administrator

- (1) This section applies if:
- (a) the Inspector-General approves an application under section 186C; and
 - (b) the applicant has paid the fee determined by the Minister by legislative instrument.
- (2) The Inspector-General must register the applicant as a debt agreement administrator by entering on the National Personal Insolvency Index the details relating to the applicant that are prescribed by the regulations.
- (3) After registering the applicant as a debt agreement administrator, the Inspector-General must give the applicant a certificate of registration.

Duration of registration as a debt agreement administrator

Subject to this Division and section 185ZCA, if a person is registered under section 186D as a debt agreement administrator, the registration remains in force for:

- (a) if the registration is not by way of renewal—3 years beginning when the person's details are entered on the National Personal Insolvency Index; or

- (b) if the registration is by way of renewal—3 years beginning immediately after the person's existing registration as a debt agreement administrator expires.

Conditions of registration—general

- (1) This section applies to a person if the person is a registered debt agreement administrator.
- (2) The Inspector-General may, by written notice given to the person, impose specified conditions on the person's registration as a debt agreement administrator.
- (3) The person's registration as a debt agreement administrator is subject to the conditions determined in an instrument under subsection (4).
- (4) The Minister may, by legislative instrument, determine conditions for the purposes of subsection (3).

Condition of registration—companies

- (1) This section applies to a company if the company is a registered debt agreement administrator.
- (2) It is a condition of the company's registration as a debt agreement administrator that each individual who takes overall responsibility for managing the company's debt agreement activities must be:
 - (a) a registered debt agreement administrator; or
 - (b) a registered trustee.
- (2A) The company's registration as a debt agreement administrator is subject to the conditions determined in an instrument under subsection (2B).
- (2B) The Minister may, by legislative instrument, determine conditions for the purposes of subsection (2A).
- (3) Subsections (2) and (2A) do not limit subsection 186C(9) or section 186F.

Application to change or remove registration conditions

- (1) If there are conditions on a person's registration as a debt agreement administrator, the person may apply to the Inspector-General for the conditions to be changed or removed.
- (1A) Subsection (1) does not apply in relation to conditions determined in an instrument under subsection 186F(4) or 186G(2B).
- (2) The application must:
 - (a) be in the approved form; and
 - (b) be accompanied by such information and documents (if any) as are specified in the regulations.
- (3) After considering an application made under subsection (1), the Inspector-General must:
 - (a) decide that the conditions on the applicant's registration as a debt agreement administrator should not be changed or removed; or
 - (b) decide that specified modifications should be made to the conditions imposed on the applicant's registration as a debt agreement administrator.

Note: See the definition of **modifications** in subsection 5(1).

Notice of decision

- (4) If the Inspector-General decides that the conditions on the applicant's registration as a debt agreement administrator should not be changed or removed, the Inspector-General must give the applicant a written notice of the decision, and the reasons for it.
- (5) If the Inspector-General decides that specified modifications should be made to the conditions imposed on the applicant's registration as a debt agreement administrator, the Inspector-General must give the applicant a written notice of the decision, and the reasons for it.

Review

- (6) The applicant may apply to the Administrative Appeals Tribunal for review of a decision of the Inspector-General made under this section.
- (7) In subsection (6):

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Division BA—Insurance

Registered debt agreement administrator to maintain insurance

- (1) A person who is a registered debt agreement administrator must maintain:
 - (a) adequate and appropriate professional indemnity insurance; and
 - (b) adequate and appropriate fidelity insurance; andagainst the liabilities that the person may incur working as a registered debt agreement administrator.
- (2) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (1); and
 - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 1,000 penalty units.

- (3) A person commits an offence of strict liability if:
 - (a) the person is subject to a requirement under subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 60 penalty units.

Division C—Surrender and cancellation of registration as a debt agreement administrator

Surrender of registration as a debt agreement administrator

- (1) This section applies to a person if the person is a registered debt agreement administrator.
- (2) The person may, by written notice given to the Inspector-General, request the Inspector-General to accept the surrender of the person's registration as a debt agreement administrator.
- (3) A request under subsection (2) must be in the approved form.

- (4) The person ceases to be registered as a debt agreement administrator when the Inspector-General accepts the request
- (5) If the Inspector-General accepts a request given under subsection (2), the Inspector-General must remove the person's registration details from the National Personal Insolvency Index.

Cancellation of an individual's registration as a debt agreement administrator

Scope

- (1) This section applies in relation to an individual if the individual is a registered debt agreement administrator.

Individual no longer passes the basic eligibility test

- (2) The Inspector-General must cancel the individual's registration as a debt agreement administrator if the Inspector-General is satisfied that the individual no longer passes the basic eligibility test.

Other grounds for cancellation of registration

- (3) The Inspector-General may ask the individual to give the Inspector-General a written explanation why the individual should continue to be registered as a debt agreement administrator, if the Inspector-General has reasonable grounds to believe that:
 - (a) the individual no longer has the ability (including the knowledge) to satisfactorily perform the duties of an administrator in relation to a debt agreement; or
 - (b) the individual has failed to properly carry out the duties of an administrator in relation to a debt agreement; or
 - (c) the individual no longer has the qualifications or experience prescribed by regulations made for the purposes of paragraph 186C(2)(e); or
 - (d) the individual has contravened a condition of the individual's registration; or
 - (e) the individual has ceased to have:
 - (i) adequate and appropriate professional indemnity insurance; or
 - (ii) adequate and appropriate fidelity insurance; oragainst the liabilities that the individual may incur while acting as a registered debt agreement administrator; or
 - (f) the individual is not a fit and proper person.

- (4) If:
 - (a) the Inspector-General does not receive an explanation within 28 days of requesting it; or
 - (b) receives an explanation, but is not satisfied with it;the Inspector-General may cancel the individual's registration as a debt agreement administrator.

Notice of cancellation

- (5) If the Inspector-General cancels, under subsection (2) or (4), an individual's registration as a debt agreement administrator, the Inspector-General must give the individual written notice of the cancellation, and the reasons for it.

Removal of registration details

- (6) If the Inspector-General cancels, under subsection (2) or (4), an individual's registration as a debt agreement administrator, the

individual's registration as a debt agreement administrator, the Inspector-General must remove the individual's registration from the National Personal Insolvency Index.

Guidelines

- (7) In deciding whether to cancel, under subsection (2) or (4), an individual's registration as a debt agreement administrator, the Inspector-General must have regard to any relevant guidelines in force under section 186Q.

Review

- (8) If the Inspector-General decides to cancel, under subsection (2) or (4), an individual's registration as a debt agreement administrator, the individual may apply to the Administrative Appeals Tribunal for review of the decision.

Cancellation of a company's registration as a debt agreement administrator

Scope

- (1) This section applies in relation to a company if the company is a registered debt agreement administrator.

Company no longer passes the basic eligibility test

- (2) The Inspector-General must cancel the company's registration as a debt agreement administrator if the Inspector-General is satisfied that the company no longer passes the basic eligibility test.

Other grounds for cancellation of registration

- (3) The Inspector-General may ask the company to give the Inspector-General a written explanation why the company should continue to be registered as a debt agreement administrator, if the Inspector-General has reasonable grounds to believe that:
- (a) the company no longer has the ability to satisfactorily perform the duties of an administrator in relation to a debt agreement; or
 - (b) the company has failed to properly carry out the duties of an administrator in relation to a debt agreement; or
 - (c) the company has contravened a condition of the company's registration; or
 - (d) the company has ceased to have:
 - (i) adequate and appropriate professional indemnity insurance; or
 - (ii) adequate and appropriate fidelity insurance; oragainst the liabilities that the company may incur while acting as a registered debt agreement administrator; or
 - (e) the company is not a fit and proper person; or
 - (f) a director of the company is not a fit and proper person.
- (4) If:
- (a) the Inspector-General does not receive an explanation within 28 days of requesting it; or
 - (b) receives an explanation, but is not satisfied with it;
- the Inspector-General may cancel the company's registration as a debt agreement administrator.

Notice of cancellation

- (5) If the Inspector-General cancels, under subsection (2) or (4), a company's registration as a debt agreement administrator,

company's registration as a debt agreement administrator, the Inspector-General must give the company written notice of the cancellation, and the reasons for it.

Removal of registration details

- (6) If the Inspector-General cancels, under subsection (2) or (4), a company's registration as a debt agreement administrator, the Inspector-General must remove the company's registration details from the National Personal Insolvency Index.

Guidelines

- (7) In deciding whether to cancel, under subsection (2) or (4), a company's registration as a debt agreement administrator, the Inspector-General must have regard to any relevant guidelines in force under section 186Q.

Review

- (8) If the Inspector-General decides to cancel, under subsection (2) or (4), a company's registration as a debt agreement administrator, the company may apply to the Administrative Appeals Tribunal for review of the decision.

Inspector-General may obtain information about debt agreement administration trust accounts

Scope

- (1) This section applies to a bank if:
- (a) the Inspector-General believes on reasonable grounds that:
 - (i) a person who is or was an administrator of a debt agreement holds or held an account with the bank; and
 - (ii) the account was kept, or purportedly kept, in compliance with subsection 185LD(1); and
 - (b) the Inspector-General has asked the person:
 - (i) under subsection 186K(3) or 186L(3), to give the Inspector-General a written explanation why the person should continue to be registered as a debt agreement administrator; or
 - (ii) under subsection 40-40(1) of Schedule 2, to give the Inspector-General a written explanation why the person should continue to be registered as a trustee; and
 - (c) if subparagraph (b)(ii) applies—the Inspector-General is satisfied for the explanation on the basis of paragraph 40-40(1)(m) of Schedule 2.

- (1A) This section also applies to a bank if:

- (a) the Inspector-General believes on reasonable grounds that:
 - (i) a person who is or was an administrator of a debt agreement holds or held an account with the bank; and
 - (ii) the account was kept, or purportedly kept, in compliance with subsection 185LD(1); and
- (b) the Inspector-General reasonably suspects that, in connection with the account, the person has:
 - (i) contravened a provision of this Act; or
 - (ii) failed to properly carry out the duties of an administrator in relation to the debt agreement; or
 - (iii) contravened a condition of the person's registration as a registered debt agreement administrator.

Requirement

Requirement

- (2) The Inspector-General may, by written notice given to the bank, require the bank to give to the Inspector-General, within the period and in the manner specified in the notice, such information about the account as is specified in the notice.

Offence

- (3) A person commits an offence if:
- (a) the person has been given a notice under subsection (2) and
 - (b) the person omits to do an act; and
 - (c) the omission contravenes a requirement in the notice.

Penalty for contravention of this subsection: 60 penalty units

Account-freezing notices—debt agreement administration trust accounts

Scope

- (1) This section applies to a bank if:
- (a) the Inspector-General believes on reasonable grounds that:
 - (i) a person who is or was an administrator of a debt agreement holds or held an account with the bank; and
 - (ii) the account was kept, or purportedly kept, in compliance with subsection 185LD(1); and
 - (b) at a particular time (the **show cause time**), the Inspector-General asked the person:
 - (i) under subsection 186K(3) or 186L(3), to give the Inspector-General a written explanation why the person should continue to be registered as a debt agreement administrator; or
 - (ii) under subsection 40-40(1) of Schedule 2, to give the Inspector-General a written explanation why the person should continue to be registered as a trustee; and
 - (c) if subparagraph (b)(ii) applies—the Inspector-General asked for the explanation on the basis of paragraph 40-40(1)(m) of Schedule 2.

Giving of freezing notice

- (2) The Inspector-General may, by written notice (an **account-freezing notice**) given to the bank within 42 days after the show cause time, direct the bank not to:
- (a) make a withdrawal from the account; or
 - (b) permit the making of a withdrawal from the account; except:
 - (c) in accordance with the written consent of the Inspector-General; or
 - (d) to recover from the account-holder an amount equal to an amount of tax (however described) that the bank has paid or is liable to pay in connection to the operation of the account;
 - (e) to discharge a liability of the account-holder to pay a fee or charge in relation to the operation of the account; or
 - (f) in such circumstances (if any) as are specified in the regulations.

Duration of freezing notice

- (3) An account-freezing notice given to a bank:
- (a) comes into force when the notice is given to the bank;

(a) comes into force when the notice is given to the bank; or

(b) remains in force for:

(i) 42 days after the show cause time; or

(ii) if a shorter period is specified in the notice—that shorter period.

Extension of 42-day period

(4) The Court may, on application by the Inspector-General, extend or further extend, the 42-day period referred to in subsection (3)(b)(i).

Revocation of freezing notice

(5) If an account-freezing notice is in force in relation to a bank account, the Inspector-General may, by written notice given to the bank, revoke the account-freezing notice.

Copy of account-freezing notice to be given to account-holder

(6) If the Inspector-General gives or revokes an account-freezing notice that relates to an account, the Inspector-General must give a copy of the account-freezing notice or the revocation notice, as the case may be, to the holder of the account.

(7) A failure to comply with subsection (6) does not affect the validity of the account-freezing notice or the revocation notice, as the case may be.

Consent of Inspector-General

(8) A consent under paragraph (2)(c) may be:

(a) unconditional; or

(b) subject to such conditions (if any) as are specified in the notice of consent.

(9) If the Inspector-General decides to refuse to give a consent under paragraph (2)(c), an application may be made to the Administrative Appeals Tribunal for review of the decision.

Power of court to set aside account-freezing notices

(1) If the Court, on application by:

(a) a bank to whom an account-freezing notice has been given; or

(b) the account-holder whose account is affected by an account-freezing notice; or

(c) any other interested person;

is satisfied that the Inspector-General was not authorised to give the notice, the Court may make an order setting aside the notice.

(2) An account-freezing notice that is set aside is taken not to have been given.

Judicial enforcement of account-freezing notices

(1) If the Court is satisfied that a bank has breached, or is proposing to breach, an account-freezing notice, the Court may, on application of the Inspector-General, make any or all of the following orders:

(a) an order directing the bank to comply with that notice;

(b) any other order that the Court thinks appropriate.

(2) The Court may discharge or vary an order granted under this section.

Protection of bank

No criminal or civil proceedings lie against a bank because of anything done (or not done) by the bank in good faith:

- (a) in compliance with an account-freezing notice; or
- (b) in connection with, or incidental to, the bank's compliance with an account-freezing notice.

Division E—Miscellaneous

Return of certificate of registration

Surrender of registration as a debt agreement administrator

- (1) A person commits an offence if:
- (a) the person has been given a certificate of registration under subsection 186D(3); and
 - (b) the person gives a notice under subsection 186J(2) surrendering the person's registration as a debt agreement administrator; and
 - (c) the person does not return the certificate of registration to the Inspector-General before the end of the period of 7 days beginning on the day the Inspector-General accepts the notice.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Cancellation of an individual's registration as a debt agreement administrator

- (3) An individual commits an offence if:
- (a) the individual has been given a certificate of registration under subsection 186D(3); and
 - (b) the individual's registration as a debt agreement administrator is cancelled under section 186K; and
 - (c) the individual does not return the certificate of registration to the Inspector-General before the end of the period of 7 days beginning on the day the individual is given a notice under subsection 186K(5) in relation to the cancellation.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

- (4) Subsection (3) does not apply if the individual has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Cancellation of a company's registration as a debt agreement administrator

- (5) A company commits an offence if:
- (a) the company has been given a certificate of registration under subsection 186D(3); and
 - (b) the company's registration as a debt agreement administrator is cancelled under section 186L; and
 - (c) the company does not return the certificate of registration to the Inspector-General before the end of the period of 7 days beginning on the day the company is given a notice under subsection 186L(5) in relation to the cancellation.

to the Inspector-General before the end of the period of 7 days beginning on the day the company is given a notice under subsection 186L(5) in relation to the cancellation.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(6) Subsection (5) does not apply if the company has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Cancellation by court order of registration as a debt agreement administrator

(6A) A person commits an offence if:

- (a) the person has been given a certificate of registration under subsection 186D(3); and
- (b) the person's registration as a debt agreement administrator is cancelled as a result of an order under section 185ZCA; and
- (c) the person does not return the certificate of registration to the Inspector-General before the end of the period of 7 days beginning on the day of the cancellation.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(6B) Subsection (6A) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6A) (see subsection 13.3(3) of the *Criminal Code*).

Strict liability

(7) Subsections (1), (3), (5) and (6A) are offences of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Cessation of registration as a debt agreement administrator—no refund of fees

- (1) This section applies if a person ceases to be registered as a debt agreement administrator.
- (2) The person is not entitled to a refund of all or part of a fee payable by the person in relation to the person's registration as a debt agreement administrator.

Guidelines relating to Inspector-General's powers

The Inspector-General may, by legislative instrument, formulate guidelines for the purposes of the following provisions:

- (a) subsection 186C(6);
- (b) subsection 186K(7);
- (c) subsection 186L(7).

Note: For consultation requirements, see section 17 of the *Legislation Act 2003*.

Part 16—Personal insolvency agreements

Division 1—Interpretation

Interpretation

- (1) In this Part, unless the contrary intention appears:

controlling trustee, in relation to a debtor whose property is subject to control under Division 2, means the person who is the controlling trustee under section 188 or 192.

debtor means a person who is insolvent.

divisible property, in relation to a personal insolvency agreement executed by a debtor, means the property, other than property that was acquired by, or devolved on, the debtor on or after the day on which he or she executed the agreement, that would be divisible amongst his or her creditors under Part VI if he or she had become a bankrupt on that day.

(1A) Without limiting the definition of **debtor** in subsection (1), a reference in this Part to a debtor shall, unless the contrary intention appears, be read as including a reference to a person who is for the time being insolvent, even if the person may ultimately cease to be insolvent.

(2) In this Part, a reference, in relation to a personal insolvency agreement, to a provable debt shall be read as a reference to a debt or liability that would have been a provable debt in the debtor's bankruptcy if the debtor had become a bankrupt on the day on which he or she executed the personal insolvency agreement.

Application of Part to joint debtors

This Part applies, with the prescribed modifications (if any), in relation to joint debtors, whether partners or not.

Division 2—Meeting of creditors and control of debtor's property

Debtor may authorise trustee or solicitor to be controlling trustee

(1) A debtor who desires that his or her affairs be dealt with under this Part without his or her estate being sequestrated and:

- (a) is personally present or ordinarily resident in Australia;
- (b) has a dwelling-house or place of business in Australia;
- (c) is carrying on business in Australia, either personally or by means of an agent or manager; or
- (d) is a member of a firm or partnership carrying on business in Australia by means of a partner or partners or of an agent or manager;

may sign an authority in accordance with the approved form naming and authorising a registered trustee, a solicitor or the Official Trustee to call a meeting of the debtor's creditors and take control of the debtor's property.

(2) An authority signed by a debtor under this section is not effective for the purposes of this Part unless:

- (a) if the person authorised is a registered trustee or solicitor, the person has consented in writing to exercise the powers given by the authority; and
- (aa) if the person authorised is the Official Trustee—an Official Receiver has given the debtor written approval to name that Official Trustee in the authority.

(2AA) If the person authorised is a registered trustee or a solicitor, before the person consents to exercise the powers given by the authority, the person must give the debtor the information prescribed by the regulations.

- (2AB) If the person authorised is the Official Trustee, then, before the Official Receiver gives approval to name the Official Trustee in the authority, the Official Receiver must give the debtor the information prescribed by the regulations.
- (2A) The regulations may prescribe the circumstances in which a person (other than the Official Trustee or a registered trustee) is ineligible to act as a controlling trustee under this Part.
- (2B) An authority signed by a debtor under this section is not effective for the purposes of this Part if, at the time the authority is signed, the person authorised:
- (a) is not the Official Trustee or a registered trustee; and
 - (b) is ineligible, under the regulations, to act as a controlling trustee under this Part.
- (2C) If the person authorised is a registered trustee or solicitor, the authority signed by the debtor under this section is not effective for the purposes of this Part unless, before the person authorised consents to exercise the powers given by the authority, the debtor gives to the person authorised:
- (a) a statement of the debtor's affairs; and
 - (b) a proposal for dealing with them under this Part.
- Note: Section 6A sets out requirements for statements of affairs.
- (2D) If the person authorised is the Official Trustee, the authority signed by the debtor under this section is not effective for the purposes of this Part unless, before an Official Receiver gives approval to name the Official Trustee in the authority, the debtor gives to the Official Receiver:
- (a) a statement of the debtor's affairs; and
 - (b) a proposal for dealing with them under this Part.
- Note: Section 6A sets out requirements for statements of affairs.
- (2E) A proposal for dealing with the debtor's affairs under this Part must include a draft personal insolvency agreement.
- Note: Section 188A sets out requirements for personal insolvency agreements.
- (3) An authority under this section that is effective for the purposes of this Part is not revocable by the debtor.
- (4) Subject to subsection 192(1), a debtor cannot give an authority within 6 months of giving another authority, unless the Court grants leave to do so.
- (5) A registered trustee or solicitor who consents to exercise the powers given by an authority must, within 2 business days of consenting, give a copy of:
- (a) the authority; and
 - (b) the debtor's statement of affairs;
- to the Official Receiver.
- (6) When an authority becomes effective, the person authorised becomes the controlling trustee.

Personal insolvency agreement

Requirements for a personal insolvency agreement

- (1) A personal insolvency agreement is a deed that:
- (a) is expressed to be entered into under this Part; and
 - (b) complies with subsection (2).

- (2) A personal insolvency agreement must:
- (a) identify the debtor's property (whether or not already owned by the debtor when he or she executes the agreement that is to be available to pay creditors' claims; and
 - (b) specify how the property is to be dealt with; and
 - (c) identify the debtor's income (whether or not already owned by the debtor when he or she executes the agreement) that is to be available to pay creditors' claims; and
 - (d) specify how the income is to be dealt with; and
 - (e) specify the extent (if any) to which the debtor is to be released from his or her provable debts; and
 - (f) specify the conditions (if any) for the agreement to come into operation; and
 - (g) specify the circumstances in which, or the events on which, the agreement terminates; and
 - (h) specify the order in which proceeds of realising the property referred to in paragraph (a) are to be distributed among creditors; and
 - (i) specify the order in which income referred to in paragraph (c) is to be distributed among creditors; and
 - (j) specify whether or not the antecedent transactions provisions of this Act apply to the debtor; and
 - (k) make provision for a person or persons to be trustee or trustees of the agreement; and
 - (l) provide that the debtor will execute such instruments and generally do all such acts and things in relation to his or her property and income as is required by the agreement.
- (3) Subsection (2) does not limit the provisions that may be included in a personal insolvency agreement.

Antecedent transactions provisions

- (4) If a personal insolvency agreement specifies that the antecedent transactions provisions of this Act apply to the debtor, sections 124 to 125 apply, with any modifications prescribed by the regulations, in relation to the debtor as if:
- (a) a creditor's petition had been presented against the debtor on the day on which the special resolution requiring the execution of the agreement was passed; and
 - (b) a sequestration order had been made against the debtor on the day on which the debtor executed the agreement; and
 - (c) the trustee of the agreement were the trustee in the debtor's bankruptcy.
- (5) In the application, by virtue of subsection (4), of the provisions referred to in that subsection:
- (a) a reference to the property of the bankrupt is to be read as a reference to the divisible property of the debtor; and
 - (b) a reference to a provable debt is to be read as a reference to a provable debt within the meaning of this Part; and
 - (c) a reference to the end of the bankruptcy is to be read as a reference to the end of the personal insolvency agreement.

Definition

- (6) In this section:

income has the meaning given by section 139L.

Inspection of statement of debtor's affairs

- (1) This section applies to the following documents relating to a debtor:
 - (a) a copy of a statement of the debtor's affairs given to an Official Receiver under subsection 188(5);
 - (b) a statement of the debtor's affairs given to the Official Receiver under subsection 188(2D).
- (2) A person who states in writing that he or she is a creditor of a debtor, may, without fee:
 - (a) inspect, personally or by an agent, the document; and
 - (b) obtain a copy of, or make extracts from, the document.
- (3) A person who does not state in writing that he or she is a creditor of the debtor, may, on payment of the fee determined by the Minister by legislative instrument:
 - (a) inspect, personally or by an agent, the document; and
 - (b) obtain a copy of, or make extracts from, the document.
- (4) The debtor may, without fee and either personally or by an agent:
 - (a) inspect the document; or
 - (b) obtain a copy of, or make extracts from, the document.
- (5) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person (other than the debtor or an agent of the debtor).
- (6) The Official Receiver may refuse to allow a person access under this section to particular information in a debtor's statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.

Control of property of a debtor who has given authority under section 188

- (1) When an authority given by a debtor under section 188 becomes effective, the property of the debtor becomes subject to control under this Division.
- (1A) The control continues until one of the following events happens:
 - (a) the creditors resolve at a meeting called under this Part that the property cease to be subject to control;
 - (b) the debtor and a trustee execute a personal insolvency agreement following a special resolution of creditors;
 - (c) 4 months pass since the authority under section 188 becomes effective;
 - (d) the Court, under section 208, releases the property from control;
 - (e) the debtor becomes a bankrupt;
 - (f) the debtor dies.
- (1B) The trustee must notify the Official Receiver in writing within 14 days after the trustee becomes aware that the control has ended because of an event specified in subsection (1A).
- (2) A debtor whose property is subject to control under this Division:
 - (a) shall not remove, dispose of or deal with any of his or her property except with the consent of the controlling trustee

- (b) shall furnish to the controlling trustee such information respect to any of the debtor's examinable affairs as the controlling trustee requires; and
- (c) shall comply with any direction given to him or her by the controlling trustee with respect to his or her property or affairs.

Penalty: Imprisonment for 12 months.

- (3) A disposal of, or dealing with, property by a debtor in contravention of subsection (2) is not invalid by reason only of contravention.

Stay of proceedings relating to creditor's petition until meeting of debtor's creditors

- (1) If:
 - (a) an authority signed by a debtor under section 188 has become effective; and
 - (b) either:
 - (i) a creditor's petition was presented against the debtor before the authority became effective; or
 - (ii) a creditor's petition is presented against the debtor after the authority became effective but before the first only meeting of the debtor's creditors called under the authority;proceedings relating to that petition are, by force of this subsection, stayed until:
 - (c) the conclusion of the meeting; or
 - (d) the adjournment of the meeting;whichever is the earlier.

- (2) This section does not limit subsection 206(1).

Court orders with effect during period of control of debtor's property

- (1) The Court may make an order that has effect while the property of the debtor is subject to control:
 - (a) discharging an order made at any time against the person or property of the debtor under a law relating to the imprisonment of fraudulent debtors; or
 - (b) staying a civil or criminal legal process begun at any time against the person or property of the debtor for the debtor's failure:
 - (i) to pay a debt that would be provable if the debtor were bankrupt; or
 - (ii) to pay a pecuniary penalty payable as a result of the failure to pay a debt that would be provable if the debtor were bankrupt; or
 - (iii) to obey an order of a court to pay a debt that would be provable if the debtor were bankrupt; or
 - (c) if the debtor has been imprisoned under a law described in paragraph (a) or for a failure described in paragraph (b)—releasing the debtor from custody.

- (2) Paragraph (1)(b) does not allow the Court to stay any proceedings under a proceeds of crime law.

Charge over debtor's property that is subject to control

Creation of charge

- (1) When the debtor's property becomes subject to control under this Division, the debtor's property is charged with:
- (a) the debtor's unsecured debts at the time the debtor signed the authority under section 188; and
 - (b) any amount by which the debtor's secured debts exceed the value of the property secured for payment of the debt at the time the debtor signed the authority under section 188.

Charge continues despite changing ownership of charged property

- (2) Subject to subsections (3) and (9), the charge is not affected by any change of ownership of the charged property.

Certain other charges have priority

- (3) The charge created by subsection (1) is subject to:
- (a) any charge or encumbrance that was on the debtor's property immediately before the debtor signed the authority under section 188; and
 - (b) any charge or encumbrance acquired in good faith and for full market value by a person who did not have notice of the charge created by subsection (1).

Priority over some other charges

- (4) The charge created by subsection (1) has priority over a charge or encumbrance that is not described in subsection (3).

Registration of charge

- (5) The controlling trustee may register a charge created by subsection (1) over particular property if a law of the Commonwealth, or of a State or Territory, provides for registration of a charge over that sort of property.

Effect of registration of charge

- (6) If the trustee registers the charge over particular property, a person who acquires the property or an interest in the property after the charge is registered is taken to have notice of the charge for the purposes of subsections (3) and (9).

Controlling trustee may sell charged property

- (7) The controlling trustee may sell property that is subject to a charge under subsection (1).

Application of proceeds of sale

- (8) Any proceeds from the sale of charged property that are not needed to meet a charge or encumbrance that has higher priority than the charge created by subsection (1) are the debtor's property.

End of charge on property that is sold

- (9) A charge created by subsection (1) ceases to have effect in relation to property if the property is acquired by a person:
- (a) in good faith for consideration at least as valuable as the market value of the property without notice of the charge
 - (b) from the controlling trustee in a sale under subsection (7).

Charge ends when property ceases to be subject to control

- (10) Unless it has already ceased to have effect under subsection (9), the charge ceases to have effect when control of the debtor's

the charge ceases to have effect when control of the debtor's property ends under subsection 189(1A).

Meaning of debtor's property

(11) In this section:

debtor's property has the meaning given in subsection 190(5).

Right of indemnity for controlling trustee

- (1) The controlling trustee is entitled to be indemnified out of the debtor's property for:
 - (a) his or her remuneration; and
 - (b) any costs, charges or expenses properly and reasonably incurred by the controlling trustee while the debtor's property was subject to control under this Division.
- (2) To secure a right of indemnity under subsection (1), the controlling trustee has a lien on the debtor's property.
- (3) A lien under subsection (2) ceases to have effect if the debtor becomes a bankrupt.

Report and declaration by controlling trustee

- (1) The controlling trustee must prepare a report:
 - (a) summarising and commenting on the information about the debtor's affairs that is available to the controlling trustee;
 - (b) stating whether the controlling trustee believes that the creditors' interests would be better served:
 - (i) by accepting the debtor's proposal for dealing with or her affairs under this Part; or
 - (ii) by the bankruptcy of the debtor; and
 - (c) naming each creditor who was identified as a related entity of the debtor in the debtor's statement of affairs.
- (2) The trustee must:
 - (a) give a copy of the report to the Official Receiver and to each creditor of the creditors; and
 - (b) keep a copy of the report.

Declaration of relationships

- (3) The controlling trustee must make a written declaration stating whether the debtor is a related entity of:
 - (a) the controlling trustee; or
 - (b) a related entity of the controlling trustee.
- (4) The controlling trustee must:
 - (a) give a copy of the declaration to the Official Receiver; and
 - (b) give a copy of the declaration to each of the creditors at the same time as the controlling trustee gives a copy of the subsection (1) report to each creditor; and
 - (c) keep a copy of the declaration.

Controlling trustee to prepare statement about possible resolutions

- (1) A controlling trustee under an authority under section 188 must prepare a written statement about the special resolutions under section 204 that may reasonably be expected to be passed at a meeting of creditors called under the authority.
- (2) The trustee must:

- (a) give a copy of the statement to the Official Receiver and to each of the creditors; and
- (b) keep a copy of the statement.

Duties and powers of controlling trustee

- (1) The controlling trustee must call a meeting of the debtor's creditors under this Division.
- (2) The controlling trustee is empowered:
 - (a) to take immediate control of the debtor's property and affairs;
 - (b) to make such inquiries and investigations in connexion with the debtor's property and examinable affairs as the trustee considers necessary;
 - (c) to carry on a business of the debtor if, in the opinion of the trustee, it will be in the interests of the creditors to do so;
 - (d) to deal with the debtor's property in any way that will, in the opinion of the trustee, be in the interests of the creditors.
- (3A) For the purpose of exercising the powers conferred by subsection (2), a trustee may, with the consent in writing of the debtor, obtain such advice or assistance as the trustee considers desirable.
- (4) For the purposes of exercising his or her powers under this section, the trustee may act in the name of the debtor as if he or she had been duly appointed by the debtor to be his or her law agent or attorney to exercise those powers.
- (5) In this section, **debtor's property**, in relation to a debtor who has given an authority under section 188, means the property of the debtor that would be divisible amongst his or her creditors under Part VI (other than Subdivision B of Division 2) if a sequestration order had been made against him or her on the day on which he or she signed the authority, and includes property that has been acquired by, or has devolved on, the debtor on or after that day, but, if a personal insolvency agreement is executed by him or her in accordance with a special resolution of a meeting of creditors called in accordance with the authority, does not include property that is acquired by, or devolves on, him or her on or after the day on which he or she executes the agreement.

Additional duties of controlling trustee

The duties of the controlling trustee include the following:

- (a) notifying the debtor's creditors of the giving by the debtor of an authority under section 188;
- (c) taking whatever action is practicable to try to ensure that the debtor discharges all of the debtor's duties under this Division;
- (d) considering whether the debtor has committed an offence against this Act;
- (e) referring to the Inspector-General or to relevant law enforcement authorities any evidence of an offence by the debtor against this Act;
- (f) making appropriate inquiries and investigations in connection with the debtor's property and examinable affairs;
- (g) disclosing to creditors any material personal interests known by the trustee that could conflict with the proper exercise of his or her powers or the proper performance of his or her functions;
- (h) exercising powers and performing functions in a

commercially sound way;

(i) exercising powers and performing functions in an impartial and independent manner;

(j) the duties imposed on the controlling trustee under Schedule 2.

Payments to protect property etc.

Without prejudice to the powers conferred on a controlling trustee by section 190, the trustee may, at any time while the property of the debtor is subject to his or her control, make any payments from the debtor's money that, in the opinion of the trustee, it is necessary to pay for the purpose of safe-guarding the value of his or her property or any of it or of avoiding forfeiture or determination of any interest or rights of the debtor in or to property.

Changing the controlling trustee

(1) If a registered trustee or solicitor who has consented to exercise the powers given by an authority under section 188:

(a) dies; or

(b) ceases to be a registered trustee or solicitor; or

(c) becomes incapable of exercising his or her powers under this Part; or

(d) gives the Official Trustee a written request to be relieved of his or her duties under this Part;

then:

(e) the Official Trustee becomes the controlling trustee; and

(f) the debtor may sign a new authority under section 188.

(2) If the debtor signs a new authority under section 188 naming a registered trustee or solicitor, the registered trustee or solicitor becomes the controlling trustee when he or she consents to exercise the powers given by the authority.

(3) If:

(a) a meeting of creditors or the Court nominates a registered trustee or the Official Trustee to be the trustee of a personal insolvency agreement; and

(b) the nominated trustee is not already the controlling trustee, the nominated trustee becomes the controlling trustee when the nominated trustee consents to act as trustee of the agreement.

(4) A person who becomes the controlling trustee under this section:

(a) has the same powers and duties as the person originally authorised by the debtor under section 188; and

(b) is taken for the purposes of this Division to have done any act or thing duly done earlier by an earlier controlling trustee.

Resolution for personal insolvency agreement

(1) The creditors may, at a meeting called in pursuance of an authority under section 188, by special resolution:

(a) where the debtor's property is subject to control under this Division, resolve that the debtor's property be no longer subject to control under this Division;

(b) require the debtor to execute a personal insolvency agreement; or

(d) require the debtor to present a debtor's petition within 14 days from the day on which the resolution was passed.

- (2) A special resolution requiring a debtor to execute a personal insolvency agreement must specify the provisions to be included in the agreement.
- (3) If a special resolution requiring the debtor to execute a personal insolvency agreement has been passed, the creditors must, by that resolution, nominate a trustee or trustees to be trustee or trustees of the agreement.
- (5) The creditors may, in nominating a trustee or trustees for the purposes of subsection (3):
 - (a) nominate 2 or more trustees to hold the office of trustee jointly, or jointly and severally; and
 - (b) nominate trustees to be trustees of the personal insolvency agreement in succession in the event of one or more of the trustees nominated declining to act or ceasing for any reason to hold the office of trustee.
- (6) Property of the debtor that vests in 2 or more trustees of a personal insolvency agreement, whether nominated to hold the office jointly, or jointly and severally, vests in those trustees as tenants.
- (7) In this section:

trustee means registered trustee or Official Trustee.

Activities of sheriff after receiving notice of signing of authority under section 188 etc.

- (1) Subject to this section, where notice in writing of the signing of a debtor of an authority under section 188, of the calling of a meeting of creditors of a debtor in pursuance of this Division or the passing of a special resolution under section 204 requiring a debtor to execute a personal insolvency agreement or present a debtor's petition is given to a sheriff, the sheriff:
 - (a) shall refrain:
 - (i) from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and
 - (ii) from taking any action on behalf of a creditor to attach a debt due to the debtor; and
 - (b) shall not:
 - (i) pay to the creditor by whom, or on whose behalf, a process of execution was issued, or to any person on his or her behalf, the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of any such process; or
 - (ii) pay to the creditor, or to any person on his or her behalf, any moneys received as a result of the attachment of the debt due to the debtor.
- (2) Where a notice is given under subsection (1) to a sheriff, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a liability of the debtor under a maintenance agreement or a maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section) may give

the sheriff a written notice setting out details of the maintenance agreement or maintenance order, and, upon the giving of the notice, subsection (1) ceases to apply in relation to the process of execution or attachment, as the case may be.

(3) Subject to this section, where notice in writing of the signing of an authority under section 188, of the calling of a meeting of creditors of a debtor in pursuance of this Division or the passing of a special resolution under section 204 requiring the debtor to execute a personal insolvency agreement or present a debtor's petition is given to the registrar or other appropriate officer of a court:

(a) to which the proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or

(b) to which moneys have been paid in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor;

any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on his or her behalf.

(4) Where a notice is given under subsection (3) to the registrar or other appropriate officer of any court, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section) may give to the registrar or other officer a written notice setting out details of the maintenance agreement or maintenance order, and, upon the giving of the notice, subsection (3) ceases to apply in relation to the process of execution or the attachment, as the case may be.

(5) Subsection (1) does not prevent the sheriff from selling property or taking action to attach a debt or paying the proceeds of the sale of property or other moneys to a creditor or a person on his or her behalf, and subsection (3) does not prevent moneys in court from being paid out of court to a creditor or a person on his or her behalf, if:

(a) having received notice of the signing by the debtor of an authority under section 188, the sheriff, registrar or other officer does not, within 42 days from the date on which the debtor signed the authority, receive notice of the passing of a special resolution under section 204 requiring the debtor to execute a personal insolvency agreement or present a debtor's petition;

(b) having received notice that a meeting of creditors of the debtor has been called, the sheriff, registrar or other officer does not, within 7 days from the date for which the meeting was called, receive notice of the passing of a special resolution referred to in paragraph (a) or of the adjournment of the meeting;

(c) having received notice of the adjournment of a meeting of creditors of the debtor, the sheriff, registrar or other officer does not, within 7 days from the date to which the meeting adjourned, receive notice of the passing of a special resolution referred to in paragraph (a) or of the further adjournment

the meeting; or

(d) having received notice of the passing of a special resolution referred to in paragraph (a), the sheriff, registrar or other officer does not, within 21 days from the date on which the resolution was passed, receive notice that the personal insolvency agreement required to be executed has been executed or that the debtor has presented a debtor's petition;

(6) Where:

(a) the sheriff, in pursuance of subsection (1) of this section or subsection 119(1) or (2), refrains from taking action to sell property of a debtor (being real property), the debtor executes a personal insolvency agreement, and the property vests in the trustee of the agreement; or

(b) a sheriff, in pursuance of subsection (1), refrains from taking action to sell property of a debtor (being real property) and the debtor becomes a bankrupt and the property vests in the trustee in the bankruptcy;

the costs of the execution are a first charge on that property.

(7) A failure by the sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a debtor in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

Duties of sheriff after receiving notice of execution of personal insolvency agreement etc.

(4) Subject to this section, where:

(a) the sheriff is satisfied:

(i) that a debtor has executed a personal insolvency agreement; and

(ii) that:

(A) property of the debtor in his or her possession is subject to a process of execution issued by or on behalf of a creditor; or

(B) proceeds of the sale of property of the debtor or other moneys in his or her possession, being proceeds of the sale of property sold, whether before or after the execution of the agreement, in pursuance of any such process or moneys seized and paid to avoid seizure or sale of property of the debtor, whether before or after the execution of the agreement, in pursuance of any such process; or

(C) moneys in his or her possession as a result of the attachment, by or on behalf of a creditor, of property of the debtor in respect of a debt due to the debtor;

is not, or are not, subject to the agreement;

the sheriff shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the debtor or to a person authorized by the debtor in writing for the purpose.

(b) the registrar or other appropriate officer of a court is satisfied:

(i) that a debtor has executed a personal insolvency agreement; and

(ii) that:

(A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale of property or other moneys paid into court, whether before or after the execution of the agreement, in pursuance of any such process; or

after the execution of the agreement, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor or

(B) moneys in court that have been paid into court, whether before or after the execution of the agreement, in pursuance of proceedings instituted by or on behalf of a creditor, to attach a debt due to the debtor;

are not subject to the agreement;

the registrar or other officer shall pay those proceeds or other moneys, as the case requires, to the debtor or to a person authorized by the debtor in writing for the purposes of the agreement;

(5) The sheriff, registrar or other officer of a court shall not, in pursuance of subsection (4):

(a) in the case of the sheriff—deliver property or pay the proceeds of the sale of property or other moneys; or

(b) in the case of the registrar or other officer—pay money into court;

to the debtor or to a person authorized by the debtor unless:

(c) 21 days have elapsed since the day on which the personal insolvency agreement was executed; and

(d) the sheriff, registrar or other officer, as the case may be, is satisfied that application has not been made to the Court for an order to set aside or terminate the agreement or that the application, or each application, made for such an order has been withdrawn or dismissed.

(6) Subject to this section, where:

(a) the sheriff is satisfied:

(i) that a debtor has executed a personal insolvency agreement; and

(ii) that:

(A) property of the debtor in his or her possession is, or is about to be, seized under a process of execution issued by or on behalf of a creditor; or

(B) proceeds of the sale of property of the debtor or other moneys in his or her possession, being proceeds of the sale of property sold, whether before or after the execution of the agreement, in pursuance of any such process or moneys seized and paid to avoid seizure or sale of property of the debtor, whether before or after the execution of the agreement, in pursuance of any such process; or

(C) moneys in his or her possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the debtor;

is, or are, subject to the agreement;

the sheriff shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the trustee of the agreement; or

(b) the registrar or other appropriate officer of a court is satisfied:

(i) that a debtor has executed a personal insolvency agreement; and

(ii) that:

(A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale of

other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the execution of the agreement, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor or

(B) moneys in court that have been paid into court, whether before or after the execution of the agreement, in pursuance of proceedings instituted by or on behalf of a creditor, to attach a debt due to the debtor;

are subject to the agreement;

the registrar or other officer shall pay those proceeds or other moneys, as the case requires, to the trustee of the agreement.

(7) The sheriff, registrar or other officer of a court shall not, in pursuance of subsection (6):

(a) in the case of the sheriff—deliver property or pay the proceeds of the sale of property or other moneys; or

(b) in the case of the registrar or other officer—pay money out of court;

to the trustee of the agreement unless:

(c) 21 days have elapsed since the day on which the personal insolvency agreement was executed; and

(d) the sheriff, registrar or other officer, as the case may be, is satisfied that application has not been made to the Court for an order to set aside or terminate the agreement or that the application, or each application, made for such an order has been withdrawn or dismissed.

(8) Where property is, or the proceeds of the sale of property or other moneys are, required by subsection (4) or (6) to be delivered or paid to the trustee of a personal insolvency agreement or to a debtor or a person authorized by the debtor, the costs of the execution or attachment, as the case may be, are a first charge on that property or those proceeds of sale or other moneys, as the case may be.

(9) For the purpose of giving effect to the charge referred to in subsection (8), the sheriff, registrar or other officer of a court may retain, on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other moneys referred to in that subsection as he or she thinks necessary for that purpose.

(10) Where a sheriff, registrar or other officer of a court has, in pursuance of subsection (4) or (6), delivered property or paid moneys to the trustee of a personal insolvency agreement or to a debtor or a person authorized by a debtor, the creditor who instituted the process of execution or instituted the attachment proceedings or on whose behalf the process was issued or the proceedings were instituted, as the case may be, may prove under the agreement as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.

(12) Where:

(a) property has been delivered by a sheriff, or the proceeds of the sale of property or other moneys have been paid by a sheriff, registrar or other officer of a court:

(i) to a debtor, or a person authorised by the debtor

subsection (4); or

(ii) to the trustee of a personal insolvency agreement under subsection (6); and

(b) the property was in the possession of the sheriff, or the proceeds of the sale of the property or the other moneys were in the possession of the sheriff or paid into court, as the case may be, under or in pursuance of a process of execution issued, or proceedings to attach a debt instituted, by or on behalf of a creditor in respect of a liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after commencement of this section);

the trustee, debtor or other person, as the case may be, to whom the property has been delivered, or those proceeds or other moneys have been paid, shall deliver that property, or pay those proceeds or other moneys, as the case requires, to that creditor.

(13) A failure by a sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a debtor in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

Court may adjourn hearing of petition where creditors have passed resolution for personal insolvency agreement

(1) Where:

(a) a meeting of creditors has, in accordance with this Part, passed a special resolution requiring a debtor to execute a personal insolvency agreement; and

(b) a creditor's petition was presented against the debtor before the passing of the resolution or is presented against him or her after the passing of the resolution but before the agreement has been duly executed;

the Court may, upon application by the debtor, a creditor or a person nominated as trustee of the proposed agreement, if it appears to the Court that it would be for the advantage of the creditors that the debtor's affairs be administered under the agreement, adjourn the hearing of the petition for such period as the Court considers necessary to allow the agreement to be executed and, if the agreement is duly executed within that period, shall dismiss the petition.

(2) Where a creditor's petition is presented against a debtor who has been required by special resolution of a meeting of creditors to execute a personal insolvency agreement, the creditor who presents the petition must, as soon as practicable, give notice in writing of that fact to the person who has been nominated as trustee of the agreement and to the Official Receiver.

Transfer of security etc. where secured creditor has voted

(1) Where a secured creditor has estimated the value of his or her security for the purposes of voting at a meeting of creditors at which a special resolution requiring the debtor to execute a personal insolvency agreement was passed:

(a) he or she is not entitled to estimate the value of the security for the purposes of proving part of his or her debt under the agreement at any other amount except with the approval of the Court; and

(b) he or she shall, upon request in writing by the trustee of a personal insolvency agreement executed in accordance with

the special resolution, surrender the security upon payment of the amount at which he or she has estimated the value of her security for the purposes of voting or, if the Court has approved his or her estimating the value of his or her security at another amount under paragraph (a), upon payment of that other amount.

(2) The Court shall not grant its approval under paragraph (1)(c) unless it is satisfied that:

- (a) the estimate made for the purposes of voting was made in good faith on a mistaken basis; or
- (b) the value of the security has changed since that estimate was made.

(3) Subject to subsection (4), where a secured creditor has voted at a meeting of creditors at which a special resolution referred to in subsection (1) was passed in respect of the whole of his or her security without having surrendered his or her security:

- (a) he or she shall be deemed to have estimated his or her security as having no value; and
- (b) he or she shall, upon request in writing by the trustee of the personal insolvency agreement executed in accordance with the special resolution, surrender the security.

(4) The Court may, upon application by a secured creditor to whom subsection (3) applies, if it is satisfied that his or her failure to estimate the value of his or her security was due to inadvertence, upon such terms as the Court considers just and equitable:

- (a) relieve him or her from the obligation to surrender the security; and
- (b) permit him or her to estimate its value for the purpose of proving part of his or her debt under the personal insolvency agreement.

(5) Subject to subsection (4), if a creditor referred to in subsection (1) or (3) fails to comply with a request in writing under that subsection, the trustee by whom the request was made may apply to the Court for an order requiring the creditor to surrender the security to which the request related and the Court may make an order accordingly.

(6) The right conferred on a secured creditor under section 90, applied in relation to personal insolvency agreements, to realise his or her security and prove for the balance due to him or her is exercisable where the trustee of such an agreement has requested the surrender of the security under this section.

Termination of control of debtor's property by the Court

The Court may make an order releasing the debtor's property from control under this Division if:

- (a) an interested person applies to the Court for such an order and
- (b) the Court is satisfied that special circumstances justify making the order.

Effects of controlling trustee to bind trustee of subsequent personal insolvency agreement or bankruptcy

Where:

- (a) a debtor signs an authority under section 188; and
- (b) subsequently a personal insolvency agreement is entered into by the debtor or the debtor becomes a bankrupt.

into by the debtor or the debtor becomes a bankrupt, all payments made, acts and things done, transactions entered and liabilities incurred by the controlling trustee in good faith exercise of his or her powers under this Part are binding on the trustee of the personal insolvency agreement or in the bankruptcy as the case may be.

her provisions about controlling trustee

Part VIII, with any modifications prescribed by the regulation applies in relation to the controlling trustee in relation to a debtor as if:

- (a) the debtor were a bankrupt; and
- (b) the controlling trustee were the trustee of the estate of a bankrupt debtor.

her provisions about debtor

- (1) Sections 77, 77A, 77C, 77D, 77E, 77F, 78 (other than paragraph 78(1)(a), (b) and (c)) and 81, with any modifications prescribed by the regulations, apply in relation to a debtor whose property is subject to control under this Division as if:

- (a) the debtor were a bankrupt; and
- (b) the controlling trustee were the trustee of the estate of a bankrupt debtor.

- (2) Section 78 (other than paragraphs 78(1)(d) and (f)), with any modifications prescribed by the regulations, applies in relation to a debtor whose property is subject to control under this Division as if the debtor were a debtor against whom a bankruptcy notice had been presented.

Division 3—General provisions

Eligibility to be trustee of personal insolvency agreement

Only a registered trustee or the Official Trustee can be a trustee of a personal insolvency agreement.

Nomination or appointment of trustee of personal insolvency agreement

- (1) A resolution that is passed at a meeting of creditors and purports to:
 - (a) nominate one or more persons under subsection 204(3) to be a trustee or trustees; or
 - (b) appoint a person under subsection 220(1) to a vacant position of trustee of a personal insolvency agreement;

is void unless the person or each of the persons gave written consent before the meeting to act as a trustee of the agreement.

- (1A) As soon as possible after the resolution is passed, each person (except the Official Trustee) nominated or appointed by the resolution must give to the Official Receiver a copy of the consent that relates to that person.

- (2) Where, if this subsection had not been enacted, a resolution purporting to nominate a person or persons, or to appoint a person would, because of a particular matter, be void by virtue of subsection (1), the Court may, on the application of the person or any of the persons, as the case may be, or of any other interested person, by order declare the resolution not to be void merely because of that matter.

- (3) Before a resolution is passed at a meeting of creditors that nominates one or more persons under subsection 204(3) to be trustee or trustees:
- (a) the person or each of those persons must make a written declaration stating whether the debtor is a related entity
 - (i) the person concerned; or
 - (ii) a related entity of the person concerned; and
 - (b) the person or each of those persons must:
 - (i) give his or her declaration to the controlling trustee and
 - (ii) keep a copy of his or her declaration; and
 - (c) the controlling trustee must table at the meeting a copy of each declaration given to the controlling trustee; and
 - (d) the controlling trustee must give a copy of each such declaration to each of the creditors at the same time as the controlling trustee gives a copy of the subsection 189A(1) report to each creditor.
- (4) Before a resolution is passed at a meeting of creditors that appoints a person under subsection 220(1) to a vacant office of trustee of a personal insolvency agreement:
- (a) the person must make a written declaration stating whether the debtor is a related entity of:
 - (i) the person; or
 - (ii) a related entity of the person; and
 - (b) the person must:
 - (i) give his or her declaration to the person presiding at the meeting; and
 - (ii) keep a copy of his or her declaration; and
 - (c) the person presiding at the meeting must table at the meeting a copy of the declaration.

Execution of personal insolvency agreements

- (1) A personal insolvency agreement must be executed by the debtor and the trustee within 21 days from the day on which the special resolution requiring the debtor to execute the agreement was passed.
- (2) The execution of the agreement by the debtor and by the trustee shall be attested by a witness.

Failure of trustee to execute personal insolvency agreement

- (1) Where a personal insolvency agreement is not executed, as required by section 216, by the registered trustee, or a registered trustee, nominated in a resolution of a meeting of creditors under section 204 to be the trustee, or a trustee, as the case requires for the agreement, a meeting of creditors called for the purpose by a creditor or the debtor may, by resolution, nominate any other registered trustee in the place of that registered trustee.
- (2) If the agreement is not executed by the registered trustee so nominated within 7 days from the date on which the resolution was passed or within such further period as the Court, on application made before the expiration of that period of 7 days, allows, the Court may, upon application by a creditor, nominate any registered trustee who is prepared to accept the office to be trustee in the place of the registered trustee who did not execute the agreement as required by section 216.
- (3) A registered trustee so nominated by the Court shall execute

- (3) A registered trustee so nominated by the Court shall execute the agreement within 7 days from the date on which the trustee was nominated or within such further period as the Court, on application made before the expiration of that period of 7 days, allows.

Notice of execution of personal insolvency agreement

- (1) The trustee of a personal insolvency agreement entered into pursuant to this Part shall:
- (a) notify each creditor of the debtor as soon as practicable after the debtor and the trustee have executed the agreement and
 - (b) within 2 days after the execution of the agreement by the debtor and the trustee—file a copy of the agreement in the office of the Official Receiver.
- (2) The trustee commits an offence if the trustee fails to comply with a requirement under paragraph (1)(b).

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

- (2A) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A trustee must notify creditors under paragraph (1)(a) in the manner prescribed by the regulations.

Trustee may sue, be sued etc. by official name

- (1) The trustee of a personal insolvency agreement entered into pursuant to this Part may sue and be sued by the prescribed official name and may, by that name, hold, dispose of or acquire property of every description, make contracts, enter into engagements binding on the trustee and his or her successors in office and do all other acts and things necessary or expedient to be done in the execution of the office of trustee.
- (2) For the purposes of subsection (1), the prescribed official name is “The Trustee (or Trustees) of the Property of (*name of debtor*) Debtor”.

Filling of vacancy in office of trustee after execution of personal insolvency agreement etc.

- (1) Where a vacancy occurs in the office of trustee of a personal insolvency agreement entered into under this Part, a meeting of creditors called for the purpose may, by resolution, appoint a registered trustee to the vacant office. The meeting may be called by any creditor or the debtor.
- (2) Where, at any time, a vacancy exists in an office of trustee of such a personal insolvency agreement, the Court may, on the application of the debtor, a creditor or an Official Receiver:
- (a) appoint to the vacant office a registered trustee who is willing to accept the appointment; or
 - (b) appoint the Official Trustee or a registered trustee, being a registered trustee who is willing so to act, to act as trustee until the vacant office is filled by a meeting of creditors.
- (3) The appointment of a trustee to a vacant office of trustee by a meeting of creditors shall be deemed to have taken effect as from the date on which the vacancy in the office occurred, except where the Official Trustee or a registered trustee has been appointed

the Official Trustee or a registered trustee has been appointed to act as trustee under paragraph (2)(b), in which case the appointment takes effect on the date on which it is made.

- (4) The appointment of a registered trustee to a vacant office of trustee by the Court shall be deemed to have taken effect as from the date on which the vacancy in the office occurred.
- (5) Where, under this section, the Official Trustee or a registered trustee is appointed to an office of trustee or to act as trustee:
 - (a) all property to which the personal insolvency agreement relates that is vested in the former trustee, alone or jointly with another trustee, shall, subject to subsection (6), vest in the Official Trustee or that registered trustee, as the case may be, alone or jointly with any continuing trustee, as the case may be, without any conveyance, assignment or transfer, from the date on which the appointment takes effect or is deemed to have taken effect; and
 - (b) the Official Trustee or that registered trustee, as the case may be, has the same rights, powers, duties and liabilities as the Official Trustee or that registered trustee, as the case may be, had been an original trustee, but is not personally liable in respect of any act done, omission made or liability incurred by a prior trustee.
- (6) Where a law of the Commonwealth or of a State or Territory requires the transmission of property to be registered, and enables a trustee so appointed to be registered as the owner of any such property to which the personal insolvency agreement relates, that property, notwithstanding that it vests in the trustee by virtue of this section, does not vest in the trustee at law until the requirements of that law have been complied with.

sequestration order where debtor fails to attend meeting, execute personal insolvency agreement etc.

- (1) Where:
 - (a) a debtor has failed, without sufficient cause, to attend a meeting of creditors called under an authority signed by the Court or her under section 188;
 - (aa) a debtor has contravened subsection 189(2);
 - (b) a debtor, having been required by a special resolution of a meeting of creditors called in pursuance of such an authority to execute a personal insolvency agreement, has failed without sufficient cause to execute the agreement within the time prescribed by this Act; or
 - (c) a meeting of creditors called in pursuance of such an authority has not, within 4 months from the date for which the meeting was called, passed one of the special resolutions referred to in subsection 204(1);the Court may, if it thinks fit, on the application of the Official Trustee, the Inspector-General, a creditor or the controlling trustee, forthwith make a sequestration order against the estate of the debtor.
- (2) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application under this section, either unconditionally or subject to conditions.
- (3) Subject to subsection (4), the making of an application under this section in respect of a debtor shall, for the purposes of this Act, be deemed to be equivalent to the presentation of a creditor's petition.

against the debtor.

- (4) The provisions of subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to an application under this section, but, on the hearing of such an application, the Court shall require proof (which may be given by affidavit) of the matters stated in the application and, unless service has been dispensed with by the Court, of service of the application on the debtor.

Variation of personal insolvency agreement

Variation by special resolution of creditors

- (1) The creditors, with the written consent of the debtor, may vary a personal insolvency agreement by special resolution at a meeting called for the purpose.

Variation by trustee

- (2) The trustee, with the written consent of the debtor, may, in writing, propose a variation of a personal insolvency agreement.
- (3) The trustee must give notice of the proposed variation to all creditors who are entitled to receive notice of a meeting of creditors.
- (4) The notice must:
- (a) include a statement of the reasons for the variation and the likely impact it will have on creditors (if it takes effect); and
 - (b) specify a date (at least 14 days after the notice is given from which it is proposed that the variation will take effect) and
 - (c) state that any creditor may, by written notice to the trustee at least 2 days before the specified date, object to the variation taking effect without there being a meeting of creditors.
- (5) If no creditor lodges a written notice of objection with the trustee at least 2 days before the specified date, then the proposed variation takes effect on the date specified in the notice.
- (6) A certificate signed by the trustee stating any matter relating to a proposed variation under subsection (2) is prima facie evidence of the matter.

Court may set aside personal insolvency agreement

Setting aside on grounds of unreasonableness etc.

- (1) If a personal insolvency agreement is in force, the Court may set aside the agreement on application by:
- (a) the Inspector-General; or
 - (b) the trustee; or
 - (c) a creditor;
- make an order setting the agreement aside if the Court is satisfied that:
- (d) the terms of the agreement are unreasonable or are not calculated to benefit the creditors generally; or
 - (e) for any other reason, the agreement ought to be set aside.

Setting aside on grounds of non-compliance with this Part etc.

- (2) If a personal insolvency agreement is in force, the Court may set aside the agreement on application by:
- (a) the Inspector-General; or

- (b) the trustee; or
- (c) a creditor; or
- (d) the debtor;

make an order setting the agreement aside if the Court is satisfied that:

- (e) the agreement was not entered into in accordance with Part; or
- (f) the agreement does not comply with the requirements of this Part.

(3) The Court must not make an order setting aside a personal insolvency agreement on the ground that it does not comply with the requirements of this Part if the agreement complies substantially with those requirements.

(4) The Court must not make an order under subsection (2) unless the application for the order is made before all the obligations under the personal insolvency agreement created have been discharged.

Setting aside on grounds of false or misleading information etc

(5) If a personal insolvency agreement is in force, the Court may, on application by:

- (a) the Inspector-General; or
- (b) the trustee; or
- (c) a creditor;

make an order setting the agreement aside if the Court is satisfied that:

- (d) the debtor has given false or misleading information in answer to a question put to the debtor with respect to any of the debtor's conduct or examinable affairs at the meeting of creditors at which the resolution requiring the debtor to execute the agreement was passed; or

(e) the debtor has:

- (i) omitted a material particular from the statement of the debtor's affairs given under subsection 188(2C) or (2D); or
- (ii) included an incorrect and material particular in the statement; or

(f) the debtor was subject to a requirement under Division 75 of Schedule 2 (including rules made under that Division) to table a statement, and the debtor has:

- (i) omitted a material particular from that statement;
- (ii) included an incorrect and material particular in the statement; or

(g) the controlling trustee has:

- (i) omitted a material particular from the declaration given by the controlling trustee under subsection 189(2) or (3); or
- (ii) included an incorrect and material particular in the declaration; or

(h) the controlling trustee was subject to a requirement under Division 75 of Schedule 2 (including rules made under that Division) to table a statement, and the controlling trustee:

- (i) omitted a material particular from that statement;
- (ii) included an incorrect and material particular in the statement; or

(i) a person who became the trustee of the agreement has:

- (i) omitted a material particular from the declaration given by the person under subsection 215A(2) or (4); or

given by the person under subsection 215A(3) or (4);

(ii) included an incorrect and material particular in the declaration.

(6) The Court must not make an order under subsection (5) unless it is satisfied that it would be in the interests of the creditors to do so.

(7) The Court must not make an order under subsection (5) unless the application for the order is made before all the obligations under the personal insolvency agreement created have been discharged.

Ancillary orders

(8) If the Court makes an order under subsection (1), (2) or (5), the Court may make such other orders as the Court thinks fit.

(9) An order under subsection (8) may be an order directing a person to pay another person compensation of such amount as specified in the order. This subsection does not limit subsection (8).

Application for sequestration order

(10) The trustee or a creditor may include in an application under subsection (1), (2) or (5) an application for a sequestration order against the estate of the debtor. If the Court, on the first-mentioned application, makes an order under this section setting the personal insolvency agreement aside, it may, if it thinks fit, immediately make the sequestration order sought.

(11) The making of an application by the trustee or a creditor for a sequestration order under this section is taken, for the purposes of this Act, to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to such an application.

Court may dispense with service on debtor of notice of application

(12) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application by the Inspector-General, the trustee or a creditor under this section, either unconditionally or subject to conditions.

Termination of personal insolvency agreement by trustee

(1) The trustee of a personal insolvency agreement may, in writing, propose the termination of the agreement if the trustee is satisfied that the debtor is in default.

(2) The trustee must give notice of the proposed termination to the creditors who are entitled to receive notice of a meeting of creditors.

(3) The notice must:

(a) include a statement of the reasons for the termination and the likely impact it will have on creditors (if it takes effect) and

(b) specify a date (at least 14 days after the notice is given) from which it is proposed that the termination will take effect and

(c) state that any creditor may, by written notice to the trustee, at least 2 days before the specified date, object to the termination taking effect without there being a meeting of creditors.

(4) If:

- (a) the debtor is in default; and
 - (b) no creditor lodges a written notice of objection with the trustee at least 2 days before the specified date;
- then the proposed termination takes effect on the date specified in the notice.
- (5) For the purposes of this section, the debtor is ***in default*** if, only if:
- (a) the debtor has failed to carry out or comply with a term of the personal insolvency agreement; or
 - (b) if the debtor has died—the debtor or the person administering the estate of the debtor has failed to carry out or comply with a term of the agreement.
- (6) A certificate signed by the trustee stating any matter relating to a proposed termination under this section is prima facie evidence of the matter.

Termination of personal insolvency agreement by creditors

- (1) The creditors may, by resolution at a meeting called for the purpose, terminate a personal insolvency agreement if:
- (a) the debtor is in default; and
 - (b) before the passage of the resolution, the trustee of the agreement tabled at the meeting a written declaration to that effect that the trustee is satisfied that the debtor is in default.
- (2) The creditors may, by special resolution at a meeting called for the purpose, terminate the personal insolvency agreement if:
- (a) property of the debtor is covered by a restraining order or forfeiture order; or
 - (b) a pecuniary penalty order made against the debtor is in force.
- (3) However:
- (a) paragraph (2)(a) does not apply if, when the personal insolvency agreement was made, the restraining order or forfeiture order already covered the property in question;
 - (b) paragraph (2)(b) does not apply if, when the personal insolvency agreement was made, the pecuniary penalty order was already in force against the debtor.
- (4) For the purposes of this section, the debtor is ***in default*** if, only if:
- (a) the debtor has failed to carry out or comply with a term of the personal insolvency agreement; or
 - (b) if the debtor has died—the debtor or the person administering the estate of the debtor has failed to carry out or comply with a term of the agreement.

Court may terminate personal insolvency agreement

- (1) If a personal insolvency agreement is in force, the Court may, on application by:
- (a) the trustee; or
 - (b) a creditor; or
 - (c) the debtor; or
 - (d) if the debtor has died—the person administering the estate of the debtor;
- make an order terminating the agreement if the Court is satisfied that:
- (e) that:

- (i) the debtor; or
 - (ii) if the debtor has died—the debtor or the person administering the estate of the debtor;
- has failed to carry out or comply with a term of the agreement; or
- (f) that the agreement cannot be proceeded with without injustice or undue delay to:
 - (i) the creditors; or
 - (ii) the debtor; or
 - (iii) if the debtor has died—the estate of the debtor; or
 - (g) that, for any other reason, the agreement ought to be terminated.

- (2) The Court must not make an order terminating a personal insolvency agreement on the ground specified in paragraph (1) or (g) unless it is satisfied that it would be in the interests of the creditors to do so.

Ancillary orders

- (3) If the Court makes an order terminating a personal insolvency agreement, the Court may make such other orders as the Court thinks fit.
- (4) An order under subsection (3) may be an order directing a person to pay another person compensation of such amount as specified in the order. This subsection does not limit subsection (3).

Application for sequestration order

- (5) The trustee or a creditor may include in an application under subsection (1) an application for a sequestration order against the estate of the debtor. If the Court, on the first-mentioned application, makes an order under this section terminating the personal insolvency agreement, it may, if it thinks fit, immediately make the sequestration order sought.
- (6) The making of an application by the trustee or a creditor for a sequestration order under this section is taken, for the purposes of this Act, to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to such an application.

Court may dispense with service on debtor of notice of application

- (7) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application by the trustee or a creditor under this section, either unconditionally or subject to conditions.

Termination of personal insolvency agreement by occurrence of terminating event

A personal insolvency agreement is terminated by the occurrence of any circumstance or event on the occurrence of which the agreement provides that it is to terminate.

Validity of acts if personal insolvency agreement set aside or terminated

Scope

- (1) This section applies if a personal insolvency agreement is:
 - (a) set aside by the Court; or
 - (b) terminated.

(b) terminated.

Validity of acts

(2) All payments made, acts and things done and transactions entered into in good faith under, or for the purposes of, the agreement by:

- (a) the trustee; or
- (b) any other person;

before he or she had notice of the order of the Court or of the termination of the agreement, as the case may be, are valid and effectual and are not liable to be set aside by the trustee of a personal insolvency agreement or in a subsequent bankruptcy.

Notice that a personal insolvency agreement has been set aside, varied or terminated

(1) If a personal insolvency agreement is terminated or varied by resolution or special resolution at a meeting of creditors called for the purpose, the trustee of the agreement must, before the end of the period of 2 days beginning on the day of the termination or variation, file a copy of the resolution or special resolution in the office of the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(2) If a personal insolvency agreement is varied in accordance with subsection 221A(5), the trustee of the agreement must, before the end of the period of 2 days beginning on the day of the variation, file a copy of the variation in the office of the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(3) If a personal insolvency agreement is terminated by the occurrence of any circumstance or event on the occurrence of which the deed provides that it is to terminate, the trustee of the agreement must, before the end of the period of 2 days beginning on the day of the termination, give written notice of that fact to the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(4) If:

- (a) the Court makes an order setting aside or terminating a personal insolvency agreement; and
- (b) a registered trustee was the trustee of the personal insolvency agreement;

the registered trustee must, before the end of the period of 2 days beginning on the day the trustee becomes aware of the order, give written notice of the order to the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(5) If:

- (a) the Court makes an order setting aside or terminating a personal insolvency agreement; or
- (b) a personal insolvency agreement is terminated other than because of an order of the Court;

the trustee of the personal insolvency agreement must give written notice of the termination to the Official Receiver.

notice of the order or termination to each of the creditors within business days of the making of the order or of the termination the case may be.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(7) Subsections (1), (2), (3), (4) and (5) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Evidence of personal insolvency agreement, resolution etc.

- (1) A personal insolvency agreement that purports to have been executed by the debtor and by the trustee, and to have been attested in accordance with this Part, shall, unless and until the contrary is proved, be deemed to have been duly executed and attested.
- (2) A certificate of the passing of a special resolution under section 204 signed in accordance with that section is *prima facie* evidence that the meeting was duly convened and held and the special resolution specified in the certificate was duly passed at the meeting.
- (3) A certificate of the passing of a resolution (not being a special resolution) under section 204 signed in accordance with that section is *prima facie* evidence that the resolution specified in the certificate was duly passed at the meeting.
- (4) The minutes of a meeting held under this Part are *prima facie* evidence of the proceedings at the meeting.

Editor may inspect personal insolvency agreement etc.

- (1) A person who states in writing that he or she is a creditor of a debtor who has executed a personal insolvency agreement under this Part may, at all reasonable times, inspect without fee, personally or by an agent, the agreement, the statement of the debtor's affairs given under subsection 188(2C) or (2D) and the proofs of debt of creditors and may make copies of, or take extracts from, the agreement, the statement and the proofs.
- (3) A person who states in writing that he or she is a creditor of a debtor who has executed a personal insolvency agreement under this Part may without fee, and any other person may on payment of the fee determined by the Minister by legislative instrument, inspect, personally or by an agent, any document filed under this Part in the office of the Official Receiver in relation to the debtor and may make copies of, or take extracts from, the document.
- (4) Any person is entitled, on payment of the fee determined by the Minister by legislative instrument, to obtain an office copy of a document filed under this Part in the office of the Official Receiver.

Stamp duty not payable on personal insolvency agreements etc. entered into under this Part

Stamp duty is not payable under a law of a State or Territory

- (a) an authority under section 188; or
- (b) a personal insolvency agreement.

Personal insolvency agreement to bind all creditors

- (1) A personal insolvency agreement that:
 - (a) is entered into in accordance with this Part; and

(b) complies with the requirements of this Part;
is, upon being duly executed by the debtor and the trustee, binding on all the creditors of the debtor.

(2) If a personal insolvency agreement has become binding on the creditors of the debtor, it is not competent for a creditor, so long as the agreement remains valid:

- (a) to present a creditor's petition against the debtor, or to proceed with such a petition presented before the agreement became so binding, in respect of a provable debt; or
- (b) to enforce any remedy against the person or property of the debtor in respect of a provable debt; or
- (c) to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

(3) This section does not:

- (a) affect the right of a secured creditor to realise or otherwise deal with the creditor's security; or
- (b) prevent a creditor, after all the obligations that a personal insolvency agreement created have been discharged, from taking any proceeding or enforcing any remedy in respect of a provable debt from which the debtor is not released by the operation of the agreement.

(4) This section does not prevent a creditor from enforcing any remedy against:

- (a) a debtor who has executed a personal insolvency agreement; or
- (b) any property of such a debtor that is not subject to the agreement;

in respect of any liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made in the case may be, before or after the commencement of this subsection).

Release of provable debts

(1) If a personal insolvency agreement provides for a debtor to be released from a provable debt, the agreement operates to release the debtor from that provable debt unless the agreement is set aside or terminated under this Part.

(2) Subsection (1) has effect subject to subsections (3), (4) and (5).

Exceptions

(3) Subsection (1) does not operate to release the debtor from a debt that would not be released by his or her discharge from bankruptcy if he or she had become a bankrupt on the day on which he or she executed the personal insolvency agreement.

(4) Subsection (1) does not affect the right of a secured creditor or a person claiming through or under a secured creditor, to realise or otherwise deal with the creditor's security:

- (a) if the secured creditor has not proved under the agreement for any part of the secured debt—for the purpose of obtaining payment of the secured debt; or
- (b) if the secured creditor has proved under the agreement for any part of the secured debt—for the purpose of obtaining payment of the part of the secured debt for which the creditor has not proved under the agreement;

and, for the purposes of enabling the secured creditor, or a person

claiming through or under a secured creditor, so to realise or with the creditor's security, but not otherwise, the secured debt, the part of the secured debt, as the case may be, is taken not to have been released.

(5) A personal insolvency agreement does not release from any liability a person who, at the date on which the debtor executed the agreement, was:

- (a) a partner or a co-trustee with the debtor; or
- (b) jointly bound or had made a joint contract with the debtor or
- (c) surety or in the nature of a surety for the debtor.

Application of general provisions of Act to personal insolvency agreements

(1) Sections 77, 77A, 77AA, 77C, 77D, 77E, 77F, 78 (other than paragraphs 78(1)(a), (b) and (c)) and 81 apply, with the prescribed modifications (if any), in relation to a debtor who has executed a personal insolvency agreement as if:

- (a) the debtor were a bankrupt; and
- (b) the trustee of the agreement were the trustee of the estate of the bankrupt debtor.

(2) Section 78 (other than paragraphs 78(1)(d) and (f)) applies, with the prescribed modifications (if any), in relation to a debtor who has executed a personal insolvency agreement as if the debtor were a debtor against whom a bankruptcy notice has been presented.

(3) Subsection 58(4) and sections 60, 61, 62, 82 to 118, 127 to 132 and 133 to 139H, Subdivisions I and J of Division 4B of Part VI apply, with the prescribed modifications (if any), in relation to such an agreement as if:

- (a) a creditor's petition had been presented against the debtor by whom the agreement was executed on the day on which the special resolution requiring the execution of the agreement was passed; and
- (b) a sequestration order had been made against him or her on that petition on the day on which he or she executed the agreement; and
- (c) the trustee of the agreement were the trustee in his or her bankruptcy.

(4) In the application, by virtue of subsections (1), (2) and (3), of the provisions referred to in those subsections:

- (a) a reference to the property of the bankrupt is to be read as a reference to the divisible property of the debtor; and
- (b) a reference to a provable debt is to be read as a reference to a provable debt within the meaning of this Part; and
- (c) a reference to the end of the bankruptcy is to be read as a reference to the end of the personal insolvency agreement.

(5) Part VIII applies, with any modifications prescribed by the regulations, in relation to a trustee of a personal insolvency agreement as if:

- (a) the debtor by whom the agreement was executed were a bankrupt; and
- (b) the trustee of the agreement were the trustee in his or her bankruptcy.

(6) If, after taking into account the prescribed modifications and the provisions of subsection (4), a provision specified in subsection

provisions of subsection (1), a provision specified in subsection (2), (3) or (5) is incapable of application in relation to a personal insolvency agreement, or the trustee of such an agreement, as the case requires, or is inconsistent with this Part, that provision does not so have application.

- (7) This Division does not empower the Court to stay any proceedings under a proceeds of crime law.

Right of debtor to remaining property

- (1) The debtor to whom a personal insolvency agreement relates is entitled to any property remaining after payment in full of:
- (a) the costs, charges and expenses of the administration of the agreement; and
 - (b) all provable debts; and
 - (c) interest on interest-bearing provable debts.
- (2) The Court may make an order directing the trustee not to pay or transfer the property, or a specified part of the property, referred to in subsection (1), to the debtor if:
- (a) an application is made for an order under this subsection by a person mentioned in subsection (2A); and
 - (b) the Court is satisfied that proceedings are pending under a proceeds of crime law; and
 - (c) the Court is satisfied that property of the debtor may:
 - (i) become subject to a forfeiture order or interstate forfeiture order made in the proceedings; or
 - (ii) be required to satisfy a pecuniary penalty order or interstate pecuniary penalty order made in the proceedings.
- (2A) For the purposes of paragraph (2)(a), the application may be made by:
- (a) in the case of pending proceedings in relation to a forfeiture order or a pecuniary penalty order under the *Proceeds of Crime Act 2002*—the Commonwealth proceeds of crime authority that is, or that is proposed to be, the responsible authority for the application for the order under that Act; or
 - (b) in the case of pending proceedings under a corresponding law—a person who is entitled to apply for an interstate confiscation order under the corresponding law.
- (3) The Court, on application made to it, may vary or revoke an order made under subsection (2).

Certificate relating to discharge of obligations

- (1) If the trustee of a personal insolvency agreement is satisfied that all the obligations that the agreement created have been discharged, the trustee must, on written request by the debtor, give to the debtor a certificate signed by the trustee to that effect.
- (2) A certificate signed by a trustee under this section is prima facie evidence of the facts stated in it.

Part XI—Administration of estates of deceased persons in bankruptcy

Administration of estates under this Part upon petition by creditor

- (1) Subject to this section, where:

(a) a debt of not less than the statutory minimum was owing to a deceased person at the time of his or her death to a creditor, or debts amounting in the aggregate to not less than that amount were so owing to any 2 or more creditors;

(b) a debt incurred by the legal personal representative of a deceased person of not less than the statutory minimum is owing to a creditor, or debts so incurred amounting in the aggregate to not less than that amount are owing to any 2 or more creditors; or

(c) a debt of not less than the statutory minimum, or debts amounting in the aggregate to not less than that amount, which a deceased person would have been liable to pay to a creditor or any 2 or more creditors if he or she had not died, becomes or become owing after his or her death;

the creditor or creditors to whom the debt or debts is or are owed may present a petition to the Court for an order for the administration of the estate of the deceased person (in this section referred to as **the deceased debtor**) under this Part.

(2) Subject to subsection (3), a secured creditor shall, for the purposes of subsection (1), be deemed to be a creditor only to the extent, if any, by which the amount of the debt owing to him or her exceeds the value of his or her security.

(3) A secured creditor may present, or join in presenting, a petition under this section as if he or she were an unsecured creditor if he or she includes in the petition a statement that he or she is willing to surrender his or her security for the benefit of creditors generally in the event of an order for the administration of the estate under this Part being made.

(4) Where a petitioning creditor is a secured creditor, he or she shall set out in the petition particulars of his or her security.

(5) A petition under this section shall be verified by the affidavit of a person who has knowledge of the facts.

(6) A petition under this section shall not be presented unless:

(a) the debt, or each of the debts, in respect of which it is presented:

(i) is a liquidated sum due at law or in equity or partly at law and partly in equity; and

(ii) is payable immediately or at a certain future time;

(b) at the time of his or her death, the deceased debtor:

(i) was personally present or ordinarily resident in Australia;

(ii) had a dwelling-house or place of business in Australia;

(iii) was carrying on business in Australia, either personally or by means of an agent or manager; or

(iv) was a member of a firm or partnership carrying on business in Australia by means of a partner or partner or by means of an agent or manager.

(7) Where a secured creditor has presented, or joined in presenting, a petition under this section as if he or she were an unsecured creditor, he or she shall, upon request in writing by the trustee within 3 months after the making of an order for the administration of the estate under this Part, surrender his or her security to the trustee for the benefit of the creditors generally.

(8) A secured creditor to whom subsection (7) applies who fails to surrender his or her security when requested to do so by the

trustee in accordance with that subsection is guilty of contempt of court.

- (9) Subject to subsection (10), a sealed copy of the petition shall be served upon the legal personal representative of the deceased debtor or, if there is no legal personal representative, upon such person as the Court directs.
- (10) The Court may, if it is satisfied that there is no legal personal representative of the deceased debtor and that there are special circumstances that justify its so doing, by order dispense with service of the petition, either unconditionally or subject to such conditions.
- (11) At the hearing of the petition, the Court shall require proof of
- (a) the matters stated in the petition (for which purpose the Court may accept the affidavit verifying the petition as sufficient);
 - (b) service of the petition, unless service of the petition has been dispensed with; and
 - (c) the fact that the debt or debts to which the petition relates is or are still owing;
- and if it is satisfied with the proof of those matters, may make an order that the estate be administered under this Part.
- (12) If the Court is not satisfied with the proof of any of those matters or is of the opinion that for other sufficient cause the order sought ought not be made, it may dismiss the petition.
- (13) Where proceedings have been commenced in a court for the administration of a deceased person's estate under a law of a Province or Territory, a petition for an order under this section in relation to the estate shall not be presented by a creditor except by leave of the Court and on such terms and conditions (if any) as the Court thinks fit.
- (14) If the Court makes an order that the estate be administered under this Part, the creditor who obtained the order must, before the end of the period of 2 days beginning on the day the order was made, give a copy of the order to the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

- (15) Subsection (14) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Debtor dying after presentation of creditor's petition

- (1) Subject to subsection (2), where a person against whom a creditor's petition has been presented under Part IV dies after the petition has been served or she has been served with the petition but before a sequestration order has been made on the petition or the petition has been dismissed, an order may be made on that petition for the administration of his or her estate under this Part.
- (2) The matters of which the Court is to require proof before making such an order in a case to which subsection (1) applies are the matters of which the Court would have required proof before making a sequestration order on the petition if the deceased person had not died.
- (3) If the Court makes an order that the estate be administered under this Part, the creditor who obtained the order must, before

the end of the period of 2 days beginning on the day the order made, give a copy of the order to the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Statement of deceased debtor's affairs etc. by legal personal representative

(1) Where an order is made under section 244 or 245 for the administration of the estate of a deceased person under this Part and there is a legal personal representative of the deceased person, the legal personal representative shall, within 28 days from the day on which he or she is notified of the making of the order:

- (a) make out a statement of the deceased person's affairs and his or her administration of the deceased person's estate;
- (b) give a copy of the statement to the Official Receiver.

Penalty: 25 penalty units.

Note: See also section 277B (about infringement notices).

(1A) Subsection (1) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

(4) The cost of making out and filing such a statement shall be borne by the estate.

(5) A person who states in writing that he or she is a creditor of the estate may, without fee, and any other person may, on payment of the fee determined by the Minister by legislative instrument, inspect, personally or by an agent, the statement filed under this section in respect of a deceased person, and make copies of, or take extracts from, the statement.

(6) If the trustee of the estate is a registered trustee, the Official Receiver must give the trustee a copy of the order and a copy of the statement of affairs.

Petition for administration under this Part by person administering deceased person's estate

(1) Subject to this section, a person administering the estate of a deceased person may present a petition for an order for the administration of the estate under this Part, accompanied by a statement, in duplicate, of the deceased person's affairs and of his or her administration of the deceased person's estate.

(1A) Upon hearing the petition, the Court may make, or refuse to make, the order sought as it thinks fit.

(2) A petition under this section shall not be presented unless, at the time of his or her death, the deceased person:

- (a) was personally present or ordinarily resident in Australia;
- (b) had a dwelling house or place of business in Australia;
- (c) was carrying on business in Australia, either personally or by means of an agent or manager; or
- (d) was a member of a firm or partnership carrying on business in Australia by means of a partner or partners, or of an agent or manager.

(3) If the Court makes an order upon hearing the petition, the person

administering the estate of the deceased person must, before the end of the period of 2 days beginning on the day the order was made, give a copy of the order to the Official Receiver.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Commencement of administration under Part

(1) Administration of the estate of a deceased person under this Part by virtue of an order made by the Court under section 247 after the commencement of this section shall be deemed to have relation back to, and to have commenced at:

- (a) if the deceased person was on the day of his or her death unable to pay his or her debts as they became due from his or her own moneys and had committed any act or acts of bankruptcy within the period of 6 months immediately preceding the day on which he or she died—the time of the commission of that act, or the first of those acts, as the case may be;
- (b) if the deceased person was on the day of his or her death unable to pay his or her debts as they became due from his or her own moneys, but had not committed any act of bankruptcy within the period of 6 months immediately preceding the day on which he or she died—the time of his or her death; or
- (c) if the deceased person was on the day of his or her death unable to pay his or her debts as they became due from his or her own moneys—the time of the presentation of the petition under which the order was made.

(2) Administration of the estate of a deceased person under this Part by virtue of an order made by the Court under section 247 in response to a creditor's petition shall be deemed to have relation back, and to have commenced at, the time of the commission of the earliest act of bankruptcy committed by the deceased person within the period of 6 months immediately preceding the date on which the petition was presented.

Application of Act in relation to administrations under this Part

(1) Subject to this section, subsection 47(2), sections 49 to 51 (inclusive), subsections 52(4) and (5), section 62, sections 73 to 78 (inclusive), section 79, sections 81 to 114 (inclusive), sections 115 to 130 (inclusive), sections 132 to 139H (inclusive), Subdivisions I and J of Division 4B of Part VI and sections 140 to 147 (inclusive) and sections 156A to 184 (inclusive) apply, with any modifications prescribed by the regulations, in relation to proceedings under this Part and the administration of estates under this Part.

(3) Subject to the regulations, in the application of the provisions specified in subsection (1) in relation to proceedings under this Part and the administration of estates of deceased persons under this Part:

- (a) a reference to a sequestration order shall be read as a reference to an order for administration of an estate under this Part;
- (b) a reference to bankruptcy shall be read as a reference to administration under this Part.

administration under this Part;

- (c) a reference to the property of the bankrupt shall be read as a reference to the divisible property of the estate as defined in subsection 249(6);
 - (d) a reference to the date of the bankruptcy or to the date on which a person became a bankrupt shall be read as a reference to the date on which the order for administration under this Part was made;
 - (da) a reference to the commencement of the bankruptcy shall be read as a reference to the time at which administration of the estate under this Part is, by virtue of section 247A, to be deemed to have commenced;
 - (e) a reference to a bankrupt shall be read as a reference to a deceased person in respect of whose estate an order for administration under this Part has been made and as including a reference to the estate of that deceased person; and
 - (f) a reference to the trustee of the estate of a bankrupt shall be read as a reference to the trustee of the estate of a deceased person in respect of whose estate an order for administration under this Part has been made.
- (4) If, after taking into account the prescribed modifications and the provisions of subsection (3), a provision specified in subsection (1) is incapable of application in relation to proceedings under this Part or the administration of estates under this Part, or is inconsistent with this Part, that provision does not so have application.

Consolidation of proceedings

- (1) Where orders have been made, whether before or after the commencement of this section, for the administration under this Part of the estates of 2 or more members of a partnership or 2 or more persons jointly liable for a debt, the Court may consolidate the proceedings upon such terms as it thinks fit.
- (2) Where:
- (a) a member of a partnership has become, whether before or after the commencement of this section, a bankrupt or 2 or more members of a partnership have become, whether before or after the commencement of this section, bankrupts; and
 - (b) an order has been made, whether before or after the commencement of this section, for the administration under this Part of the estate of another member of the partnership or orders have been made, whether before or after the commencement of this section, for the administration under this Part of the estates of 2 or more other members of the partnership;
- the Court may consolidate the proceedings upon such terms as it thinks fit.
- (3) Where:
- (a) one of the persons jointly liable for a debt has become, whether before or after the commencement of this section, a bankrupt or 2 or more of the persons jointly liable for a debt have become, whether before or after the commencement of this section, bankrupts; and
 - (b) an order has been made, whether before or after the commencement of this section, for the administration under this Part of the estate of another person jointly liable for the debt or orders have been made, whether before or after the

commencement of this section, for the administration under this Part of the estates of 2 or more persons jointly liable for the debt;

the Court may consolidate the proceedings upon such terms as it thinks fit.

(4) Where the Court makes an order under subsection (1), (2) or (3) and section 110 applies in the administration under this Act of all the estates (whether estates of bankrupts or of deceased debtors) to which that order relates.

(5) Where the Court makes an order under subsection (1), (2) or (3) in relation to 2 or more estates, the Court may, in the order:

(a) declare a specified date to be, for the purpose of the application of the provisions of Division 3 of Part VI in the administration of the joint estate, the date on which all the petitions relevant to the administration of those estates shall be deemed to have been presented;

(b) declare a specified date to be, for that purpose, the date of the bankruptcy in respect of each of those estates being administered in bankruptcy and the date on which each of those estates for administration under this Part was made in respect of those estates being administered under this Part; and

(c) declare a specified time to be, for that purpose, the time at which that is the commencement of the bankruptcy in respect of each of those estates being administered in bankruptcy and the time at which the administration under this Part of each of those estates being administered under this Part (other than an estate in respect of which the order for its administration under this Part was made before the commencement of this section) is, by virtue of section 247A, to be deemed to have commenced;

and, if the Court does so, those estates shall be administered accordingly.

Effect of order for vesting of property on making of order

(1) Subject to this Act, where an order is made for the administration of the estate of a deceased person under this Part

(a) the divisible property of the estate, not being after-acquired property, vests forthwith in the Official Trustee or, if when the order is made, a registered trustee is trustee of the estate of the deceased person under this Act, in that registered trustee; and

(b) after-acquired property of the estate vests, as soon as it is acquired by, or devolves on, the estate, in the Official Trustee or, if a registered trustee is trustee of the estate of the deceased person under this Act, in that registered trustee; and is divisible amongst the creditors of the deceased person under this Act in accordance with this Act.

(2) Where a law of the Commonwealth or of a State or Territory requires the transmission of property to be registered and enables the trustee of the estate of a deceased person under this Act to be registered as the owner of any such property that is part of the divisible property of the estate, the property, notwithstanding that it vests in equity in the trustee by virtue of this section, does not so vest at law until the requirements of that law have been complied with.

(3) Except as provided by this Act, after an order has been made

the administration of the estate of a deceased person under this Part, it is not competent for a creditor:

- (a) to enforce any remedy against the estate in respect of a debt which is not provable in the administration; or
- (b) except with the leave of the Court and on such terms as the Court thinks fit, to commence any legal proceedings in respect of such a debt or take any fresh step in such a proceeding.

(4) After an order has been made for the administration of the estate of a deceased person under this Part, distress for rent shall not be levied or proceeded with against the divisible property of the estate, whether or not the deceased person was a tenant of the premises of which the property is comprised in the estate, or the landlord by whom the distress is sought to be levied.

(4A) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against the estate of a deceased person in a relation to which the Court has made an order for administration under this Part, or against any property of such an estate that is not part of the divisible property of the estate, in respect of any liability of the estate under a maintenance agreement or a maintenance order (whether entered into or made, as the case may be, before or after the commencement of this subsection).

(5) Nothing in this section affects the right of a secured creditor to realize or otherwise deal with his or her security.

(6) For the purposes of this section, where the administration of the estate of a deceased person under this Part is, by virtue of section 247A, to be deemed to have commenced before the death of the deceased person, the divisible property of the estate comprised in the estate of the deceased person is—

(a) property that formed part of the estate upon the death of the deceased person other than:

(i) property that, if the deceased person had not died and a sequestration order had been made against him or her immediately before his or her death, would not have been divisible amongst his or her creditors under Part VI; or

(ii) so much of:

(A) the proceeds of a policy of life assurance or an endowment assurance; or

(B) a payment from a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or an approved deposit fund (within the meaning of that Act); or

(BAA) a payment from an exempt public sector superannuation scheme (within the meaning of that Act); or

(BA) a payment from an RSA;

as would not have been divisible among the creditors of the deceased person under Part VI if:

(C) the deceased person had not died; and

(D) a sequestration order had been made against the deceased person immediately before his or her death; and

(E) the amount concerned had been paid immediately before his or her death;

(b) property that was or is acquired by, or devolved or devolved on, the estate after the death of the deceased person and before an order releasing the estate from administration under this Part is made, not being property that, if the deceased person had not died and a sequestration order had been made

against him or her immediately before his or her death, would not have been divisible amongst his or her creditors under Part VI;

(c) the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property that might have been exercised by the legal personal representative of the deceased person for the benefit of the estate at any time before an order releasing the estate from administration under this Part is made;

(d) property that forms part of the divisible property of the estate by virtue of section 251 and any amount for which the deceased person is liable to account to the trustee of the estate under subsection 251(2);

(e) if, immediately before the death of the deceased person, property was owned by the deceased person and another person or other persons as joint tenants—an amount equal to the value of the improvements (if any) made to that property wholly or principally by or at the expense of the deceased person after, or not earlier than 2 years before, the commencement of administration of his or her estate under this Part;

(f) property (other than property that formed part of the estate of the deceased person upon his or her death) that belonged to, or was vested in, the deceased person at the commencement of administration of his or her estate under this Part or was acquired by, or devolved on, the deceased person after the commencement of administration of his or her estate under this Part and before his or her death, not being property that, if he or she had not died and a sequestration order had been made against him or her at the commencement of administration of his or her estate under this Part, would have been divisible amongst his or her creditors under Part VI; and

(g) the capacity to exercise, and take proceedings for exercising, all such powers in, over or in respect of property that might have been exercised by the deceased person for his or her own benefit at the commencement of administration of his or her estate under this Part, or at any time after the commencement of administration of his or her estate under this Part and before his or her death.

(7) For the purposes of this section, where the administration of the estate of a deceased person is under this Part, by virtue of section 247A, to be deemed to have commenced at the time of his or her death, the divisible property of the estate comprises:

(a) property that formed part of the estate upon the death of the deceased person other than:

(i) property that, if the deceased person had not died and a sequestration order had been made against him or her immediately before his or her death, would not have been divisible amongst his or her creditors under Part VI; or

(ii) so much of:

(A) the proceeds of a policy of life assurance or endowment assurance; or

(B) a payment from a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or an approved deposit fund (within the meaning of that Act); or

(BAA) a payment from an exempt public sector

superannuation scheme (within the meaning of Act); or

(BA) a payment from an RSA;

as would not have been divisible among the creditors of the deceased person under Part VI if:

(C) the deceased person had not died; and

(D) a sequestration order had been made against the deceased person immediately before his or her death; and

(E) the amount concerned had been paid immediately before his or her death;

(b) property that was or is acquired by, or devolved or devolved on, the estate after the death of the deceased person and before an order releasing the estate from administration under this Part is made, not being property that, if the deceased person had not died and a sequestration order had been made against him or her immediately before his or her death, would not have been divisible amongst his or her creditors under Part VI;

(c) the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property might have been exercised by the legal personal representative of the deceased person for the benefit of the estate at any time before an order releasing the estate from administration under this Part is made;

(d) property that forms part of the divisible property of the estate by virtue of section 251 and any amount for which a person is liable to account to the trustee of the estate under subsection 251(2); and

(e) if, immediately before the death of the deceased person, property was owned by the deceased person and another person or other persons as joint tenants—an amount equal to the value of the improvements (if any) made to that property wholly or principally by or at the expense of the deceased person after, or not earlier than 2 years before, the commencement of administration of his or her estate under this Part.

(8) For the purposes of this section, where the administration of the estate of a deceased person under this Part is, by virtue of section 247A, to be deemed to have commenced after the death of the deceased person, the divisible property of the estate comprises

(a) property that formed part of the estate at the commencement of administration of the estate under this Part other than:

(i) property that, if the deceased person had not died and a sequestration order had been made against him or her at that time, would not have been divisible amongst his or her creditors under Part VI; or

(ii) so much of:

(A) the proceeds of a policy of life assurance or endowment assurance; or

(B) a payment from a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or an approved deposit fund (within the meaning of that Act); or

(BAA) a payment from an exempt public sector superannuation scheme (within the meaning of

Act); or

(BA) a payment from an RSA;

as would not have been divisible among the creditors of the deceased person under Part VI if:

(C) the deceased person had not died; and

(D) a sequestration order had been made against the deceased person at that time; and

(E) the amount concerned had been paid at that time;

(b) property that was or is acquired by, or devolved or devolves on, the estate after the commencement of administration under this Part and before an order releasing the estate from administration under this Part is made, not being property that, if the deceased person had not died and a sequestration order had been made against him or her at the commencement of administration of his or her estate under this Part, would have been divisible amongst his or her creditors under Part VI;

(c) the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property that might have been exercised by the legal personal representative of the deceased person for the benefit of the estate at the commencement of administration under this Part or at any time after that time and before an order releasing the estate from administration under this Part is made; and

(d) property that forms part of the divisible property of the estate by virtue of section 251 and any amount for which a person is liable to account to the trustee of the estate under subsection 251(2).

(9) The value of any improvements made to property owned by a deceased person in respect of whose estate an order is made for administration under this Part and another person or other persons as joint tenants shall, for the purposes of paragraph (6)(e) or (f), be determined as at the date of the death of the deceased person.

(10) In this section:

after-acquired property, in relation to an estate, means property that is acquired by, or devolves on, the estate of the deceased person on or after the day on which the order for the administration of the estate under this Part is made, being property that is part of the divisible property of the estate.

commencement of administration, in relation to the administration of the estate of a deceased person under this Part, means the time at which the administration of the estate under this Part is, by virtue of section 247A, to be deemed to have commenced.

Charge over property owned in joint tenancy

(1) Where:

(a) an amount equal to the value of improvements made to property owned by a deceased person in respect of whose estate an order is made for administration under this Part and another person or other persons as joint tenants forms, for the purposes of section 249, part of the divisible property of the estate of the deceased person; and

(b) the property is owned by that other person, or is owned (whether as joint tenants or otherwise) by all or some of the other persons and no other person, on the day on which the

order for the administration of the estate under this Part was made;

there is created, by force of this subsection, a charge on that property to secure the payment of that amount.

- (2) The charge created on property by subsection (1):
- (a) is subject to every charge or encumbrance to which the property was subject immediately before the time at which the order for administration under this Part was made;
 - (b) subject to subsection (3), has priority over all other charges or encumbrances whatsoever; and
 - (c) subject to subsection (3), is not affected by any change of ownership of the property.
- (3) A charge created by subsection (1) on any property:
- (a) ceases to have effect in respect of the property upon the sale of the property to a *bona fide* purchaser for value who, at the time of the purchase, has no notice of the charge; and
 - (b) is postponed in favour of a further charge, or an encumbrance, on the property acquired *bona fide* and for value by a person who, at the time of the acquisition, had no notice of the first-mentioned charge.
- (4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of charges over property of that kind, the trustee of the estate may cause the charge to be registered under the provisions of that law and, if he or she does so, a person who purchases or otherwise acquires the property, or an interest in the property, after registration of the charge shall, for the purposes of subsection (3), be deemed to have notice of the charge.

Effect of order under Part where deceased person was bankrupt

- (1) Where an order is made for the administration of the estate of a deceased person under this Part who was, at the time of his or her death, a bankrupt:
- (a) property:
- (i) that was acquired by, or devolved on, the deceased person on or after the date of the bankruptcy; and
 - (ii) that is divisible amongst the creditors of the deceased person, but had not been distributed amongst the creditors in the bankruptcy before the date on which the order was made;
- shall (subject to any disposition of that property made by the trustee in the bankruptcy without knowledge of the presentation of the petition on which the order was made) be subject also to section 126 in its application to the administration of deceased estates under this Part by virtue of section 248) vest forthwith in the trustee of the estate of the deceased person;
- (b) property:
- (i) that is acquired by, or devolves on, the estate of the deceased person on or after the date of the making of the order; and
 - (ii) that is divisible amongst the creditors of the estate under this Part;
- vests in the trustee of the estate of the deceased person

under this Part as soon as it is acquired by, or devolves on, the estate;

(c) the trustee in the bankruptcy:

(i) shall be deemed to be a creditor in the administration of the estate of the deceased person under this Part in respect of any unsatisfied balance of his or her expenses, remuneration in the bankruptcy, the liabilities incurred by him or her in administering the estate in the bankruptcy and the debts proved in the bankruptcy (whether or not those debts are entitled to priority, or are postponed, in the bankruptcy);

(ii) shall rank equally with the ordinary unsecured creditors of the estate of the deceased person in its administration under this Part; and

(iii) may, where he or she has lodged a proof of debt in the administration under this Part, amend that proof of debt without the consent of the trustee of the estate of the deceased person under this Part, for the purpose of adding:

(A) his or her expenses in the bankruptcy that exceed his or her remuneration in the earlier bankruptcy, or that has, accrued after the proof of debt was lodged;

(B) liabilities incurred by him or her in administering the estate in the bankruptcy after the proof of debt was lodged; or

(C) debts proved in the bankruptcy after the proof of debt was lodged;

or, with the consent of the trustee of the estate of the deceased person, for any other purpose;

(d) a charge or charging order that, by virtue of subsection 118(9), is void as against the trustee in the bankruptcy continues to be void as against that trustee; and

(e) a transaction that, by virtue of section 120, 121, 122, 123 or 128C, is void as against the trustee in the bankruptcy continues to be void as against that trustee.

(2) Where:

(a) the trustee of the estate of a bankrupt who has died receives, after the death of the bankrupt, notice of the presentation of a creditor's petition against the deceased bankrupt, being a petition that was presented before he or she died; or

(b) the trustee of the estate of a bankrupt who has died receives notice of the presentation of a petition for the administration of the estate of the deceased bankrupt under this Part;

the trustee shall hold the after-acquired property of the deceased bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the petition has been dealt with by the Court or has lapsed.

(3) Where the trustee of the estate of a bankrupt who has died receives, after the death of the bankrupt, notice of the reference to the Court of a debtor's petition against the deceased bankrupt, being a petition that was presented before he or she died, the trustee shall hold the after-acquired property of the deceased bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the Court has dealt with the petition.

(4) Where the trustee of the estate of a bankrupt who has died receives notice of the presentation of a petition for the administration of the estate of the deceased bankrupt under this Part, holding after-acquired property of the deceased bankrupt, or the proceeds thereof, until the petition has been dealt with by the Court or has lapsed.

including after-acquired property of the deceased bankrupt, or the proceeds of any such property, in pursuance of subsection 59(3) or subsection (2) or (3) of this section and an order is made for the administration of the estate of the deceased bankrupt under this Part, the trustee shall:

- (a) in a case where the trustee is also the trustee in relation to the administration of the estate of the deceased bankrupt under this Part—hold all such property, and the proceeds of such property, as trustee in relation to the administration of the estate of the deceased bankrupt under this Part; or
 - (b) in any other case—deliver all such property, and pay the proceeds of such property, to the trustee in relation to the administration of the estate of the deceased bankrupt under this Part.
- (5) Where a law of the Commonwealth or of a State or Territory requires the transmission of property to be registered, and enables the trustee in relation to the administration of the estate of a deceased person under this Part to be registered as the owner of any such property that is part of the property of the estate, that property, notwithstanding that it vests in equity in the trustee by virtue of subsection (1), does not vest in the trustee under that law until the requirements of that law have been complied with.
- (6) In subsections (2), (3) and (4), ***after-acquired property***, in relation to a deceased bankrupt, means such of the property that was acquired by, or devolved on, the bankrupt on or after the date of the bankruptcy and before he or she died or that was acquired by, or devolved on, the estate of the bankrupt after his or her death, being property divisible among the creditors of the deceased bankrupt, as has not been distributed amongst the creditors in the bankruptcy.

Real property devised by will that vests directly in devisee to form part of estate in certain cases

- (1) Subject to this section, where an order for the administration of the estate of a deceased person under this Part is made within 12 months after the death of that person, any real property of the deceased person devised by his or her will which, under a law of a State or Territory, vests, either upon the death of that person or upon compliance with a law of the State or Territory relating to the registration of interests in land, directly in the devisee, forms part of the divisible property of the estate.
- (2) Where, before the making of such an order, the devisee has disposed of the property devised, or has mortgaged or charged the property for valuable consideration, to a person acting in good faith, the property does not form part of the divisible property of the estate or forms part of the divisible property of the estate subject to the mortgage or charge, as the case requires, but the devisee is liable to account to the trustee of the estate for the proceeds of the disposal of the property or for an amount equal to the amount which it is mortgaged or charged, as the case requires.

Liability of legal personal representative

- (1) A payment or transfer of property made by the legal personal representative of a deceased person:
- (a) after service on him or her of a petition under this Part in respect of the estate of that person;
 - (b) in a case to which subsection 245(1) applies, after he or she has knowledge of the presentation of a petition against the estate;

has knowledge of the presentation of a petition against the person; or

(c) after a petition is presented under section 247 in respect of the estate of that person;

does not, if an order for the administration of the estate of that person is made under this Part on that petition, operate as a discharge to the legal personal representative as between him or herself and the trustee.

(2) Except as provided by subsection (1), nothing in this Part shall be taken to impose on the legal personal representative of a deceased person any liability for any payment or transfer of property made or any act or thing done, in good faith by the legal personal representative before an order for administration of the estate of the deceased person is made under this Part.

Annulment on payment of debts

(1) If the trustee of the estate of a deceased person is satisfied that all the debts of the estate of a deceased person have been paid in full, the order for the administration of the estate under this Part shall be annulled, by force of this subsection, on the date on which the such payment was made.

(2) The trustee must, before the end of the period of 2 days beginning on that date, give to the Official Receiver a written certificate setting out the name and the administration number of the estate and the date of the annulment.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) For the purposes of this section, if a debt has been proved by a creditor but the creditor cannot be found or cannot be identified, the debt may be paid to the Official Receiver and, if so paid, is taken for the purposes of this section to have been paid in full to the creditor.

(4A) Money received by the Official Receiver under subsection (4) is received on behalf of the Commonwealth.

(5) If money is paid to the Official Receiver under subsection (4), the provisions of subsections 254(3) to (9) apply in relation to that money as if it had been paid to the Commonwealth by a trustee under subsection 254(2).

(6) In this section:

debts of the estate of a deceased person means all debts that have been proved in the administration of the estate and include interest payable on such of those debts as bear interest, and the costs, charges and expenses of the administration of the estate including the remuneration and expenses of the trustee.

Annulment by Court

If the Court is satisfied that an order for the administration of the estate of a deceased person under this Part ought not to have been made, the Court may make an order annulling the administration of the estate under this Part.

Effect of annulment

- (1) If the administration of the estate of a deceased person under this Part is annulled under section 252A or 252B:
 - (a) all sales and dispositions of property and payments duly made, and all acts done, by the trustee of the estate under this Part or any person acting under the authority of the trustee, before the Court before the annulment are taken to have been validly made or done; and
 - (b) the trustee may apply the property still vested in the trustee in connection with the administration of the estate in payment of the costs, charges and expenses of the administration of the estate, including the remuneration and expenses of the trustee; and
 - (c) subject to subsection (2), the remainder (if any) of the property still vested in the trustee in connection with the administration of the estate reverts to the estate of the deceased person.
- (2) If an application is made to the Court by a person claiming an interest in property referred to in paragraph (1)(c), the Court, after hearing such persons as it thinks fit, may make an order, either unconditionally or on such conditions as the Court considers just and equitable, for the vesting of the property in, or delivery of the property to, a person in whom, or to whom, it seems to the Court to be just and equitable that it should be vested or delivered, or to the trustee for that person.
- (3) Subject to subsection (4), if an order vesting property in a person is made under subsection (2), the property vests immediately in that person without any conveyance, transfer or assignment.
- (4) If:
 - (a) the property to which such an order relates is property the transfer of which is required by a law of the Commonwealth or of a State or of a Territory to be registered; and
 - (b) that law enables the registration of such an order;
 the property, even though it vests in equity in the person named in the order, does not vest in that person at law until the requirements of that law have been complied with.

Part 1A—Farmers’ debts assistance

Interpretation

In this Part, ***the relevant authority***, in relation to a stay under a proclaimed law in its application in relation to a person or the estate of a deceased person, means the person administering the proclaimed law by or under which the stay was or is in force.

Law of State or Territory may be proclaimed

Where a law of a State or Territory (including a law that came into operation before the commencement of this section):

- (a) provides for the giving of financial assistance for the purpose of discharging debts of persons who are farmers within the meaning of the *Loan (Farmers’ Debt Adjustment) Act 1935*; or
- (c) gives effect to the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Adjustment) Act 1976* or that agreement as subsequently amended (including that agreement as amended by the

agreement between the Commonwealth, the States and the Northern Territory the execution of which, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1979* or that last-mentioned agreement as subsequently amended); or

(d) gives effect to the agreement between the Commonwealth and the States and the Northern Territory the execution of which, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1985* or that agreement as subsequently amended; or

(e) gives effect to an agreement between the Commonwealth and a State or the Northern Territory whose execution, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1988*, or that agreement as subsequently amended;

the Governor-General may, by Proclamation, specify the law a law in relation to which this Part applies.

Notice about stay under proclaimed law

The relevant authority may give to the Official Receiver a written notice that a stay under a proclaimed law applies to a person specified in the notice.

Relevant authority may apply for stay of proceedings under certain petitions

- (1) If:
- (a) a creditor's petition is presented against a person (whether alone or jointly with another person) or against a partnership of which a person is a member; or
 - (b) a debtor's petition is presented against a partnership of which a person is a member and that person is not one of the partners presenting the petition;
- and a stay under a proclaimed law applies in relation to that person, the relevant authority may, at any time before a sequestration order is made on the creditor's petition or before a debtor's petition is accepted by the Official Receiver, as the case may be, apply to the Court for an order staying all or any proceedings under the petition, and the Court may, if it thinks proper, upon such terms and conditions as it thinks proper, stay all or any proceedings under the petition.
- (2) If a petition is presented under section 244 or section 247 for an order for the administration of the estate of a deceased person and a stay under a proclaimed law applies in relation to the estate, the relevant authority may, at any time before the order is made, apply to the Court for an order staying all or any proceedings under the petition, and the Court may, if it thinks fit, upon such terms and conditions as it thinks proper, stay all or any proceedings under the petition.
- (3) An order made under this section may provide that the stay be of indefinite duration or for such period as the Court thinks proper.

Relevant authority may be heard on application relating to debtor's petition

- (1) The relevant authority may appear and be heard at the hearing of:
- (a) an application under subsection 55(6A) for leave to present a petition against a debtor in relation to whom a stay applies;

under a proclaimed law; or

(b) an application under subsection 56A(7) by a person to whom a stay under a proclaimed law applies for the Court's permission to join in presenting a petition against a partnership; or

(c) an application under subsection 57(8) by a person in respect of whom a stay under a proclaimed law applies for leave to present a petition under section 57.

(2) The relevant authority may appear in person or be represented by a barrister or solicitor.

XII—Unclaimed dividends or moneys

Payment of unclaimed moneys to the Commonwealth

(1) In this section, **trustee** means:

(a) a trustee of the estate of a bankrupt; or

(aa) the administrator of a debt agreement; or

(b) a trustee of a personal insolvency agreement; or

(c) a trustee of a composition or a scheme of arrangement;

(d) a trustee of the estate of a deceased person in respect of which an order has been made under Part XI of this Act;

and includes the Official Trustee.

(2) Where a trustee has under his or her control:

(a) any dividends or other moneys that have remained unclaimed for a period exceeding 6 months, in circumstances where the trustee has identified the person entitled to the dividends or other moneys but has been unable to locate that person after making all reasonable efforts to do so; or

(b) any moneys that it is proposed not to distribute or pay to any person;

he or she shall forthwith pay those moneys to the Commonwealth.

(2A) Where:

(a) the Court has, after the presentation of a creditor's petition against a debtor, directed the Official Trustee, an Official Receiver or a registered trustee to take control of the property of the debtor;

(b) the petition has been withdrawn or dismissed;

(c) the Official Trustee, Official Receiver or registered trustee, as the case may be, has moneys under its control in pursuance of the direction; and

(d) it is not reasonably practicable to pay those moneys to the person entitled to them;

the Official Trustee, Official Receiver or registered trustee, as the case may be, shall pay those moneys to the Commonwealth.

Application for entitlement determination

(3) A person who claims to be entitled to any moneys that have been paid to the Commonwealth under subsection (2) or (2A) may make an application, in the approved form, to the Official Receiver for a determination that the person is so entitled.

Official Receiver satisfied person entitled to moneys

(4) If a person makes an application in accordance with subsection (3) and the Official Receiver is satisfied that the person is entitled to those moneys or a part of those moneys, the Official

Receiver must:

- (a) make a written determination to that effect; and
- (b) specify in the determination the amount to which the person is so entitled; and
- (c) give the person notice of the determination.

(5) The Commonwealth must pay to the person an amount equal to the amount referred to in paragraph (4)(b). That amount is a repayment for the purposes of section 77 of the *Public Governance and Accountability Act 2013*.

Official Receiver not satisfied person entitled to moneys

- (6) If a person makes an application in accordance with subsection (3) and the Official Receiver is not satisfied as mentioned in subsection (4), the Official Receiver must:
- (a) make a written determination to that effect; and
 - (b) give the person notice of the determination.

Review by the Court

- (7) The person may apply to the Court for review of a determination under subsection (4) or (6).
- (8) After reviewing the determination, the Court must:
- (a) affirm the determination; or
 - (b) vary the determination; or
 - (c) set aside the determination and substitute another determination.

Official Receiver's determination not a legislative instrument

- (9) A determination under subsection (4) or (6) is not a legislative instrument.

XIII—Evidence

Record of proceedings or evidence

- (1) A transcript or electronic or magnetic recording that purports to be a record of proceedings under section 77C or 81, or of proceedings before a court, is to be taken to be a record of that kind, unless the contrary is proved.
- (2) The transcript or recording is admissible as evidence of the matters described by a person whose words are recorded in the transcript or recording, unless the Court, or a court in which the transcript is sought to be introduced, makes an order to the contrary.
- (3) The cost of preparing a transcript or recording is an expense in the administration of the estate of the bankrupt or debtor to which the matters recorded relate.

Evidence of matters stated in notices published in *Gazette*

A copy of the *Gazette* containing any notice inserted in it in pursuance of this Act is *prima facie* evidence of the matters stated in the notice.

Evidence of proceedings at meetings of creditors or committee of inspection

The minutes of proceedings at a meeting of creditors or of a committee of inspection under this Act, signed by a person

describing himself or herself as, or appearing to have been, chair of the meeting is *prima facie* evidence of those proceedings.

Presumption about due convening of meetings etc.

Subject to this Act, unless the contrary is shown:

- (a) a meeting of creditors or of a committee of inspection in respect of which minutes of proceedings have been signed by a person describing himself or herself as, or appearing to have been, chair of the meeting shall be deemed to have been duly convened and held; and
- (b) all resolutions passed or proceedings taken at such a meeting shall be deemed to have been duly passed or taken.

Taking and swearing of affidavits

- (1) An affidavit to be used for the purposes of this Act may be sworn within the Commonwealth or a Territory of the Commonwealth before a person authorized to administer oaths for the purposes of the High Court or the Supreme Court of a State or Territory or of a Commonwealth, a Judge of a Court having jurisdiction under the Act, an Official Receiver, a justice of the peace, a commissioner for affidavits or a commissioner for declarations.
- (2) An affidavit to be used for the purposes of this Act may be sworn at a place outside the Commonwealth and the Territories of the Commonwealth before:
 - (aa) a Commissioner of the High Court authorized to administer oaths in that place for the purposes of the High Court;
 - (a) a commissioner of the Supreme Court of a State or Territory of the Commonwealth for taking affidavits empowered and authorized to act in that place;
 - (b) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, exercising his or her function in that place;
 - (ba) an employee of the Commonwealth who is:
 - (i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
 - (ii) exercising his or her function in that place;
 - (bb) an employee of the Australian Trade and Investment Commission who is:
 - (i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
 - (ii) exercising his or her function in that place;
 - (c) a notary public exercising his or her function in that place; or
 - (d) a person qualified to administer an oath in that place, including a person certified by a person mentioned in any of paragraphs (aa) to (c), or by the superior court of that place to be so qualified.

Part IV—Offences

Concealment etc. of property etc.

- (1) A person shall not:
 - (a) with intent to defraud the creditors of:
 - (i) a bankrupt;
 - (ii) a deceased person or the estate of a deceased person; or

(iii) a debtor who has executed a personal insolvency agreement, a deed of assignment or a deed of arrangement;

conceal property of the bankrupt, of the deceased person or his or her estate or of the debtor;

(b) receive property:

(i) from a bankrupt or a debtor who has executed a personal insolvency agreement, a deed of assignment, a deed of arrangement or a person on behalf of a bankrupt or such a debtor;

(ii) from the legal personal representative of a deceased person; or

(iii) from a debtor who subsequently becomes a bankrupt or executes such an agreement or deed, or a person on behalf of such a debtor;

with intent to defraud, or to assist the bankrupt, the legal personal representative or the debtor to defraud, the creditor of the bankrupt, of the deceased person or his or her estate or of the debtor;

(c) with intent to defraud, insert or cause to be inserted in the *Gazette* or in a newspaper an advertisement purporting to be made under this Act without authority or knowing it to be false in any particular; or

(d) with intent to defraud:

(i) in any proceedings in bankruptcy;

(ii) in connexion with the administration of the estate of a deceased person; or

(iii) in connexion with the administration of a debtor's affairs under a personal insolvency agreement, a deed of assignment, a deed of arrangement, a composition or a scheme of arrangement;

make a false claim or a declaration or statement of account that is untrue in any particular or lodge a proof of debt that is untrue in any particular.

Penalty: Imprisonment for 5 years.

(2) A person commits an offence if:

(a) the person disposes of, receives, removes, retains or conceals property that has been seized:

(i) as part of the property of a bankrupt; or

(ii) as part of the estate of a deceased person; or

(iii) under a personal insolvency agreement, a deed of assignment; and

(b) the first-mentioned person knows that the property has been so seized.

Penalty: Imprisonment for 1 year.

(3) In this section:

composition does not include a composition entered into for the purposes of a proclaimed law.

deceased person means a deceased person in respect of whose estate an order for administration has been made under Part 2 of this Act.

deed of arrangement does not include a deed of arrangement executed for the purposes of a proclaimed law.

scheme of arrangement does not include a scheme of

arrangement made or entered into for the purposes of a proclaw.

false affidavits

A person who intentionally makes a false statement in an affidavit to be used for the purposes of this Act commits an offence and is punishable:

- (a) upon summary conviction—by imprisonment for a period not exceeding 6 months or a fine not exceeding 2 penalty units or both; or
- (b) upon conviction on indictment—by imprisonment for a period not exceeding 4 years.

false claims about a creditor's entitlement to vote

- (1) A creditor must not give to the trustee a voting document knowing or reckless that the document is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

- (2) In this section:

give includes cause to be given.

trustee means:

- (a) a trustee in a bankruptcy; or
- (b) a trustee of a composition or scheme of arrangement under Division 6 of Part IV; or
- (d) a controlling trustee as defined in Part X; or
- (e) a trustee of a personal insolvency agreement under Part X or
- (f) a trustee of an estate being administered under Part X

voting document means:

- (a) a statement:
 - (i) relating to the amount in respect of which the creditor claims that the bankrupt is indebted to the creditor, the value of the consideration that the creditor gave for an assignment of a debt the bankrupt owes to the creditor, whether the creditor holds a security interest in respect of the debt; and
 - (ii) that is given to the trustee at or before a meeting called for the purposes of Part IV, X or XI or Schedule 1
- (b) a form:
 - (i) relating to the appointment of a person to represent the creditor at a meeting as the creditor's proxy; and
 - (ii) that is given to the trustee at or before a meeting called for the purposes of Part IV, X or XI or Schedule 1

Failure of person to attend before the Court etc.

- (1) This section applies to a person who:
- (a) is served, whether before or after the commencement of this Act, with a summons under this Act to attend for examination under a provision of this Act (other than section 81), or to appear as a witness before the Court, and has tendered a reasonable sum for expenses; or
 - (b) is not a relevant person within the meaning of section 81 but is served, whether before or after the commencement of this Act, with a summons to attend for examination under

that section and is tendered a reasonable sum for expenses

(c) is a relevant person within the meaning of section 81 and is served, on or after the commencement of this section, with a summons to attend for examination under that section.

(1A) A person to whom this section applies must not, after the commencement of this section:

(a) fail to attend as required by the summons served on the person; or

(b) fail to appear and report from day to day, unless excused or released from further attendance by the Court, the Registrar or the magistrate, as the case may be.

Penalty: Imprisonment for 6 months.

(1B) Subsection (1A) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

(2) Nothing in this section limits the power of the Court to punish persons for contempt of court, but a person shall not be punished under this section and for contempt of court in respect of the same act or omission.

Arrest of person failing to attend before the Court etc.

(1) Subject to subsection (2), where a person who is served, whether before or after the commencement of this section, with a summons referred to in subsection 264A(1):

(a) fails to attend before the Court, the Registrar or the magistrate, as the case may be, as required by the summons; or

(b) fails to appear and report himself or herself from day to day as required by the Court, the Registrar or magistrate, as the case may be;

the Court, the Registrar or the magistrate, as the case may be, may, on proof by affidavit of the service of the summons, issue a warrant for the apprehension of the person.

(2) The Court, the Registrar or the magistrate shall not issue a warrant under subsection (1) for the apprehension of a person mentioned in paragraph 264A(1)(a) or (b) who has failed to attend for examination under a provision of this Act, or to appear as a witness before the Court, as required by a summons under this Act, unless the Court, the Registrar or the magistrate, as the case may be, is satisfied, on proof by affidavit, that the person was tendered a reasonable sum for expenses.

(3) A warrant issued under subsection (1) authorizes the apprehension of the person and his or her being brought before the Court, the Registrar or the magistrate, as the case may be, and his or her detention in custody until he or she is released by order of the Court, the Registrar or the magistrate, as the case may be.

(4) A warrant issued under subsection (1) may be executed by a constable and a constable executing the warrant has the power to break and enter any place or building for the purpose of executing the warrant.

(5) The Court, the Registrar or the magistrate, as the case may be, may order a person apprehended under this section to pay the costs of the apprehension.

- (6) The apprehension of a person under this section does not release him or her from any liability incurred by him or her by reason of her failure to attend before the Court, the Registrar or the magistrate, as the case may be.

Refusal to be sworn or give evidence etc.

- (1) A person appearing before the Court, the Registrar or a magistrate for the purpose of being examined under this Act, or appearing as a witness before the Court, shall not:
- (a) refuse or fail to be sworn or to make an affirmation;
 - (b) refuse or fail to answer a question which he or she is required to answer by the Court, the Registrar or the magistrate, as the case may be; or
 - (c) refuse or fail to produce any books that he or she is required by the Court, the Registrar or the magistrate, as the case may be, or by a summons under this Act, to produce.

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) Nothing in this section limits the power of the Court to punish persons for contempt of court, but a person shall not be punished under this section and for contempt of court in respect of the same act or omission.

Prevarication or evasion in the course of examination

- (1) Where a person who is being examined before the Court, the Registrar or a magistrate under this Act is guilty of prevarication or evasion, the person commits an offence punishable upon conviction by imprisonment for a period not exceeding 6 months or a fine not exceeding 10 penalty units, or both.
- (2) Nothing in this section limits the power of the Court to punish persons for contempt of court, but a person shall not be punished under this section and for contempt of court in respect of the same conduct.

Offences in relation to Registrar or magistrate conducting an examination

- (1) A person shall not:
- (a) insult or disturb a Registrar or magistrate before whom an examination under this Act is being held;
 - (b) interrupt an examination under this Act before a Registrar or magistrate;
 - (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where an examination under this Act is being held before a Registrar or magistrate;
 - (d) use insulting or threatening language towards a Registrar or magistrate before whom an examination under this Act is being held; or
 - (e) by writing or speech use words calculated:
 - (i) to influence improperly a Registrar or magistrate before whom an examination under this Act is being held; or
 - (ii) to bring a Registrar or magistrate before whom an examination under this Act is being held;

examination under this Act is being held into disreput

Penalty: Imprisonment for 6 months or 10 penalty units, or bo

(2) For the purposes of an offence against subsection (1), strict liability applies to the following physical elements of circumstance of the offence:

- (a) that the Registrar or magistrate is a Registrar or magistrate before whom an examination under this Act is being held;
- (b) that the examination is an examination under this Act held before a Registrar or magistrate.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

Failure of bankrupt or debtor to disclose property etc.

(1) A bankrupt:

- (a) shall fully and truly disclose to the trustee all of the property of the bankrupt, and its value;
- (b) shall fully and truly disclose to the trustee particulars of the disposition of property made by him or her within the period of 2 years immediately preceding the date on which he or she became a bankrupt;
- (c) shall not refuse or fail to comply with a direction by the trustee to deliver to the trustee property in the possession of the bankrupt, being all or part of the property of the bankrupt;
- (ca) shall fully and truly disclose to the trustee such information about any of the bankrupt's conduct and examinable affairs as the trustee requires;
- (d) shall not refuse or fail to tell the trustee where the books (including books of an associated entity of the bankrupt) relating to the bankrupt's examinable affairs may be found;
- (e) shall not refuse or fail to comply with a direction by the trustee to deliver to the trustee books (including books of an associated entity of the bankrupt) that are in the possession of the bankrupt and relate to any of the bankrupt's examinable affairs;
- (f) shall not omit any material particular from a statement relating to any of the bankrupt's examinable affairs;
- (g) shall, if he or she knows that a person has lodged a proof of debt in the bankruptcy that is false, forthwith inform the trustee of the fact; and
- (h) shall give to the trustee a full and proper explanation of the loss or depreciation of any of his or her assets or part of a his or her assets that occurred within the period of 2 years immediately preceding the date on which he or she became a bankrupt.

Penalty: Imprisonment for 1 year.

(1A) A bankrupt is taken to have complied with paragraph (1)(a), (ca) if he or she has fully and truly disclosed to the best of his or her knowledge and belief as required by that paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(2) A bankrupt shall be deemed to have complied with paragraph (b) in respect of any property if he or she shows that that property has been disposed of in the ordinary way of his or her business in meeting the ordinary expenses of his or her family.

Note: See also subsection 5(6).

(3) A bankrupt shall not, with the intention of obtaining the consent of his or her creditors or any of them to any matter relating to the affairs of the bankrupt's examinable affairs, make a false representation or commit any fraud.

Penalty: Imprisonment for 5 years.

(4) A person who, after the presentation of a petition on which, by virtue of the presentation of which, he or she becomes a bankrupt,

(a) conceals, removes, disposes of or deals with any part of his or her property to the value of \$20 or more;

(b) conceals a debt due to or by him or her;

(c) conceals, parts with, destroys, mutilates, falsifies, alters or makes a false entry in, or omits a material particular from a book (including a book of an associated entity of the person) affecting or relating to any of the person's examinable affairs;

(d) attempts to account for any part of his or her property by falsely stating that he or she has incurred a loss or expense;

(e) otherwise than in the ordinary way of his or her business disposes of, or gives security over, property that he or she has obtained on credit and for which he or she has not paid; or

(f) prevents the production of a book (including a book of an associated entity of the person) affecting or relating to any of the person's examinable affairs;

commits an offence and is punishable, upon conviction, by imprisonment for a period not exceeding 1 year.

(5) A person who, after the presentation of a petition on which, by virtue of the presentation of which, he or she becomes a bankrupt, either alone or jointly with another person:

(a) obtains property by fraud; or

(b) incurs any debt or liability by fraud;

commits an offence and is punishable, upon conviction, by imprisonment for a period not exceeding 5 years.

(6) Subsections (4) and (5) extend to an act or omission done or made after the commencement of this Act where the petition was presented before the commencement of this Act but do not apply to an act or omission done or made after the person by whom it was done or made has been discharged from the bankruptcy or after his or her bankruptcy has been annulled.

(7) A person who has become a bankrupt after the commencement of this Act and, within 12 months before the presentation of the petition on which, or by virtue of the presentation of which, he or she became a bankrupt, has done any of the things specified in paragraphs (4)(a) to (f) or paragraph (5)(a) or (b), whether before or after the commencement of this Act, commits an offence and is punishable, upon conviction, by imprisonment for a period not exceeding the maximum period of imprisonment applicable to the doing of that thing under subsection (4) or subsection (5), whichever the case may be.

(8) A person who has become a bankrupt and, within 2 years before he or she became a bankrupt and after the commencement of this Act, has contracted a debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation, after taking into consideration his or her other liabilities (if any), of being able to pay the debt, commits an offence and is punishable, upon conviction, by imprisonment for a period not exceeding 1 year.

- (9) It is a defence to a charge under this section (not being a charge under paragraph (1)(c) or (e) or subsection (3), (5) or (8)) if the defendant proves that the act or omission to which the charge relates was done or made without intent to defraud any of his or her creditors.

Offences relating to exercise of powers under section 77A or 130

- (1) A person shall not refuse or fail to comply with a requirement under section 77A or 130.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A person shall not, in purported compliance with a requirement under section 77A or 130, give information, or make a statement that is, to the person's knowledge, false or misleading in a material particular.

- (3) A person shall not:

- (a) obstruct or hinder a person in the exercise of a power conferred by section 77A; or
- (b) obstruct or hinder a person who is executing a warrant issued under section 130.

- (3A) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

- (4) The occupier, or person in charge, of premises that a person enters under a warrant issued under section 130 shall provide the last-mentioned person all reasonable facilities and assistance for the effective exercise of his or her powers under the warrant.

Penalty: Imprisonment for 12 months.

Disposing or charging of property by person who becomes, or has become, a bankrupt

- (1) A person who, after the presentation of a petition on which, by virtue of the presentation of which, he or she becomes a bankrupt, disposes of, or creates a charge on, any property with intent to defraud his or her creditors commits an offence and is punishable upon conviction, by imprisonment for a period not exceeding 5 years.

- (2) Subsection (1) does not apply to the disposal of, or the creation of a charge on, property after the person by whom the disposal is effected or the charge is created is discharged from bankruptcy after his or her bankruptcy has been annulled.

- (3) A person who has become a bankrupt after the commencement of this Act and, within 12 months before the presentation of the petition on which, or by virtue of the presentation of which, he or she became a bankrupt and after the commencement of this Act has disposed of, or created a charge on, any property with intent to defraud his or her creditors commits an offence and is punishable upon conviction, by imprisonment for a period not exceeding 5 years.

False declaration by debtor or bankrupt

- (1) This section applies to a declaration contained in a statement that:
- (a) is filed under paragraph 54(1)(a) or (2)(a); or
 - (aa) accompanies a declaration presented under section 54(1)(a); or
 - (b) accompanies a petition presented under paragraph 55(1)(a) or subsection 56B(1); or
 - (c) is filed under paragraph 56F(1)(a) or (b); or
 - (d) accompanies a petition presented under subsection 57(1)(a); or
 - (da) is given to the Official Receiver under section 77CA; or
 - (e) is given to the Official Receiver under:
 - (i) subsection 185C(2B); or
 - (ii) subsection 185M(1B); or
 - (iii) subsection 185P(1B); or
 - (ea) is given to the Official Receiver under section 185D with respect to a debt agreement proposal; or
 - (f) is given under subsection 188(2C) or (2D).

- (2) A person must not make a declaration to which this section applies that the person knows to be false.

Penalty: Imprisonment for 12 months.

Presumed maker of declaration in electronic statement

- (3) If a declaration is contained in a statement that:
- (a) was received by the Official Receiver electronically; and
 - (b) purported to be made by a particular person;
- the declaration is presumed to have been made by the person, in the absence of evidence to the contrary.
- (4) Subsection (3) applies whether the statement was filed, accompanied a declaration or petition or was given to the Official Receiver, as described in subsection (1).
- (5) Subsection (3) does not affect by implication the operation of any law of the Commonwealth outside this section.

Failure of person to provide information

- (1) A person must not refuse or fail to comply with a notice given to the person under subsection 6A(3), subsection 77C(1) or section 77CA or 139V.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Failure of person to attend

- (1) A person who is required by a notice under subsection 77C(1) to attend before the Official Receiver or an authorised officer and to whom an advance is offered in accordance with subsection 77C(2) must not:
- (a) fail to attend as required by the notice; or
 - (b) fail to appear and report from day to day, unless excused or released from further attendance by the Official Receiver or authorised officer, as the case may be.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Arrest of person failing to attend before Official Receiver or authorised officer

- (1) Subject to subsection (2), if a person who is required by a notice under subsection 77C(1) to attend before the Official Receiver or an authorised officer:
- (a) fails to attend as required by the notice; or
 - (b) fails to appear and report from day to day, as required by the Official Receiver or authorised officer;
- the Registrar, on proof by affidavit of the service of the notice, may issue a warrant for the arrest of the person.
- (2) The Registrar must not issue a warrant under subsection (1) for the arrest of a person unless:
- (a) the Registrar is satisfied, on proof by affidavit, that the person was offered an advance in accordance with subsection 77E(1); or
 - (b) both:
 - (i) the person is or has been a bankrupt; and
 - (ii) the person's attendance was required for the purpose of giving evidence or producing books relating to the person's bankruptcy.
- (3) A warrant issued under subsection (1) authorises the arrest of the person and his or her being brought before the Registrar, and his or her detention in custody until he or she is released by or on the order of the Registrar.
- (4) A warrant issued under subsection (1) may be executed by a constable, and a constable executing the warrant has the power to break in and enter any premises for the purpose of executing the warrant.
- (5) The Registrar may order a person arrested under this section to pay the costs of the arrest.
- (6) The arrest of a person under this section does not relieve the person from any liability incurred because of his or her failure to attend before the Official Receiver or authorised officer.

Refusal to be sworn or give evidence etc.

- (1) A person attending before the Official Receiver or an authorised officer as required by a notice under subsection 77C(1) must not:
- (a) refuse or fail to be sworn or to make an affirmation; or
 - (b) refuse or fail to answer a question that the person is required to answer by the Official Receiver or authorised officer, as the case may be; or
 - (c) refuse or fail to produce any books that the person is required by the notice to produce.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Prevarication or evasion in the course of giving evidence

Where a person who is giving evidence before the Official Receiver or an authorised officer as required by a notice under subsection 77C(1) is guilty of prevarication or evasion, the person commits an offence punishable upon conviction by imprisonment for a period not exceeding 6 months.

Offences in relation to personal insolvency agreements

- (1) A debtor shall not knowingly give a false or misleading answer to a question put to him or her at a meeting called under Part X.

Penalty: Imprisonment for 1 year.

- (2) A debtor who has executed a personal insolvency agreement under Part X:

- (a) shall fully and truly disclose to the trustee of the agreement all the property subject to the agreement and its value;
- (b) shall not refuse or fail to comply with a direction of the trustee of the agreement to deliver up to the trustee property subject to the agreement that is in the possession of the debtor;

- (ba) shall fully and truly disclose to the trustee of the agreement such information about any of the debtor's conduct and examinable affairs as the trustee requires;

- (c) shall not refuse or fail to comply with a direction by the trustee of the agreement:

- (i) to tell the trustee where books (including books of the associated entity of the debtor) relating to any of the debtor's examinable affairs may be found; or
- (ii) to deliver to the trustee such books that are in the possession of the debtor;

- (d) shall not omit any material particular from a statement relating to any of the debtor's examinable affairs;

- (e) shall, if he or she knows that a person has lodged a proof of debt under the agreement that is false, forthwith inform the trustee of the fact;

- (f) shall execute such instruments and do all such acts and things in relation to property subject to the agreement and its realization as are required by this Act or by the trustee or are ordered by the Court upon the application of the trustee and

- (g) shall aid to the utmost of his or her power in the administration of his or her property and affairs under the agreement.

Penalty: Imprisonment for 1 year.

- (2A) A debtor is taken to have complied with paragraph (2)(a) or (2)(b) if he or she has fully and truly disclosed to the best of his or her knowledge and belief as required by that paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A debtor who has executed a personal insolvency agreement under Part X shall not make a false representation or commit fraud with the intention of obtaining the consent of his or her creditors or any of them to any matter relating to any of the debtor's examinable affairs.

Penalty: Imprisonment for 5 years.

(4) Subsections (2) and (3) do not apply to an act or omission that was done or made after:

- (a) all the obligations that the personal insolvency agreement created have been discharged; or
- (b) the personal insolvency agreement has been set aside or terminated.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

(5) If a personal insolvency agreement specifies that the antecedent transactions provisions of this Act apply to the debtor, the debtor must fully and truly disclose to the trustee of the agreement the particulars of any disposition of property made by him or her in the period of 2 years immediately preceding the date on which he or she signed the authority under section 188 authorizing the calling of the meeting of his or her creditors at which the resolution requiring the execution of the agreement was passed.

Penalty: Imprisonment for 1 year.

(5A) A debtor is taken to have complied with subsection (5) if he or she has fully and truly disclosed to the best of his or her knowledge and belief as required by that subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

(6) A debtor shall be deemed to have complied with subsection (5) in respect of any property if he or she shows that that property has not been disposed of in the ordinary way of his or her business or for meeting the ordinary expenses of his or her family.

Note: See also subsection 5(6).

(7) A debtor who has signed an authority under section 188, and who, within 12 months before the date on which he or she signed that authority and after the commencement of this Act:

- (a) done any of the things specified in any of paragraphs 265(5)(a) to (f) or paragraph 265(5)(a) or (b); or
- (b) disposed of, or created a charge on, any property with intent to defraud his or her creditors;

commits an offence and is punishable, upon conviction, if the offence relates to the doing of a thing specified in paragraph 265(5)(a) or (b) or a thing specified in paragraph (b) of this subsection, imprisonment for a period not exceeding 5 years or, in any other case, by imprisonment for a period not exceeding 1 year.

(8) It is a defence to a charge under this section (not being a charge under paragraph (2)(b) or (c) or subsection (3) of this section) if the defendant proves that the act or omission to which the charge relates was done or made without intent to defraud any of his or her creditors.

Undischarged bankrupt or debtor who is a party to a debt agreement obtaining credit etc. without disclosing bankruptcy or debt agreement

(1) An undischarged bankrupt or a debtor who is a party to a debt agreement shall not:

- (a) either alone or jointly with another person, obtain credit

the extent of \$3,000 or more from a person without informing that person that he or she is an undischarged bankrupt or a party to a debt agreement (as the case requires);

(aa) either alone or jointly with another person, obtain goods or services from a person:

(i) by giving a bill of exchange or cheque drawn, or a promissory note made, by him or her either alone or jointly with another person, being a bill, cheque or note under which the sum payable is \$3,000 or more; or

(ii) by giving 2 or more such instruments under which the sums payable amount in the aggregate to \$3,000 or more without informing that person that he or she is an undischarged bankrupt or a party to a debt agreement (as the case requires);

(ab) either alone or jointly with another person, enter into a hire-purchase agreement with a person, or enter into a contract or agreement for the leasing or hiring of any goods from a person, being a hire-purchase agreement, contract or agreement under which the amounts payable to that person amount in the aggregate to \$3,000 or more, without informing that person that he or she is an undischarged bankrupt or a party to a debt agreement (as the case requires);

(ac) either alone or jointly with another person, obtain goods or services from a person by promising to pay that person or another person an amount of, or amounts aggregating, \$3,000 or more without informing that person that he or she is an undischarged bankrupt or a party to a debt agreement (as the case requires);

(ad) either alone or jointly with another person, obtain an amount of, or amounts aggregating, \$3,000 or more from a person by promising to supply goods to, or render service to, that person or another person without informing that person that he or she is an undischarged bankrupt or a party to a debt agreement (as the case requires); or

(b) carry on business under an assumed name, in the name of another person or, either alone or in partnership, under a name without disclosing to every person with whom he or she deals, or, if he or she is carrying on business in partnership under a firm name, the partnership deals, his or her true name and the fact that he or she is an undischarged bankrupt or a party to a debt agreement (as the case requires).

(2) This section has effect subject to section 304A.

Penalty: Imprisonment for 3 years.

Failure to keep proper books of account

(1) A person who has become a bankrupt after the commencement of this Act and:

(a) has not kept such books, accounts and records as are usual and proper in any business carried on by him or her and are sufficient to sufficiently disclose his or her business transactions and financial position during any period while the business was being carried on within the period of 5 years immediately preceding the date on which he or she became a bankrupt;

(b) having kept such books, accounts or records, has not preserved them;

commits an offence and is punishable, upon conviction:

(c) in the case of a person who has previously been either

(c) in the case of a person who has previously been bankrupt whose bankruptcy has not been annulled or a person whose affairs have been administered under a personal insolvency agreement, a deed of assignment or a deed of arrangement under this Act or the repealed Act or who has made a composition or arrangement with creditors under this Act or the repealed Act—by imprisonment for a period not exceeding 3 years; and

(d) in the case of any other person—by imprisonment for a period not exceeding 1 year.

(2) It is a defence to a prosecution under subsection (1) if the accused proves that in the circumstances his or her failure to or preserve the books, accounts or records was honest and excusable.

Gambling or hazardous speculations

A person who has become a bankrupt after the commencement of this Act and:

(a) within 2 years before the presentation of the petition on which, or by virtue of the presentation of which, he or she became a bankrupt, whether the petition was presented before or after the commencement of this Act, materially contributed to, or increased the extent of, his or her insolvency; or

(b) during any period between the presentation of that petition and the date on which he or she became a bankrupt, lost or disposed of his or her property;

by gambling or by speculations that, having regard to his or her financial position at the time and any other material circumstances, were rash and hazardous, being gambling or speculations not connected with a trade or business carried on by him or her, commits an offence and is punishable, on conviction, by imprisonment for a period not exceeding 1 year.

Leaving Australia with intent to defeat creditors etc.

(1) A person who:

(a) within 6 months before the presentation of the petition on which he or she became a bankrupt, left Australia, or did an act preparatory to leaving Australia, with intent to defeat or delay his or her creditors; or

(b) after the presentation of the petition on or by virtue of which he or she became a bankrupt and before he or she became bankrupt, left Australia, or did an act preparatory to leaving Australia, with intent to defeat or delay his or her creditors; or

(c) after he or she has become a bankrupt and before he or she is discharged from the bankruptcy, without the consent in writing of the trustee of his or her estate, leaves Australia, or does an act preparatory to leaving Australia;

commits an offence and is punishable, on conviction, if the offence relates to the doing of a thing specified in paragraph (a) or (b), by imprisonment for a period not exceeding 5 years or, in any other case, by imprisonment for a period not exceeding 3 years.

(2) The trustee may impose written conditions on a consent given for the purposes of paragraph (1)(c). If the bankrupt is liable to make a contribution to the trustee under section 139P or 139Q, the conditions may include conditions regarding the payment of that contribution.

- (3) If the bankrupt contravenes any condition imposed by the trustee, the bankrupt commits an offence and is punishable, on conviction, by imprisonment for a period not exceeding 1 year.

Offences constituted by refusal, failure or omission to act

- (1) This section applies to an offence against this Act, a physical element of which is:
- (a) a refusal, failure or omission to act; or
 - (b) a contravention constituted by a refusal, failure or omission to act.
- (2) A person may be charged with, and convicted of, the offence if the place of the refusal, failure, omission or contravention was one of the following:
- (a) the place where the person should have done the act;
 - (b) the person's usual place of residence at the time the act should have been done;
 - (c) the person's place of residence last known to the Official Receiver.
- (3) Subsection (2) is subject to section 80 of the Constitution.
- (4) Subsection (2) does not apply to an offence against subsection 264A(1A), 264C(1) or 267F(1).

Criminal liability not affected by discharge etc.

A person may be prosecuted for an offence against this Act although:

- (a) he or she has been discharged from bankruptcy or his or her bankruptcy has been annulled;
- (b) a composition or a scheme of arrangement has been accepted or approved under Division 6 of Part IV; or
- (c) a personal insolvency agreement has become binding on him or her creditors.

Trustee acting under a personal insolvency agreement that has been set aside

- (1) A person who acts as trustee under a personal insolvency agreement that has, to his or her knowledge, been set aside or has been terminated is liable, on conviction by the Court or a court of summary jurisdiction, to a fine not exceeding \$20 for each day on which he or she has so acted, not being a day on which his or her acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the debtor.
- (2) It is a defence to proceedings brought under subsection (1) if a person alleged to have acted as trustee proves that his or her acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the debtor.

Punishment of contempt of court

Where by this Act it is provided that a person is guilty of contempt of court, that person may be dealt with by any court having jurisdiction in bankruptcy as if he or she were guilty of contempt of that court, but a person is not liable to be punished more than once in respect of the one contempt.

Keeping of books in respect of period of bankruptcy

- (1) Subject to this section, a bankrupt must:
 - (a) keep books that record and explain any income derived from the bankrupt, record the particulars of any employment of the bankrupt, and record and explain any other dealings, transactions or other financial or business affairs of the bankrupt, during the period of the bankruptcy; and
 - (b) retain the books until discharged from the bankruptcy.
 - (2) The bankrupt must:
 - (a) keep the books in writing in the English language or so enable the books to be readily accessible and convertible into writing in the English language; and
 - (b) keep the books so as to enable any liability of the bankrupt arising under this Act by virtue of any acts, transactions or other matters occurring during the period of the bankruptcy to be readily ascertainable.
 - (3) A person who has possession of any books referred to in subsection (1) must:
 - (a) produce the books to the trustee or to the Official Receiver when requested to do so; and
 - (b) retain the books until the bankrupt is discharged.
 - (4) A person is not required to retain books if the trustee or the Official Receiver, by written notice given to the person, has told the person that the retention of those books is not necessary.
- Penalty: Imprisonment for 6 months.

Enfringement notices for offences

- (1) The regulations may make provision in relation to enabling a person who is alleged to have committed an offence of a kind referred to in the table in subsection (2) to pay to the Commonwealth, as an alternative to prosecution, a penalty of an amount worked out in accordance with subsection (2).
- (2) The amount of penalty payable to the Commonwealth under regulations made for the purposes of subsection (1) in respect of an offence is determined using the following table:

Penalties payable		
Item	Alleged offence	Penalty payable
1	subsection 52(1A)	1 penalty unit
2	subsection 73(1A)	1 penalty unit
3	subsection 74(5A)	1 penalty unit
4	subsection 153A(2)	1 penalty unit
5	subsection 153B(3)	1 penalty unit
6	subsection 185C(4D)	12 penalty units
7	subsection 185LE(1A)	1 penalty unit
12	subsection 185LEA(1)	1 penalty unit
13	subsection 185ZA(1)	1 penalty unit
14	subsection 186N(1)	1 penalty unit
15	subsection 186N(3)	1 penalty unit
16	subsection 186N(5)	1 penalty unit
17	subsection 186N(6A)	1 penalty unit
18	subsection 218(2)	1 penalty unit
19	subsection 224A(1)	1 penalty unit
20	subsection 224A(2)	1 penalty unit
21	subsection 224A(3)	1 penalty unit
22	subsection 224A(4)	1 penalty unit
23	subsection 224A(5)	1 penalty unit
24	subsection 244(14)	1 penalty unit
25	subsection 245(3)	1 penalty unit
26	subsection 246(1)	5 penalty units

27	subsection 247(3)	1 penalty unit
28	subsection 252A(2)	1 penalty unit
29	subsection 30-1(5) of Schedule 2	1 penalty unit
30	subsection 35-5(2) of Schedule 2	1 penalty unit
31	subsection 65-40(3) of Schedule 2	1 penalty unit
32	subsection 70-10(4) of Schedule 2	1 penalty unit
33	subsection 70-11(2) of Schedule 2	1 penalty unit
34	subsection 70-25(4) of Schedule 2	1 penalty unit

Part IV—Provisions relating to the Bankruptcy (Estate Charges) Act 1997

Interpretation

In this Part:

Estate Charges Act means the *Bankruptcy (Estate Charges) Act 1997*.

interest charge means charge imposed by Part 2 of the Estate Charges Act.

late payment penalty means penalty payable under subsection 281(1).

realisations charge means charge imposed by Part 3 of the Estate Charges Act.

Administration of, and powers and functions in relation to, the Charges Acts

- (1) The Inspector-General has the general administration of the Estate Charges Act.
- (2) A reference to “this Act” in section 12 or 77AA of this Act is taken to include a reference to the Estate Charges Act.

Deferred payment of interest charge or realisations charge

- (1) A person may defer the payment of an amount of interest charge relating to a particular trustee account if:
 - (a) the total amount of interest charge that the person is liable to pay in respect of the account is less than \$50; and
 - (b) the account has not been closed; and
 - (c) the person has notified the Inspector-General as provided for in subsection (3).
- (2) A person may defer the payment of an amount of realisation charge relating to a particular bankrupt’s estate, deceased person’s estate or debtor’s property, as the case may be, if:
 - (a) the total amount of realisations charge that the person is liable to pay in respect of the estate or property is less than \$50; and
 - (b) the trustee account in relation to the estate or property has not been closed; and
 - (c) the person has notified the Inspector-General as provided for in subsection (3).
- (3) If a person intends to defer paying an amount of interest charge or realisations charge, he or she must notify the Inspector-General in writing of that fact before the time by which the amount is otherwise required to be paid.

otherwise required to be paid.

- (4) If a person defers payment of an amount of interest charge or realisations charge in accordance with this section, the amount is still payable to the Commonwealth, but the person does not have to pay it until 21 days after whichever of the following happens first:
- (a) at the end of a charge period:
 - (i) if the deferral is of interest charge—the total amount of interest charge that the person is liable to pay in respect of the relevant trustee account is \$50 or more; or
 - (ii) if the deferral is of realisations charge—the total amount of realisations charge that the person is liable to pay in respect of the relevant estate or property is \$50 or more;
 - (b) the relevant trustee account is closed.

Note: As a deferred amount is still payable to the Commonwealth, it must be taken into account in working out the total amounts referred to in paragraphs (1)(a), (2)(a) and (4)(a).

- (5) In this section:

trustee account means an account referred to in section 65-5 of Schedule 2.

late payment penalty—interest charge and realisations charge

- (1) If any interest charge or realisations charge remains unpaid at the time for payment of the charge, the person liable to pay the charge is liable to pay to the Commonwealth a late payment penalty calculated from that time at the rate of 20% per year on the amount unpaid.
- (2) The person liable to pay late payment penalty is personally liable to pay the penalty and is not entitled to be reimbursed in respect of the penalty out of the bankrupt's estate, the deceased person's estate or the debtor's property, as the case may be.

extension of time for payment—interest charge and realisations charge

- (1) The Inspector-General may, in a particular case, extend the time for payment of interest charge or realisations charge.
- (2) The following provisions apply in relation to extensions of time under subsection (1):
- (a) the person liable to pay the charge may apply for an extension;
 - (b) an application is to be in writing, setting out the reasons for the application, and is to be made to the Inspector-General before the original time for payment;
 - (c) the Inspector-General's decision on an application is to be in writing;
 - (d) application may be made to the Administrative Appeals Tribunal for review of a decision to refuse an application, or to grant a lesser extension than was applied for.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

remission of interest charge, realisations charge and late payment penalty

- (1) The Inspector-General may remit an amount of interest charge

realisations charge or late payment penalty that is payable but not been paid if the Inspector-General thinks that:

- (a) failure to remit the amount would cause a person undue hardship; and
- (b) it is appropriate to remit the amount.

(2) The following provisions apply in relation to remissions under subsection (1):

- (a) the person liable to pay the charge or penalty may apply for a remission;
- (b) an application is to be in writing, setting out the reasons for the application, and is to be made to the Inspector-General;
- (c) the Inspector-General's decision on an application is to be in writing;
- (d) application may be made to the Administrative Appeals Tribunal for review of a decision to refuse an application, or to remit a lesser amount than was applied for.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

Recovery of interest charge, realisations charge and late payment penalty

Interest charge, realisations charge or late payment penalty that is due and payable may be recovered by the Commonwealth as a debt due to the Commonwealth.

Payments by cheque or payment order

(1) If a person gives the Commonwealth a cheque or payment order in payment of an amount of interest charge, realisations charge or late payment penalty, the amount is taken not to be paid until the cheque or payment order is paid by the institution on which it is drawn.

(2) If:

- (a) a person gives the Commonwealth a cheque or payment order in payment of an amount of interest charge or realisations charge; and
- (b) the cheque or payment order is paid by the institution on which it is drawn;

then, for the purposes of working out if there is a liability to pay a late payment penalty, the amount of charge is taken to have been paid when the person gave the cheque to the Commonwealth.

Regulations may deal with other matters

(1) The regulations may include other provisions dealing with the collection and recovery of interest charge, realisations charge or late payment penalty, including (but not limited to) provisions dealing with the following:

- (a) the methods by which charge and late payment penalty are to be paid;
- (b) refunds of, or overpayments of, charge or late payment penalty;
- (c) as an alternative to the refund of the whole or a part of an amount to a person, crediting the amount or part of the amount against a liability of the person to pay charge or late payment penalty;
- (d) forms to be used, and information to be provided, in relation to the payment of charge and late payment penalty.

- (2) The matters that may be covered in regulations made for the purposes of paragraph (1)(a) include, but are not limited to, the making of payments using:
- (a) electronic funds transfer systems; or
 - (b) credit cards; or
 - (c) debit cards.
- (3) A refund of an amount in accordance with the regulations is paid out of the Consolidated Revenue Fund, which is appropriate accordingly.

XVI—Miscellaneous

Certain provisions in contracts etc. to be void

- (1) A provision in a contract or agreement for the sale of property, a lease of property, in a hire-purchase agreement, in a licence or a PPSA security agreement to the effect that:
- (a) the contract, agreement, lease, hire-purchase agreement, licence or PPSA security agreement is to terminate, or may be terminated by the vendor, lessor, owner, licensor or PPSA secured party; or
 - (b) the operation of the contract, agreement, lease, hire-purchase agreement, licence or PPSA security agreement is to be modified; or
 - (c) property to which the contract, agreement, lease, hire-purchase agreement, licence or PPSA security agreement relates may be repossessed by or on behalf of the vendor, lessor, owner, licensor or PPSA secured party;
- if the purchaser, lessee, hirer, licensee or PPSA grantor or debtor becomes a bankrupt or commits an act of bankruptcy or executes a personal insolvency agreement under this Act is void.

- (2) This section extends to contracts, agreements, leases, hire-purchase agreements and licences entered into or granted before the commencement of this Act.

- (2A) This section extends to a PPSA security agreement entered into before or after the time this subsection commences.

Note: This subsection commenced at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

- (3) In this section:

lease includes an agreement for a lease.

lessee includes a person who has agreed to take a lease.

lessor includes a person who has agreed to grant a lease.

Certain provisions in bills of sale etc. to be void

- (1) A provision in a bill of sale, mortgage, lien, charge or PPSA security agreement:
- (a) enabling the grantee, mortgagee, person entitled to the benefit of the lien or charge or PPSA secured party to exercise any power or remedy; or
 - (b) to the effect that the operation of the bill of sale, mortgage, lien, charge or PPSA security agreement is to be modified if the grantor, mortgagor, the person whose property is subject to the lien or charge or the PPSA grantor or debtor becomes a

bankrupt or commits an act of bankruptcy or executes a personal insolvency agreement under this Act is void.

(2) This section extends to bills of sale, mortgages, liens and charges entered into or granted before the commencement of this Act.

(3) This section extends to a PPSA security agreement entered into at or after the time this subsection commences.

Note: This subsection commenced at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

Certain provisions in governing rules of superannuation funds and approved deposit funds to be void

(1) This section applies to a provision in the governing rules of a provident, benefit, superannuation, retirement or approved deposit fund to the extent to which the provision has the effect that:

- (a) any part of the beneficial interest of a member or depositor is cancelled, forfeited, reduced or qualified; or
- (b) the trustee or another person is empowered to exercise discretion relating to such a beneficial interest to the detriment of a member or depositor;

if the member or depositor:

- (c) becomes a bankrupt; or
- (d) commits an act of bankruptcy; or
- (e) executes a personal insolvency agreement under this Act.

(2) The provision is void.

(2A) This section does not apply to a provision that facilitates compliance with:

- (a) section 128B; or
- (b) section 128C; or
- (c) a notice under section 128E; or
- (d) an order under paragraph 128K(1)(b); or
- (e) a notice under section 139ZQ; or
- (f) an order under subsection 139ZT(2); or
- (g) an order under section 139ZU.

(3) This section extends to governing rules made before the commencement of this section.

(4) In this section:

governing rules, in relation to a fund, means any trust instrument, other document or legislation, or combination of them, governing the establishment or operation of the fund.

Certain provisions in RSA's terms and conditions to be void

(1) This section applies to a provision in the terms and conditions of an RSA to the extent to which the provision has the effect that

- (a) any part of the amount of money a bankrupt holds in an RSA is cancelled, forfeited, reduced or qualified; or
- (b) the provider of the RSA is empowered to exercise a discretion relating to such an amount to the detriment of the RSA holder;

if the RSA holder:

- (c) becomes a bankrupt; or
- (d) commits an act of bankruptcy; or

- (e) executes a personal insolvency agreement under this Act;
- (2) The provision is void.
- (3) This section does not apply to a provision that facilitates compliance with:
 - (a) section 128B; or
 - (b) section 128C; or
 - (c) a notice under section 128E; or
 - (d) an order under paragraph 128K(1)(b); or
 - (e) a notice under section 139ZQ; or
 - (f) an order under subsection 139ZT(2); or
 - (g) an order under section 139ZU.

Certain provisions in trust deeds void

- (1) A provision of a trust deed is void to the extent that it has the effect of:
 - (a) cancelling, reducing or qualifying a beneficiary's interest under the trust; or
 - (b) allowing the trustee to exercise a discretion to the detriment of a beneficiary's interest;if the beneficiary becomes a bankrupt, commits an act of bankruptcy or executes a personal insolvency agreement under this Act.
- (2) This section does not apply to a provision that facilitates compliance with:
 - (a) section 128B; or
 - (b) section 128C; or
 - (c) a notice under section 128E; or
 - (d) an order under paragraph 128K(1)(b); or
 - (e) a notice under section 139ZQ; or
 - (f) an order under subsection 139ZT(2); or
 - (g) an order under section 139ZU.

Applications to Court

Where in respect of any matter this Act provides that:

- (a) an application may be made to the Court; or
- (b) the Court or the Registrar may exercise a power;

and does not specify the person by whom the application may be made or the person on whose application the power may be exercised, as the case may be, the application may be made by the person, or the Registrar, if the power may be exercised on the application of, any person aggrieved by or interested in that matter.

Parts of dollar to be disregarded in determining majority in value of creditors etc.

In determining for the purposes of this Act whether a majority in value of creditors, or a particular proportion in value of creditors, has passed a resolution or done any other act or thing, if a creditor's debt consists of a number of whole dollars and a part of a dollar, the part of the dollar shall be disregarded.

Indexation

- (1) In this section:

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of

capital cities, published by the Australian Statistician in respect of that quarter.

indexable amount means:

- (a) the amount of \$20 referred to in paragraph 77D(1)(a);
- (b) the amount of \$20 referred to in subsection 77E(2); or
- (c) the amount of \$20 referred to in subsection 77E(3); or
- (d) the amount of \$10 referred to in paragraph 77E(4)(a);
- (e) the amount of \$10 referred to in paragraph 77E(4)(b);
- (f) an amount prescribed by the regulations for the purposes of paragraph 77E(3)(a) or (4)(a); or
- (g) the amount of \$3,000 referred to in paragraph 149D(1)(a), or
- (j) each amount of \$3,000 referred to in section 269;

or, if any such amount has previously been altered under this section, the amount as so altered or last altered.

- (2) Section 77D or 77E applies in relation to the attendance of a person on a day during a quarter that begins after the commencement of the section concerned as if the indexable amount or each indexable amount in that section were replaced by the amount worked out using the formula in subsection (6).
- (3) Section 149D applies in relation to an act, omission or transaction by a bankrupt that constituted misleading conduct that took place or was entered into on a day during a quarter that begins after the date of commencement of the section concerned as if the indexable amount in that section were replaced by the amount worked out using the formula in subsection (6).
- (5) Section 269 applies in relation to an act, omission or transaction referred to in that section that took place or was entered into on a day during a quarter that begins after the date of commencement of section 41 of the *Bankruptcy Amendment Act 1991* as if each indexable amount in section 269 were replaced by the amount worked out using the formula in subsection (6).

- (6) The formula for the purposes of subsections (2), (3) and (5)

$$\text{Previous indexable amount} \times \text{Indexation factor}$$

where:

Previous indexable amount means the indexable amount for the previous quarter.

Indexation factor means the indexation factor for the quarter worked out under subsection (8).

- (7) If, apart from this subsection, an amount worked out under subsection (6) would be an amount of dollars and cents, the amount is to be rounded to the nearest dollar (rounding 50 cents upwards).
- (8) The indexation factor for a quarter is the number (worked out to 3 decimal places) worked out by dividing the index number for the previous quarter by the index number for the quarter that immediately preceded the previous quarter.
- (9) If the factor worked out under subsection (8) in relation to a quarter would, if it were worked out to 4 decimal places, end with a number greater than 4, the factor worked out under that subsection in relation to that quarter is taken to be the factor worked out to 3 decimal places and increased by 0.001.

- (10) Subject to subsection (11), if at any time, whether before or

the commencement of this section, the Australian Statistician published or publishes an index number in respect of a quarter substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

- (11) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of the application of this section after the change takes place or takes place, regard is to be had only to the index number published in terms of the new index reference period.

Payment of expenses by Commonwealth

- (1) Where the Minister, upon the application of the trustee of the estate of a bankrupt, the trustee under Part X in relation to a debtor or the trustee of the estate of a deceased person that is being administered under Part XI of this Act, is satisfied:

(a) that proceedings relating to:

(i) the estate of the bankrupt, the debtor or the deceased person; or

(ii) any of the examinable affairs of the bankrupt, the debtor or the deceased person;

should be instituted, continued or defended; or

(aa) that the trustee should appear and participate in proceedings before the Administrative Appeals Tribunal reviewing a decision or determination by the trustee, or reviewing a decision of the Inspector-General on a review of such a decision or determination; or

(b) that inquiries should be made concerning:

(i) the estate of the bankrupt, the debtor or the deceased person; or

(ii) any of the examinable affairs of the bankrupt, the debtor or the deceased person;

and is also satisfied that the moneys in the estate of the bankrupt, the debtor or the deceased person, as the case may be, are, or may be, insufficient to meet the cost of the proceedings or inquiries, the Minister may, by instrument in writing, direct that the cost of the proceedings or inquiries (including any costs that may be awarded against the trustee), or such part of the cost of the proceedings or inquiries (including any costs that may be awarded against the trustee) as is specified in the direction, be paid by the Commonwealth and, in that case, the cost or that part of the cost, as the case may be, shall be paid accordingly out of moneys available under an appropriation made by the Parliament.

- (2) A direction made by the Minister under subsection (1) may be subject to such conditions (including conditions as to the taxation of all or any costs and the reimbursement of the Commonwealth whole or in part, by the estate of the bankrupt, the debtor or the deceased person, as the case may be) as the Minister thinks fit.

- (3) The Minister may, by instrument in writing, revoke or vary a direction made by him or her under subsection (1).

- (4) In this section:

estate, in relation to a personal insolvency agreement under Part X, means the property and income subject to the agreement.

Formal defect not to invalidate proceedings

- (1) Proceedings under this Act are not invalidated by a formal defect or an irregularity, unless the court before which the objection that ground is made is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by an order of that court.
- (2) A defect or irregularity in the appointment of any person exercising, or purporting to exercise, a power or function under this Act or under a personal insolvency agreement entered into under this Act does not invalidate an act done by him or her in good faith.

Protection of Registrars, magistrates etc. in relation to examinations

- (1) A Registrar or magistrate has, in the exercise of the powers conferred on him or her by this Act, the same protection in relation to the performance of the functions conferred on him or her by this Act in relation to the examination of a person, the same protection and immunity as a Justice of the High Court.
- (2) A barrister, solicitor or other person representing a person examined under this Act, or a person entitled to take part in the examination of a person under this Act, has in respect of the examination the same protection and immunity as a barrister appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, a person summoned to attend for examination, or appearing for examination, under this Act has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

Protection in respect of reports

- (1) An action, suit or proceeding does not lie against the Inspector-General, an Official Receiver, the trustee of the estate of a bankrupt or any other person in respect of a statement made in good faith in a report prepared or given to a person under subsection 12(1A) or (1B), section 189A or section 20-25, 20-60-65 or 70-40 of Schedule 2.
- (2) Subsection (1) shall not be taken to limit or affect any other right, privilege, immunity or defence existing apart from that subsection.

Proceedings in firm name

Any person or persons carrying on business under a firm name may take proceedings or be proceeded against under this Act in the firm name, but in that case the Court may, on the application of an interested person, order the name of the person or the names of the persons so carrying on business to be disclosed and verified in such manner as the Court directs.

Representation of corporation etc.

Subject to this Act, for the purposes of this Act:

- (a) a corporation may act by any person duly authorized in its behalf by the corporation;
- (b) a partnership may act by any of its members or a duly authorized agent;
- (c) a person of unsound mind may act by a person authorized and empowered by law to act for him or her; and

empowered by law to act for him or her, and

(d) any person may act by his or her agent duly authorized that behalf.

Service of notices etc.

- (1A) Where a trustee carries on business at 2 or more addresses, notice or other document in relation to which no special manner of service is prescribed may be sent to the trustee at any of those addresses.
- (2) Where a notice or other document is required by this Act to be served on or given to a person, the Court may, in a particular case, order that it be given or served in a manner specified by the Court, whether or not any other manner of giving or serving the notice or other document is prescribed.

Stamp duty not payable on trustee's cheques or receipts

- (1) In this section, **trustee** means:
- (a) a trustee of the estate of a bankrupt; or
 - (b) a trustee of a personal insolvency agreement; or
 - (c) a trustee of a composition or a scheme of arrangement; or
 - (d) a trustee of the estate of a deceased person in respect of which an order has been made under Part XI of this Act.
- (2) Notwithstanding anything contained in a law of a State or Territory, stamp duty is not payable under such a law:
- (a) on a cheque drawn by a trustee on an account kept under this Act;
 - (b) on a cheque received by a trustee in his or her capacity as trustee, being a cheque drawn in a State or Territory other than that in which it is received by the trustee; or
 - (c) on a receipt given by a trustee in his or her capacity as trustee.

Audit of accounts and records of the Official Trustee and the Official Receivers

- (1) The Auditor-General shall inspect and audit the accounts and records of the Official Trustee and the Official Receivers, and forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his or her doing so.
- (2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records of the Official Trustee and the Official Receivers.
- (3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under subsection (1).
- (4) The Auditor-General or a person authorized by him or her is entitled at all reasonable times to full and free access to all books of the Official Trustee and the Official Receivers.
- (5) The Auditor-General or a person authorized by him or her may make copies of, or take extracts from, any books of the Official Trustee or an Official Receiver.
- (6) The Auditor-General or a person authorized by him or her may require any person to furnish him or her with such information as he or she may require in the possession of the person or to which the person has access.

the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act and the person shall comply with the requirement.

- (7) A person who contravenes subsection (6) commits an offence punishable, upon conviction, by a fine not exceeding 2 penalty units.

Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may:
- (a) provide for the establishment, maintenance, correction and inspection of the National Personal Insolvency Index; and
 - (b) specify matters that must be, or may be, entered in the Index; and
 - (c) provide for the obtaining of extracts of material entered in the Index; and
 - (d) provide for the use of extracts of material entered in the Index in evidence in proceedings under this Act and other Acts of the Commonwealth or of a State or Territory; and
 - (e) provide for immunity from actions for defamation arising from publication of material in the Index or publication of extracts of material from the Index; and
 - (f) provide for information and documents to be given to persons for entry in the Index; and
 - (g) provide for the means of service of documents; and
 - (h) provide for the publication of notice of specified events;
 - (j) provide for the charging and payment of fees, but not the setting of amounts of fees other than fees mentioned in paragraph 81(17)(b), in relation to:
 - (i) proceedings under this Act; and
 - (ii) inspection of material entered in the Index or the Register of Trustees; and
 - (iii) obtaining extracts of material entered in the Index or the Register of Trustees; and
 - (iv) inspection and copying of documents given to Official Receivers; and
 - (v) the making of other requests or applications under this Act or the presentation or lodgment of other documents under this Act; and
 - (k) prescribe penalties not exceeding 50 penalty units for offences against the regulations; and
 - (l) provide for a person who is alleged to have committed an offence against the regulations to pay a penalty to the Commonwealth as an alternative to prosecution (being a penalty not exceeding one-fifth of the maximum fine that a court could impose on the person for that offence).

Legislative instruments determining fees

- (1) The Minister may make legislative instruments determining amounts of one or more of the following:
- (a) fees for the purposes of one or more of subsections 54(1), 55(9), 56(2) and 57(11), subparagraph 77(3)(b)(iii)

35(3), 35(4) and 37(11), subparagraph 77(3)(b)(iii), subsection 163A(2), paragraphs 186B(2)(c) and 186D(1)(f), subsections 188B(3), 226(3) and (4), 246(5), and subsection 20-5(3), paragraph 20-30(1)(c) and subsection 20-70(3) of Schedule 2 (as they apply of their own force or as they apply because of another provision);

- (b) other fees relating to one or more of the following:
 - (i) proceedings under this Act;
 - (ii) inspection of material entered in the National Personal Insolvency Index;
 - (iii) obtaining extracts of material entered in the National Personal Insolvency Index;
 - (iv) inspection and copying of documents given to Official Receivers;
 - (v) the making of other requests or applications under this Act or the presentation or lodgment of other documents under this Act;
- (c) remuneration of the Official Trustee.

(2) Fees determined must not be such as to amount to taxation.

Schedule 1—Acts repealed

Section 4(1)

- Bankruptcy Act 1924*
- Bankruptcy Act 1927*
- Bankruptcy Act 1928*
- Bankruptcy Act 1929*
- Bankruptcy Act 1930*
- Bankruptcy Act 1932*
- Bankruptcy Act 1933*
- Bankruptcy Act 1945*
- Bankruptcy Act 1946*
- Bankruptcy Act 1954*
- Bankruptcy Act 1958*
- Bankruptcy Act 1959*
- Bankruptcy (Decimal Currency) Act 1965*

Schedule 2—Insolvency Practice Schedule (Bankruptcy)

Note: See section 4A.

Part 1—Introduction

Section 1—Introduction

Object of this Schedule

- (1) The object of this Schedule is to ensure that any person registered as a trustee:
 - (a) has an appropriate level of expertise; and
 - (b) behaves ethically; and
 - (c) maintains sufficient insurance to cover his or her liability in practising as a registered trustee.
- (2) The object of this Schedule is also:
 - (a) to regulate the administration of regulated debtors’ estates consistently, unless there is a clear reason to treat a matter that arises in relation to a particular kind of estate differently; and
 - (b) to regulate the administration of regulated debtors’ estates

to give greater control to creditors.

simplified outline of this Schedule

Registering trustees

Under this Act, only the Official Trustee or a registered trustee can act as the trustee of a regulated debtor's estate.

Part 2 of this Schedule sets out the process for registering trustees, and also deals with disciplining registered trustees.

Consistently regulating the administration of regulated debtors' estates

Part 3 of this Schedule sets out provisions to regulate the administration of regulated debtors' estates consistently.

A regulated debtor is a bankrupt, a person whose property is subject to control under Division 2 of Part X, a debtor under a personal insolvency agreement or a deceased person whose estate is being administered under Part XI.

Other provisions

There are other matters relevant to the administration of regulated debtors' estates in this Act.

This Schedule also gives authority for a legislative instrument to make the Insolvency Practice Rules, to deal with some matters.

Many of the terms in this Schedule are defined. The Dictionary in section 5-5 contains a list of every term that is defined in this Schedule. Other terms are defined in section 5 of this Act.

Division 5—Definitions

Division A—Introduction

simplified outline of this Division

Terms used in this Schedule are defined in the Dictionary. In some cases, the definition is a signpost to another provision of the Schedule in which the meaning of the term is explained.

Some of the key terms, the meaning of which is explained in this Division, are regulated debtor, regulated debtor's estate and trustee of a regulated debtor's estate.

Division B—The Dictionary

The Dictionary

In this Schedule:

adequate and appropriate fidelity insurance has a meaning affected by subsection 25-1(2).

adequate and appropriate professional indemnity insurance has a meaning affected by subsection 25-1(2).

administration account: see section 65-5.

annual administration return means the return required to be lodged under subsection 70-5(2).

annual trustee return means the return required to be lodged

annual review report means the report required to be lodged under subsection 30-1(1).

committee of inspection for a regulated debtor's estate means a committee appointed under sections 80-10 to 80-25 in relation to the administration of the estate.

creditor, when used in relation to a regulated debtor's estate, means a creditor of the estate.

current conditions: see section 5-10.

end of an administration of a regulated debtor's estate means

- (a) in the case of a bankruptcy—the day on which the bankrupt is discharged or the bankruptcy is annulled, whichever happens first; and
- (b) in the case of an administration under Part X—the day 10 years after the day on which a personal insolvency agreement made by the debtor for the administration of the debtor's estate took effect; and
- (c) in the case of an administration under Part XI—the day 10 years after the day on which the administration is taken to have commenced under section 247A.

financial interest: a person has a **financial interest** in the administration of a regulated debtor's estate in the circumstances set out in section 5-30.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Insolvency Practice Rules means the rules made by the Minister under section 105-1.

Insolvency Practice Schedule (Corporations) means Schedule 5 to the *Corporations Act 2001*, and includes rules made under section 105-1 of that Schedule.

March quarter means the period of 3 months beginning on 1 January.

maximum default amount for a trustee of a regulated debtor's estate: see section 60-15.

notified estate charge: see subsection 20-75(7).

prescribed means prescribed by the Insolvency Practice Rules.

registered trustee means an individual who is registered as a trustee under Part 2 of this Schedule.

Register of Trustees means the register established and maintained by the Inspector-General under section 15-1.

regulated debtor: see section 5-15.

regulated debtor's estate: see section 5-16.

remuneration determination, for a trustee of a regulated debtor's estate, means a determination made:

- (a) under section 60-10 or 60-11 in relation to the trustee;
- (b) in accordance with section 60-12.

this Schedule includes the Insolvency Practice Rules.

trustee of a regulated debtor's estate: see section 5-20 and section 5-25.

Meaning of *current conditions*

- (1) Each of the following is a ***current condition*** imposed on a registered trustee:
 - (a) a condition that a committee decides that the registered trustee is to be subject to under subsection 20-20(5) or (6) subject to any variation that a committee has decided should be made to the condition under section 20-55;
 - (b) a condition imposed on all registered trustees, or on registered trustees of the trustee's class, under section 20-20(6);
 - (c) a condition imposed under subsection 40-15(2) (direction not to accept further appointments);
 - (d) a condition that a committee decides that the registered trustee is to be subject to under paragraph 40-55(1)(f) or (conditions as a result of disciplinary action), subject to any variation that a committee has decided should be made to the condition under section 20-55;
 - (e) a condition imposed on the registered trustee by the Court under section 45-1.
- (2) However, the ***current conditions*** imposed on a registered trustee do not include:
 - (a) a condition that a committee has decided to remove under section 20-55; or
 - (b) a condition that is removed under subsection 40-15(4) (condition removed because a direction not to accept further appointments has been withdrawn); or
 - (c) a condition that the Court has ordered be removed under section 45-1.

Meaning of *regulated debtor*

A person is a ***regulated debtor*** if the person is:

- (a) a bankrupt; or
- (b) a person whose property is subject to control under Division 2 of Part X; or
- (c) a debtor under a personal insolvency agreement; or
- (d) a deceased person whose estate is being administered under Part XI.

Meaning of *regulated debtor's estate*

An estate is a ***regulated debtor's estate*** if it is:

- (a) in relation to a bankrupt—the estate of the bankrupt, other than any estate of the bankrupt administered under Part XI—because the bankrupt is a deceased person; and
- (b) in relation to a person whose property is subject to control under Division 2 of Part X—the estate of the person; and
- (c) in relation to a debtor under a personal insolvency agreement—the estate of the debtor; and
- (d) in relation to a deceased person whose estate is being administered under Part XI—the estate of the person being administered under that Part.

Meaning of *trustee of a regulated debtor's estate*

A person is the ***trustee of a regulated debtor's estate*** if the person is:

- (a) in relation to a bankrupt—the trustee of the bankrupt's estate; and

- (b) in relation to a person whose property is subject to control under Division 2 of Part X—the controlling trustee; and
- (c) in relation to a debtor under a personal insolvency agreement—the trustee of the agreement; and
- (d) in relation to a deceased person whose estate is being administered under Part XI—the trustee administering the estate under that Part.

References to the trustee of a regulated debtor’s estate

A reference in this Schedule to the trustee of a regulated debtor’s estate is to be read:

- (a) in relation to a regulated debtor’s estate in respect of which there are 2 or more joint trustees—as a reference to all of the trustees; and
- (b) in relation to a regulated debtor’s estate in respect of which there are 2 or more joint and several trustees—as a reference to all of the trustees or any one or more of the trustees.

Persons with a *financial interest* in the administration of a regulated debtor’s estate

A person has a ***financial interest*** in the administration of a regulated debtor’s estate:

- (a) if the person is one of the following:
 - (i) the regulated debtor;
 - (ii) a creditor;
 - (iii) the trustee; or
- (b) in any other circumstances prescribed.

Section 6—Application of this Schedule to Official Trustee

This Schedule generally does not apply to the Official Trustee

A provision of this Schedule does not apply to the Official Trustee unless the provision is expressed to apply to the Official Trustee.

Part 2—Registering and disciplining practitioners

Section 10—Introduction

Simplified outline of this Part

Registering trustees

An individual may apply to the Inspector-General to be registered as a trustee. The Inspector-General will refer the application to a committee who will consider the applicant’s qualifications, conduct and fitness and whether the applicant will take out appropriate insurance. Registration may be subject to conditions. It is for 3 years and may be renewed.

A registered trustee must:

- (a) lodge an annual return with the Inspector-General that includes proof that the trustee has appropriate insurance; and
- (b) give the Inspector-General notice if the trustee’s circumstances change or if certain other events happen.

Disciplining registered trustees

If a registered trustee fails to comply with certain requirements,

such as the requirement to lodge a document or give information. The Inspector-General may give directions that may result in a trustee being unable to accept further appointments. The Inspector-General may also seek a Court order.

The Inspector-General may suspend or cancel a trustee's registration in certain circumstances. The Inspector-General may also give the trustee a show-cause notice. If such a notice is given and no sufficient explanation is given, the Inspector-General may take further disciplinary action on the decision of a committee.

Industry bodies may notify the Inspector-General where they suspect there are grounds for disciplinary action.

Court powers

The Court has broad powers to make orders in relation to registered trustees (including imposing conditions on registration).

Working cooperatively with ASIC

In performing his or her functions and exercising his or her powers under this Act in relation to persons who are, have been or may become both registered trustees under this Act and registered liquidators under the *Corporations Act 2001*, the Inspector-General must work cooperatively with ASIC.

Division 15—Register of trustees

Register of Trustees

- (1) The Inspector-General must establish and maintain a Register of Trustees.
- (2) The Register of Trustees may be kept in any form that the Inspector-General considers appropriate.
- (3) The Insolvency Practice Rules may provide for and in relation to the Register of Trustees.
- (4) Without limiting subsection (3), the Insolvency Practice Rules may provide for and in relation to:
 - (a) the details to be entered on the Register of Trustees; and
 - (b) the parts of the Register that are to be made available to the public.
- (5) Without limiting paragraph (4)(a), those details may include:
 - (a) details of any disciplinary action decided by a committee under section 40-55; and
 - (b) details of persons who have had their registration as a trustee under this Act suspended or cancelled.

Division 20—Registering trustees

Division A—Introduction

Simplified outline of this Division

An individual may apply to the Inspector-General to be registered as a trustee. The application will be referred to a committee, which will assess the application against specified criteria (the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance). The committee will report its decision to the Inspector-General and, if the

committee decides that the applicant should be registered, the Inspector-General will register the applicant as a trustee.

A registration may be subject to conditions. Conditions may be imposed on a particular registered trustee by the committee, on all registered trustees or a class of registered trustees by the Insolvency Practice Rules. A registered trustee may apply to the Inspector-General to have a condition imposed by a committee removed or varied. That application will be referred to a committee.

Registration is for 3 years, but may be renewed. An application for renewal may be made to the Inspector-General within specified time periods.

A decision of a committee about an application for registration or about a condition of registration is reviewable by the Administrative Appeals Tribunal (see Division 96 of this Schedule).

Division B—Registration

Application for registration

- (1) An individual may apply to the Inspector-General to be registered as a trustee.
- (2) The application must be lodged with the Inspector-General in an approved form.
- (3) The application must be accompanied by the application fee determined by the Minister by legislative instrument.
- (4) The application is properly made if subsections (2) and (3) are complied with.

Inspector-General may convene a committee to consider

- (1) The Inspector-General may convene a committee for the purposes of considering an application, or applications, for registration as a trustee.
- (2) The committee must consist of:
 - (a) the Inspector-General; and
 - (b) a registered trustee chosen by a prescribed body; and
 - (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

Inspector-General must refer applications to a committee

- (1) The Inspector-General must refer an application for registration as a trustee that is properly made to a committee convened under section 20-10 for consideration.
- (2) The Inspector-General must do so within 2 months after receiving the application.

Committee to consider applications

Committee must consider referred applications

- (1) If an application for registration as a trustee is referred to a committee, the committee must consider the application.
- (2) For the purposes of considering the application, the committee
 - (a) must interview the applicant; and
 - (b) may require the applicant to sit for an exam.

Decision of committee

- (3) Within 45 business days after interviewing the applicant, the committee must decide whether the applicant should be registered as a trustee or not.
- (4) The committee must decide that the applicant should be registered as a trustee if it is satisfied that the applicant:
 - (a) has the qualifications, experience, knowledge and abilities prescribed; and
 - (b) will take out:
 - (i) adequate and appropriate professional indemnity insurance; and
 - (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur while acting as a registered trustee; and
 - (c) has not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; and
 - (d) is not, and has not been within 10 years before making the application, an insolvent under administration; and
 - (e) has not had his or her registration as a trustee under the *Corporations Act 2001* cancelled within 10 years before making the application other than in response to a written request by the applicant to have the registration cancelled; and
 - (f) has not had his or her registration as a liquidator under the *Corporations Act 2001* cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and
 - (g) is not disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*, or under a law of an external Territory or a law of a foreign country; and
 - (h) is otherwise a fit and proper person; and
 - (i) is resident in Australia or in another prescribed country.
- (5) The committee may decide that the applicant should be registered even if the committee is not satisfied of a matter mentioned in paragraph (4)(a), (e), (f) or (i), provided the committee is satisfied that the applicant would be suitable to be registered as a trustee if the applicant complied with conditions specified by the committee.

Registration may be subject to conditions

- (6) The committee may decide that the applicant's registration be subject to any other conditions specified by the committee.

Spent convictions

- (7) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

Committee to report

The committee must give the applicant and the Inspector-General a report setting out:

- (a) the committee's decision on the application; and
- (b) the committee's reasons for that decision; and
- (c) if the committee decides under subsection 20-20(5) or 20-20(6) that the applicant should be registered subject to a condition:
 - (i) the condition; and
 - (ii) the committee's reasons for imposing the condition.

Registration

Registration as trustee

- (1) The Inspector-General must register the applicant as a trustee if:
 - (a) the committee has decided that the applicant should be registered; and
 - (b) the applicant has produced evidence in writing to the Inspector-General that the applicant has taken out:
 - (i) adequate and appropriate professional indemnity insurance; and
 - (ii) adequate and appropriate fidelity insurance; andagainst the liabilities that the applicant may incur while acting as a registered trustee; and
 - (c) the applicant has paid the registration fee determined by the Minister by legislative instrument.
- (2) The Inspector-General registers an applicant by entering on the Register of Trustees the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

Registration subject to current conditions

- (3) The registration is subject to the current conditions imposed on the registered trustee.

Certificate of registration

- (4) After registering a person as a trustee, the Inspector-General must give the person a certificate of registration.
- (5) The certificate may be given electronically.

Period of registration

- (6) The registration has effect for 3 years.

Conditions imposed on all registered trustees or a class of registered trustees

- (1) The Insolvency Practice Rules may impose conditions on all registered trustees, or registered trustees of a specified class.
- (2) Without limiting subsection (1), a condition may be imposed limiting the kinds of activity in which a trustee may engage, either for the duration of the registration or for a shorter period.
- (3) Without limiting subsection (1), conditions may be imposed relating to the administration of debt agreements by trustees.

Division C—Varying etc. conditions of registration

Application to vary etc. conditions of registration

- (1) If a committee has decided under this Schedule that a person

registration as a trustee is to be subject to a condition, the person may apply to the Inspector-General for the condition to be varied or removed.

- (2) However, an application cannot be made:
 - (a) if the person's registration as a trustee is suspended; or
 - (b) if the condition is of a prescribed kind; or
 - (c) in prescribed circumstances.
- (3) The application must be lodged with the Inspector-General in the approved form.
- (4) The application is properly made if:
 - (a) an application can be made; and
 - (b) subsection (3) is complied with.
- (5) A single application by a registered trustee may deal with more than one condition.

Inspector-General may convene a committee to consider applications

- (1) The Inspector-General may convene a committee for the purposes of considering an application, or applications, made under section 20-40.
- (2) The committee must consist of:
 - (a) the Inspector-General; and
 - (b) a registered trustee chosen by a prescribed body; and
 - (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

Inspector-General must refer applications to a committee

- (1) The Inspector-General must refer an application that is properly made under section 20-40 to a committee convened under section 20-45 for consideration.
- (2) The Inspector-General must do so within 2 months after receiving the application.

Committee to consider applications

- (1) If an application to vary or remove a condition of registration is referred to a committee, the committee must consider the application.
- (2) Unless the applicant otherwise agrees, the committee must, for the purposes of considering the application, interview the applicant.
- (3) The committee must, within 20 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2):
 - (a) decide whether the condition to which the application relates should be varied or removed; and
 - (b) if a condition is to be varied, specify the way in which it is to be varied.

Committee to report

The committee must give the applicant and the Inspector-General a report setting out:

- (a) the committee's decision on the application; and
- (b) the committee's reasons for that decision; and
- (c) if the committee decides that a condition should be varied, the variation that is to be made.

Committee's decision given effect

If the committee decides that a condition imposed on a registered trustee is to be varied or removed, the condition is varied or removed in accordance with that decision.

Division D—Renewal

Application for renewal

- (1) An individual may apply to the Inspector-General to have the individual's registration as a trustee renewed.
- (2) The application must be lodged with the Inspector-General, in the approved form, before the applicant's registration as a trustee ceases to have effect.

Note: The Court may extend the time within which an application must be lodged: see paragraph 33(1)(c).

- (3) If an individual applies to have his or her registration as a trustee renewed, the individual must, at least 1 month before the registration ceases to have effect, pay the renewal fee determined by the Minister by legislative instrument. If the renewal fee is not paid at least 1 month before the registration ceases to have effect, an additional amount equal to 20% of the renewal fee is payable by the applicant by way of penalty.
- (4) The application is properly made if subsection (2) is complied with.

Renewal

Renewal of registration

- (1) On application under section 20-70, the Inspector-General may renew the registration of the applicant as a trustee if:
 - (a) the application is properly made; and
 - (b) the applicant has produced evidence in writing to the Inspector-General that the applicant maintains:
 - (i) adequate and appropriate professional indemnity insurance; and
 - (ii) adequate and appropriate fidelity insurance; andagainst the liabilities that the applicant may incur while acting as a registered trustee; and
 - (c) the applicant has complied with any condition dealing with continuing professional education to which the applicant is subject during the applicant's current registration; and
 - (d) the applicant has paid the renewal fee determined by the Minister under subsection 20-70(3), and any late payment penalty under that subsection; and
 - (e) the applicant does not owe more than the prescribed amount of notified estate charges.
- (2) The Inspector-General renews the registration of the applicant entering, or maintaining, on the Register of Trustees the details

relating to the applicant prescribed for the purposes of subsection 15-1(3).

Registration subject to current conditions

- (3) The renewed registration is subject to the current condition imposed on the registered trustee.

Certificate of registration

- (4) After renewing the registration of a person as a trustee, the Inspector-General must give the person a certificate of registration.
- (5) The certificate may be given electronically.

Period of registration

- (6) The renewed registration has effect for 3 years, beginning on the day after the person's immediately preceding registration as a trustee ceased to have effect.

When a notified estate charge is owed

- (7) A person owes a **notified estate charge** if:
- (a) the person owes either of the following:
 - (i) a charge under the *Bankruptcy (Estate Charges) Act*, 1997 (the **estate charge**);
 - (ii) a penalty under section 281 (late payment penalty) of this Act in respect of that charge; and
 - (b) the Inspector-General notified the person of the unpaid estate charge at least one month and 10 business days before the person's registration as a trustee ceases to have effect.

Division E—Offences relating to registration

False representation that a person is a registered trustee

A person commits an offence if:

- (a) the person makes a representation; and
- (b) the representation is that the person is a registered trustee and
- (c) the representation is false.

Penalty: 30 penalty units.

Division 25—Insurance

Registered trustees to maintain insurance

Registered trustee must maintain insurance

- (1) A registered trustee must maintain:
- (a) adequate and appropriate professional indemnity insurance; and
 - (b) adequate and appropriate fidelity insurance;
- against the liabilities that the trustee may incur working as a registered trustee.
- (2) The Inspector-General may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity insurance, and adequate and appropriate fidelity insurance, in relation to either or both of the following:
- (a) specified circumstances;
 - (b) one or more specified classes of registered trustees.

Offence

(3) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (1) and
- (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 1,000 penalty units.

(4) A person commits an offence of strict liability if:

- (a) the person is subject to a requirement under subsection (1) and
- (b) the person fails to comply with the requirement.

Penalty: 60 penalty units.

Section 30—Annual trustee returns

Annual trustee returns

Registered trustee must lodge annual return

(1) A person who is a registered trustee during all or part of a trustee return year for the person must, within 1 month after the end of that year, lodge with the Inspector-General a return that conforms with subsection (3).

(2) Each of the following is a **trustee return year** for a person who is or was registered as a trustee under section 20-30:

- (a) the period of 12 months beginning on the day on which registration first began;
- (b) each subsequent period of 12 months.

(3) A return under subsection (1) must:

- (a) be in the approved form; and
- (b) include evidence that the person has, during the whole or any period of the year during which the person was registered as a trustee, maintained:
 - (i) adequate and appropriate professional indemnity insurance; and
 - (ii) adequate and appropriate fidelity insurance; andagainst the liabilities that the person may incur working as a registered trustee.

(4) The Inspector-General may, on the application of the registered trustee made before the end of the period for lodging a return under subsection (1), extend, or further extend, that period.

Offence

(5) A person commits an offence of strict liability if:

- (a) the person is subject to a requirement under subsection (1) and
- (b) the person fails to comply with the requirement.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

Section 35—Notice requirements

Notice of significant events

Registered trustee must lodge notice

(1) A registered trustee must lodge with the Inspector-General

notice, in the approved form, if any of the following events occur:

- (a) the trustee becomes an insolvent under administration;
- (b) a bankruptcy notice is issued under this Act in relation to the trustee as debtor, or a corresponding notice is issued in relation to the trustee as debtor under a law of an external Territory or a law of a foreign country;
- (c) the trustee is convicted of an offence involving fraud or dishonesty;
- (d) the trustee is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*, or under a law of an external Territory or a law of a foreign country;
- (e) the trustee ceases to have:
 - (i) adequate and appropriate professional indemnity insurance; or
 - (ii) adequate and appropriate fidelity insurance; oragainst the liabilities that the trustee may incur working as a registered trustee;
- (f) the trustee is issued with a notice under section 40-40 of Schedule 2 to the *Corporations Act 2001* (a show-cause notice) in relation to the trustee's registration as a liquidator under that Act;
- (g) the trustee's registration as a liquidator under the *Corporations Act 2001* is suspended or cancelled;
- (h) any other event prescribed.

The notice must be lodged within 5 business days after the registered trustee could reasonably be expected to be aware that the event has occurred.

Offence

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) and
 - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 100 penalty units.

Notice of other events

Registered trustee must lodge notice

- (1) A registered trustee must lodge with the Inspector-General a notice, in the approved form, if any of the following events occur:
- (a) information included in an annual trustee return, or in an annual administration return, prepared by or on behalf of the trustee is or becomes inaccurate in a material particular;
 - (b) any other event prescribed.

The notice must be lodged within 10 business days after the registered trustee could reasonably be expected to be aware that the event has occurred.

Offence

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) and
 - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 5 penalty units.

Part 40—Disciplinary and other action

Division A—Introduction

Simplified outline of this Division

Remedying failure to lodge documents or give information or documents

The Inspector-General may direct a registered trustee to comply with a requirement to lodge a document, or give any information or document, to the Inspector-General. If the trustee fails to comply with the direction, the Inspector-General can direct that the trustee accept no further appointments or seek an order from the Court directing the trustee to comply.

Correcting and completing information given to the Inspector-General

If the Inspector-General reasonably suspects that information that a registered trustee is required to give the Inspector-General under this Act is incomplete or inaccurate, the Inspector-General can direct the trustee to confirm, complete or correct the information. The Inspector-General can also direct the trustee to tell someone about the defect in the information. If the trustee fails to comply with a direction, the Inspector-General can direct that the trustee accept no further appointments or seek an order from the Court directing the trustee to comply.

Other grounds for a direction not to accept further appointments

There are other grounds on which the Inspector-General can issue a direction not to accept further appointments, for example if the registered trustee fails to comply with a direction to convene a meeting.

Suspending or cancelling registration

An individual's registration as a trustee can be suspended or cancelled.

The registration is automatically cancelled if the registered trustee becomes an insolvent under administration or dies.

In some circumstances, the Inspector-General can suspend or cancel the registration of a person as a trustee. The Inspector-General can also give a registered trustee notice to show-cause why the trustee should continue to be registered. If the Inspector-General is not satisfied with the answer, the Inspector-General can refer the matter to a committee which make a decision on what action should be taken.

An industry body can give the Inspector-General notice of possible grounds for disciplinary action.

If a registration is suspended, the trustee can apply to the Inspector-General to have the suspension lifted or shortened.

A decision about the suspension or cancellation of the registration of a trustee is reviewable by the Administrative Appeals Tribunal (see Division 96 of this Schedule).

Division B—Direction to comply

Registered trustee to remedy failure to lodge documents or give information or documents

Application of this section

- (1) This section applies if a registered trustee fails to comply with a requirement to lodge any document, or give any information or document, that the trustee is required under this Act to lodge or give to the Inspector-General.

Inspector-General may give direction to comply

- (2) The Inspector-General may, in writing, direct the trustee to comply with the requirement within 10 business days after the notice is given.
- (3) The Inspector-General may, on the application of a registered trustee made before the end of the period referred to in subsection (2), extend, or further extend, that period.

Consequences for failing to comply

- (4) If the trustee does not comply within the period, the Inspector-General may do either or both of the following:
- (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
 - (b) apply to the Court for an order, under section 30 (general powers of Courts in bankruptcy), section 45-1 of this Schedule or any other provision that is relevant, directing the trustee to comply with the requirement within such time as is specified in the order.

Direction is not a legislative instrument

- (5) A direction under subsection (2) is not a legislative instrument.

Relationship with other laws

- (6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person who fails to comply with a requirement to lodge a document with, or give information or a document to, the Inspector-General.

Registered trustee to correct inaccuracies etc.

Application of this section

- (1) This section applies if the Inspector-General reasonably suspects that information that a registered trustee is required under this Act to give the Inspector-General (whether in a document lodged or given to the Inspector-General or otherwise) is incomplete or incorrect in any particular.

Inspector-General may give direction to correct information etc.

- (2) The Inspector-General may, in writing, direct the trustee to do one or more of the following within a period of 10 business days after the direction is given:
- (a) confirm to the Inspector-General that the information is complete and correct;
 - (b) complete or correct the information (as the case requires);
 - (c) notify any persons specified by the Inspector-General in the direction of the addition or correction.

- (3) The Inspector-General may, on the application of a registered

- (3) The Inspector-General may, on the application of a registered trustee made before the end of the period referred to in subsection (2), extend, or further extend, that period.

Consequences for failing to comply

- (4) If the trustee does not comply within the period, the Inspector-General may do either or both of the following:
- (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
 - (b) apply to the Court for an order, under section 30 (general powers of Courts in bankruptcy), section 45-1 of this Scheme or any other provision that is relevant, directing the trustee to comply with the requirement within such time as is specified in the order.

Direction is not a legislative instrument

- (5) A direction under subsection (2) is not a legislative instrument.

Relationship with other laws

- (6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person giving incomplete or incorrect information.

Direction not to accept further appointments

Inspector-General may give direction not to accept further appointments

- (1) The Inspector-General may, in writing, direct a registered trustee not to accept any further appointments as a trustee, or not to accept any further appointments as a trustee during a period specified in the direction, if:
- (a) the trustee has failed to comply with a direction given to the trustee under section 40-5 (direction to remedy failure to provide documents, or give information or documents); or
 - (b) the trustee has failed to comply with a direction given to the trustee under section 40-10 (direction to correct inaccurate information); or
 - (c) a committee has decided under paragraph 40-55(1)(d) that the Inspector-General should give the direction referred to in that paragraph; or
 - (d) the trustee has failed to comply with a direction given to the trustee under section 70-70 (direction to give relevant information or material); or
 - (e) the trustee has failed to comply with a direction given to the trustee under subsection 75-20(1) or (2) (direction to convene a meeting of creditors or comply with requirements in relation to such a meeting).

Condition of registration to comply with direction

- (2) If the Inspector-General gives a direction to a registered trustee under subsection (1), it is a condition of the trustee's registration that the trustee must comply with the direction.

Withdrawal of direction

- (3) The Inspector-General may withdraw a direction given under subsection (1).
- (4) The condition is removed from the trustee's registration if the Inspector-General withdraws the direction.

Direction is not a legislative instrument

(5) A direction under subsection (1) is not a legislative instrument.

Relationship with other laws

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to:

- (a) a person who fails to comply with a requirement to lodge a document with, or give information or a document to, the Inspector-General; or
- (b) a person giving incomplete or incorrect information; or
- (c) any matter in relation to which a committee makes a decision under subsection 40-55(1).

(7) Nothing in this section limits the power of the Inspector-General under this Act, or any other law, to apply to the Court for an order in relation to a failure to comply with a direction mentioned in subsection (1).

Division C—Automatic cancellation

Automatic cancellation

- (1) The registration of a person as a trustee is cancelled if:
 - (a) the person becomes an insolvent under administration; or
 - (b) the person dies.
- (2) The cancellation takes effect on the day the event mentioned in subsection (1) happens.

Division D—Inspector-General may suspend or cancel registration

Inspector-General may suspend registration

- (1) The Inspector-General may suspend the registration of a person as a trustee if:
 - (a) the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*, or under a law of an external Territory or a law of a foreign country; or
 - (b) the person ceases to have:
 - (i) adequate and appropriate professional indemnity insurance; or
 - (ii) adequate and appropriate fidelity insurance against the liabilities that the person may incur working as a registered trustee; or
 - (c) the person's registration as a liquidator under the *Corporations Act 2001* has been cancelled or suspended, or is about to be, other than in compliance with a written request by the person to cancel or suspend the registration; or
 - (d) the person owes more than the prescribed amount of notified estate charges; or
 - (e) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or
 - (f) the person has been convicted of an offence involving fraud or dishonesty; or
 - (g) the person lodges a request with the Inspector-General in the approved form to have the registration suspended.
- (2) Nothing in this section affects the operation of Part VIIC of the

Crimes Act 1914.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose specified convictions and require persons aware of such convictions to disregard them.

Inspector-General may cancel registration

- (1) The Inspector-General may cancel the registration of a person as a trustee if:
- (a) the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*, or under a law of an external Territory or a law of a foreign country; or
 - (b) the person ceases to have:
 - (i) adequate and appropriate professional indemnity insurance; or
 - (ii) adequate and appropriate fidelity insurance against the liabilities that the person may incur working as a registered trustee; or
 - (c) the person's registration as a liquidator under the *Corporations Act 2001* has been cancelled, other than in compliance with a written request by the person to cancel registration; or
 - (d) the person owes more than the prescribed amount of notified estate charges; or
 - (e) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or
 - (f) the person has been convicted of an offence involving fraud or dishonesty; or
 - (g) the person lodges a request with the Inspector-General in the approved form to have the registration cancelled.
- (2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose specified convictions and require persons aware of such convictions to disregard them.

Notice of suspension or cancellation

Application of this section

- (1) This section applies if the Inspector-General decides under section 40-25 or 40-30 to suspend or cancel the registration of a person as a trustee.

Inspector-General must give notice of decision

- (2) The Inspector-General must, within 10 business days after making the decision, give the person a written notice setting out the decision, and the reasons for the decision.

When decision comes into effect

- (3) The decision comes into effect on the day after the notice is given to the person.

Failure to give notice does not affect validity of decision

- (4) A failure by the Inspector-General to give the notice under section 40-30 does not affect the validity of the decision.

subsection (2) within 10 business days does not affect the validity of the decision.

Division E—Disciplinary action by committee

Inspector-General may give a show-cause notice

(1) The Inspector-General may give a registered trustee notice in writing asking the trustee to give the Inspector-General a written explanation why the trustee should continue to be registered, if the Inspector-General believes that:

- (a) the trustee no longer has the qualifications, experience, knowledge and abilities prescribed under paragraph 20-2(1)(a); or
- (b) the trustee has committed an act of bankruptcy within the meaning of this Act or a corresponding law of an external Territory or a foreign country; or
- (c) the trustee is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*, or under a law of an external Territory or a law of a foreign country; or
- (d) the trustee has ceased to have:
 - (i) adequate and appropriate professional indemnity insurance; or
 - (ii) adequate and appropriate fidelity insurance against the liabilities that the person may incur working as a registered trustee; or
- (e) the trustee has breached a current condition imposed on the trustee; or
- (f) the trustee has contravened a provision of this Act; or
- (g) the trustee's registration as a liquidator under the *Corporations Act 2001* has been cancelled or suspended, or is about to be cancelled or suspended, other than in compliance with a written request by the trustee to cancel or suspend the registration; or
- (h) the trustee owes more than the prescribed amount of notified estate charges; or
- (i) if the Court has made an order under section 90-15 that the trustee repay remuneration—the trustee has failed to repay the remuneration; or
- (j) the trustee has been convicted of an offence involving fraud or dishonesty; or
- (k) the trustee is permanently or temporarily unable to perform the functions and duties of a trustee because of physical or mental incapacity; or
- (l) the trustee has failed to carry out adequately and properly (whether in Australia or in an external Territory or in a foreign country):
 - (i) the duties of a trustee; or
 - (ii) any other duties or functions that a registered trustee is required to carry out under a law of the Commonwealth or of a State or Territory, or under the general law; or
- (m) if the trustee is or was the administrator of a debt agreement—the trustee has failed to carry out adequately and properly (whether in Australia or in an external Territory or in a foreign country) the duties of an administrator in relation to a debt agreement; or
- (n) the trustee is not a fit and proper person; or
- (o) the trustee is not resident in Australia or in another prescribed country; or
- (p) the trustee has failed to comply with a standard prescribed

(p) the trustee has failed to comply with a standard prescribed for the purposes of subsection (4).

(2) A notice under subsection (1) is not a legislative instrument

(3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose specified convictions and require persons aware of such convictions to disregard them.

(4) The Insolvency Practice Rules may prescribe standards applicable to the exercise of powers, or the carrying out of duties of registered trustees.

Inspector-General may convene a committee

(1) The Inspector-General may convene a committee to make a decision of a kind mentioned in section 40-55 in relation to a registered trustee, or registered trustees.

(2) The committee must consist of:

- (a) the Inspector-General; and
- (b) a registered trustee chosen by a prescribed body; and
- (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

Inspector-General may refer matters to the committee

The Inspector-General may refer a registered trustee to a committee convened under section 40-45 if the Inspector-General

- (a) gives the trustee a notice under section 40-40 (a show-cause notice); and
- (b) either:
 - (i) does not receive an explanation within 20 business days after the notice is given; or
 - (ii) is not satisfied by the explanation.

Decision of the committee

(1) If a registered trustee is referred to a committee under section 40-50, the committee must decide one or more of the following:

- (a) that the trustee should continue to be registered;
- (b) that the trustee's registration should be suspended for a period, or until the occurrence of an event, specified in the decision;
- (c) that the trustee's registration should be cancelled;
- (d) that the Inspector-General should direct the trustee not to accept any further appointments as trustee, or not to accept any further appointments as trustee during the period specified in the decision;
- (e) that the trustee should be publicly admonished or reprimanded;
- (f) that a condition specified in the decision should be imposed on the trustee;
- (g) that a condition should be imposed on all other registered

- (g) that a condition should be imposed on all other registered trustees that they must not allow the trustee to carry out any of the functions or duties, or exercise any of the powers, of the trustee on their behalf (whether as employee, agent, consultant or otherwise) for a period specified in the decision of no more than 10 years;
 - (h) that the Inspector-General should publish specified information in relation to the committee's decision and the reasons for that decision.
- (2) Without limiting paragraph (1)(f), conditions imposed under paragraph may include one or more of the following:
- (a) a condition that the trustee engage in, or refrain from engaging in, specified conduct;
 - (b) a condition that the trustee engage in, or refrain from engaging in, specified conduct except in specified circumstances;
 - (c) a condition that the trustee publish specified information;
 - (d) a condition that the trustee notify a specified person or persons of specified information;
 - (e) a condition that the trustee publish a specified statement;
 - (f) a condition that the trustee make a specified statement to a specified person or class of persons.
- (3) In making its decision, the committee may have regard to:
- (a) any information provided to the committee by the Inspector-General; and
 - (b) any explanation given by the trustee; and
 - (c) any other information given by the trustee to the committee; and
 - (d) if the trustee is or was also a registered liquidator under the *Corporations Act 2001*—any information in relation to the trustee given to the committee by ASIC or a committee convened under the Insolvency Practice Schedule (Corporations); and
 - (e) any other matter that the committee considers relevant.

Committee to report

The committee must give the registered trustee and the Inspector-General a report setting out:

- (a) the committee's decision in relation to the trustee; and
- (b) the committee's reasons for that decision; and
- (c) if the committee decides under paragraph 40-55(1)(f) that the trustee should be registered subject to a condition:
 - (i) the condition; and
 - (ii) the committee's reasons for imposing the condition; and
- (d) if the committee decides under paragraph 40-55(1)(g) that a condition should be imposed on all other registered trustees in relation to the trustee:
 - (i) the condition; and
 - (ii) the committee's reasons for imposing the condition.

Inspector-General must give effect to the committee's decision

The Inspector-General must give effect to the committee's decision.

Division F—Lifting or shortening suspension

Application to lift or shorten suspension

Application of this section

- (1) This section applies if a person's registration as a trustee has been suspended.

Suspended trustee may apply to the Inspector-General

- (2) The person may apply to the Inspector-General:
 - (a) for the suspension to be lifted; or
 - (b) for the period of the suspension to be shortened.
- (3) The application must be lodged with the Inspector-General in an approved form.
- (4) The application is properly made if subsection (3) is complied with.

Inspector-General may convene a committee to consider applications

- (1) The Inspector-General may convene a committee for the purposes of considering an application, or applications, made under section 40-70.
- (2) The committee must consist of:
 - (a) the Inspector-General; and
 - (b) a registered trustee chosen by a prescribed body; and
 - (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

Inspector-General must refer applications to a committee

- (1) The Inspector-General must refer an application that is properly made under section 40-70 to a committee convened under section 40-75 for consideration.
- (2) The Inspector-General must do so within 2 months after receiving the application.

Committee to consider applications

- (1) If an application is referred to a committee, the committee must consider the application.
- (2) Unless the applicant otherwise agrees, the committee must interview the applicant for the purposes of considering the application.
- (3) Within 10 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2), the committee must:
 - (a) decide whether the suspension should be lifted, or the period of the suspension shortened; and
 - (b) if the period of the suspension is to be shortened—specify when the suspension is to end.

Committee to report

The committee must give the applicant and the Inspector-General a report setting out:

- (a) the committee's decision on the application; and
- (b) the committee's reasons for that decision; and
- (c) if the committee decides that the period of the suspension should be shortened—when the suspension is to end.

Committee's decision given effect

If the committee decides that a suspension is to be lifted or shortened, the suspension is lifted or shortened in accordance with the decision.

Division G—Action initiated by industry body

Notice by industry bodies of possible grounds for disciplinary action

Industry body may lodge notice

- (1) An industry body may lodge with the Inspector-General a notice in the approved form (an **industry notice**):
 - (a) stating that the body reasonably suspects that there are grounds for the Inspector-General:
 - (i) to suspend the registration of a registered trustee under section 40-25; or
 - (ii) to cancel the registration of a registered trustee under section 40-30; or
 - (iii) to give a registered trustee a notice under section 40-40 (a show-cause notice); or
 - (iv) to impose a condition on a registered trustee under another provision of this Schedule; and
 - (b) identifying the registered trustee; and
 - (c) including the information and copies of any documents which the suspicion is founded.

Inspector-General must consider information and documents

- (2) The Inspector-General must consider the information and the copies of any documents included with the industry notice.

Inspector-General must give notice if no action to be taken

- (3) If, after such consideration, the Inspector-General decides to take no action in relation to the matters raised by the industry notice, the Inspector-General must give the industry body written notice of that fact.

45 business days to consider and decide

- (4) The consideration of the information and the copies of any documents included with the industry notice must be complete, and, if the Inspector-General decides to take no action, a notice under subsection (3) given, within 45 business days after the industry notice is lodged.

Inspector-General not precluded from taking action

- (5) The Inspector-General is not precluded from:
 - (a) suspending the registration of a registered trustee under section 40-25; or
 - (b) cancelling the registration of a registered trustee under section 40-30; or
 - (c) giving a registered trustee a notice under section 40-40

show-cause notice); or

- (d) imposing a condition on a registered trustee under and provision of this Schedule;

wholly or partly on the basis of information or a copy of a document included with the industry notice, merely because the Inspector-General has given a notice under subsection (3) in relation to the matters raised by the industry notice.

Notice to industry body if Inspector-General takes action

- (6) If the Inspector-General does take action of the kind mentioned in subsection (5) wholly or partly on the basis of information or a copy of a document included with the industry notice, the Inspector-General must give the industry body notice of that fact.

Notices are not legislative instruments

- (7) A notice under subsection (3) or (6) is not a legislative instrument.

No liability for notice given in good faith etc.

- (1) An industry body is not liable civilly, criminally or under any administrative process for giving a notice under subsection 40-100(1) if:
 - (a) the body acted in good faith in giving the notice; and
 - (b) the suspicion that is the subject of the notice is a reasonable suspicion.
- (2) A person who, in good faith, makes a decision as a result of which the industry body gives a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for making the decision.
- (3) A person who, in good faith, gives information or a document to an industry body that is included, or a copy of which is included, in a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for giving the information or document.

Meaning of *industry bodies*

The Insolvency Practice Rules may prescribe ***industry bodies*** for the purposes of this Subdivision.

Division 45—Court oversight of registered trustees

Court may make orders in relation to registered trustees

- (1) The Court may make such orders as it thinks fit in relation to a registered trustee.
- (2) The Court may exercise the power under subsection (1):
 - (a) on its own initiative, during proceedings before the Court; or
 - (b) on application under subsection (3).
- (3) Each of the following persons may apply for an order under subsection (1):
 - (a) the registered trustee;
 - (b) the Inspector-General.
- (4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
 - (a) whether the registered trustee has faithfully performed

- is faithfully performing, the registered trustee's duties; and
- (b) whether an action or failure to act by the registered trustee is in compliance with this Act and the Insolvency Practice Rules; and
- (c) whether an action or failure to act by the registered trustee is in compliance with an order of the Court; and
- (d) whether any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the registered trustee; and
- (e) the seriousness of the consequences of any action or failure to act by the registered trustee, including the effect of the action or failure to act on public confidence in registered trustees as a group.

(5) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

Court may make orders about costs

- (1) Without limiting section 45-1, the Court may make orders in relation to a registered trustee that deal with the costs of a matter considered by the Court.
- (2) Those orders may include an order that:
 - (a) the registered trustee is personally liable for some or all of those costs; and
 - (b) the registered trustee is not entitled to be reimbursed from the regulated debtor's estate or creditors in relation to some or all of those costs.
- (3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

Division 50—Committees under this Part

Simplified outline of this Division

This Division sets out common rules for committees established under this Part.

If a prescribed body appoints a person to a committee, that person must have the prescribed knowledge or experience or, if no knowledge or experience is prescribed, the knowledge and experience necessary to carry out the functions to be performed. If the Minister appoints a person to a committee, that person must have knowledge or experience in a field such as business law (including the law of bankruptcy) or public policy relating to bankruptcy.

A single committee may consider more than one matter. The consideration of a matter is not affected by a change in the membership of the committee. A matter may be adjourned or transferred to another committee. The Insolvency Practice Rules may prescribe procedures and make other rules for committees.

The use and disclosure of information given to a committee is restricted to listed purposes.

Prescribed body appointing a person to a committee

Application of this section

- (1) This section applies if a prescribed body is to appoint a person

a committee under this Part.

Prescribed body must only appoint a person with appropriate knowledge and experience

(2) The prescribed body is to appoint a person as a member of the committee only if the prescribed body is satisfied that the person has:

- (a) if any knowledge or experience is prescribed in relation to appointments of the kind to be made—that knowledge or experience; or
- (b) if no knowledge or experience is prescribed in relation to appointments of the kind to be made—the knowledge and experience necessary to carry out the person's functions as a member of the committee if appointed.

Minister appointing a person to a committee

Application of this section

(1) This section applies if the Minister is to appoint a person to a committee under this Part.

Matters of which the Minister must be satisfied before appointing

(2) The Minister is to appoint a person as a member of the committee only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields:

- (a) business;
- (b) law, including the law relating to bankruptcy;
- (c) economics;
- (d) accounting;
- (e) public policy relating to bankruptcy.

Single committee may consider more than one matter

A single committee may be convened under this Part to consider one or more of the following:

- (a) a matter or matters relating to one applicant for registration as a trustee;
- (b) a matter or matters relating to more than one applicant for registration as a trustee;
- (c) a matter or matters relating to one registered trustee;
- (d) a matter or matters relating to more than one registered trustee.

Ongoing consideration of matters by committee

If a committee is convened under this Part to consider a matter:

- (a) the committee's powers, functions and duties in relation to the matter are not affected by a change in the membership of the committee; and
- (b) the committee may adjourn its consideration of the matter and may do so more than once; and
- (c) the matter may be transferred to another committee with the powers, functions and duties under this Part in relation to matters of that kind.

Procedure and other rules relating to committees

The Insolvency Practice Rules may provide for and in relation to:

- (a) the manner in which the committees convened under this

Part are to perform their functions, including:

- (i) meetings of committees; and
 - (ii) the number of committee members required to constitute a quorum; and
 - (iii) disclosure of interests in a matter before a committee and
 - (iv) the manner in which questions are to be decided by a committee; and
- (b) the reconstitution of a committee; and
- (c) the termination of the consideration of a matter by a committee, and the transfer of matters to another committee.

Remuneration of committee members

- (1) A member of a committee convened under this Part is entitled to receive the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is entitled to receive such remuneration as the Minister determines in writing.
- (2) A member is entitled to receive such allowances as the Minister determines in writing.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Committee must only use information etc. for purposes for which disclosed

Offence

- (1) A person commits an offence if:
- (a) the person is or was a member of a committee convened under this Part; and
 - (b) information or a document is or was disclosed to the person for the purposes of exercising powers or performing functions as a member of the committee; and
 - (c) the person uses or discloses the information or document.

Penalty: 50 penalty units.

Exception—information or document disclosed to ASIC or another committee etc.

- (2) Subsection (1) does not apply if the information or document:
- (a) is used or disclosed by the person for the purposes of exercising powers or performing functions as a member of a committee mentioned in subsection (1); or
 - (b) is disclosed:
 - (i) to ASIC to assist ASIC to exercise its powers or perform its functions under Chapter 5 of the *Corporations Act 2001* or the Insolvency Practice Schedule (Corporations); or
 - (ii) to a committee convened under Part 2 of the Insolvency Practice Schedule (Corporations) to assist the committee to exercise its powers or perform its functions under that Part; or
 - (iii) to another committee convened under this Part to assist the committee to exercise its powers or perform its functions under this Part; or
 - (iv) to enable or assist a body prescribed for the purposes of this paragraph to perform its disciplinary function.

- relation to its members; or
- (v) in order to enable or assist an authority or person, State or Territory, or a foreign country, to perform or exercise a function or power that corresponds, or is analogous, to any of the committee's or the Inspector-General's functions and powers; or
- (vi) to a court or tribunal in relation to proceedings before the court or tribunal.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Chapter 5 of the *Corporations Act 2001* deals with external administration of companies.

Part 55—General rules relating to estate administrations

Division 55—Introduction

Simplified outline of this Part

This Part sets out requirements for conducting the administration of a regulated debtor's estate.

The main provisions deal with:

- (a) the remuneration of the trustee; and
- (b) the duties of the trustee in handling the money and other property of the estate; and
- (c) conflicts of interest; and
- (d) the duties of the trustee to keep appropriate records, report to the Inspector-General and to give information, documents and reports to creditors and others; and
- (e) creditor meetings; and
- (f) the creation and conduct of a committee to monitor administration (called a committee of inspection); and
- (g) the rights of creditors to review the administration and
- (h) the rights of creditors to remove the trustee and appoint another; and
- (i) the review of the administration by the Court.

There are additional rules that apply to the administration of a regulated debtor's estate (for example, about appointment of trustee) in this Act.

Part 60—Remuneration and other benefits received by the trustee

Division A—Introduction

Simplified outline of this Division

Remuneration

The trustee of a regulated debtor's estate is entitled to receive remuneration for necessary work properly performed by the trustee in relation to the administration.

The amount of remuneration will usually be set under a remuneration determination. Remuneration determinations are made in most cases by the creditors or the committee of

inspection (if there is one).

However, if there is no remuneration determination, the trustee will be entitled to receive a reasonable amount for the work. The maximum amount that the trustee may receive in this way is \$5,000 (exclusive of GST and indexed).

The Court may review the remuneration of the trustee of a regulated debtor's estate and may also make orders under Division 90 about remuneration (including ordering repayment of remuneration).

Other benefits

The trustee of a regulated debtor's estate must not:

- (a) employ a related entity, unless certain requirements are met; or
- (b) purchase any assets of the estate; or
- (c) get any other benefits or profits from the administration of the estate.

Division B—Remuneration of trustees

Trustee's remuneration

Remuneration in accordance with remuneration determination

- (1) The trustee of a regulated debtor's estate is entitled to receive remuneration for necessary work properly performed by the trustee in relation to the administration of the regulated debtor's estate in accordance with the remuneration determinations (if any) for the trustee (see sections 60-10 and 60-11).

Remuneration for trustees if no remuneration determination

- (2) If no remuneration determination is made in relation to necessary work properly performed by a trustee in relation to the administration of the regulated debtor's estate, the trustee is entitled to receive reasonable remuneration for the work. However, that remuneration must not exceed the maximum default amount.

Remuneration to be paid from the funds in the estate

- (3) The remuneration is to be paid from the funds in the regulated debtor's estate.

Remuneration determinations—creditors or committee of inspection

A determination, specifying remuneration that a trustee of a regulated debtor's estate is entitled to receive for necessary work properly performed by the trustee in relation to the administration of the estate, may be made:

- (a) by resolution of the creditors; or
- (b) if there is a committee of inspection and a determination has not been made under paragraph (a)—by the committee of inspection.

Remuneration determinations—Inspector-General

- (1) The Inspector-General may, in prescribed circumstances, make a determination specifying remuneration that a trustee of a regulated debtor's estate is entitled to receive for necessary work properly performed by the trustee in relation to the administration of the estate.

- (2) The Inspector-General must have regard to any matter prescribed in making a determination under subsection (1).
- (3) Insolvency Practice Rules made for the purposes of subsection (2) may provide for and in relation to:
 - (a) a matter referred to in section 60-12; or
 - (b) any other matter.

Remuneration determinations—general rules

Manner in which remuneration may be specified

- (1) A determination under section 60-10 or 60-11 may specify remuneration that the trustee is entitled to receive in either or of the following ways:
 - (a) by specifying an amount of remuneration;
 - (b) by specifying a method for working out an amount of remuneration.

Remuneration on a time-cost basis

- (2) If a determination under section 60-10 or 60-11 specifies that the trustee is entitled to receive remuneration worked out wholly or partly on a time-cost basis, the determination must include a calculation of the amount of remuneration worked out on a time-cost basis that the trustee is entitled to receive.

Remuneration on a percentage basis

- (3) If a determination under section 60-10 or 60-11 specifies that the trustee is entitled to receive remuneration worked out wholly or partly on the basis of a specified percentage of money received by the trustee in respect of the regulated debtor's estate:
 - (a) the determination must specify the money to which the specified percentage applies; and
 - (b) the specified percentage must not be greater than the percentage prescribed for the purposes of this paragraph.

More than one remuneration determination may be made

- (4) To avoid doubt, more than one determination under section 60-10 or 60-11 may be made in relation to a particular trustee and a particular regulated debtor's estate.

Maximum default amount

Maximum default amount

- (1) The **maximum default amount** for a trustee is an amount (exclusive of GST) worked out as follows:
 - (a) if the trustee is appointed as the trustee of the regulated debtor's estate during the financial year beginning on 1 July 2016—\$5,000;
 - (b) if the trustee is appointed as the trustee of the regulated debtor's estate during a financial year beginning on or after 1 July 2017—the greater of:
 - (i) the amount worked out by multiplying the indexation factor for the financial year (worked out under subsections (3) and (4)) by the maximum default amount for a trustee appointed as the trustee of a regulated debtor's estate during the previous financial year; and
 - (ii) the amount (if any) prescribed for the purposes of this subparagraph.

Rounding

- (2) Amounts worked out under subsection (1) must be rounded to the nearest whole dollar (rounding 50 cents upwards).

Indexation factor

- (3) Subject to subsection (4), the **indexation factor** for a financial year is the number worked out by dividing the index number for the March quarter immediately preceding that financial year by the index number for the March quarter immediately preceding the first-mentioned March quarter.
- (4) If an indexation factor worked out under subsection (3) would be less than 1, the indexation factor is to be increased to 1.

Changes to CPI index reference period and publication of substituted index numbers

- (5) In working out the indexation factor:
- (a) use only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and
 - (b) disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

Definition—index number

- (6) In this section:

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the index numbers for the capital cities, published by the Australian Statistician in respect of that quarter.

Division E—Duties of trustees relating to remuneration and benefits etc.

Trustee must not derive profit or advantage from the administration of the estate

Deriving profit or advantage from the estate

- (1) A trustee of a regulated debtor's estate must not directly or indirectly derive any profit or advantage from the administration of the estate.

Circumstances in which profit or advantage is taken to be derived

- (2) To avoid doubt, a trustee of a regulated debtor's estate is taken to derive a profit or advantage from the administration of the estate if:
- (a) the trustee directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the estate; or
 - (b) the trustee directly or indirectly derives a profit or advantage from a creditor of the estate; or
 - (c) a related entity of the trustee directly or indirectly derives a profit or advantage from the administration of the estate.

Exceptions

- (3) Subsection (1) does not apply to the extent that:
- (a) another provision of this Act, or of another law, requires

- (a) another provision of this Act, or of another law, requires the trustee to derive the profit or advantage; or
- (b) the Court gives leave to the trustee to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent the trustee from recovering remuneration for necessary work properly performed by the trustee in relation to the administration of the estate, as the trustee is permitted to do so under other provisions of this Act.

(4) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:

- (a) the trustee employs or engages a person to provide services in connection with the administration of the estate; and
- (b) a related entity of the trustee directly or indirectly derives a profit or advantage as a result of that employment or engagement; and
- (c) one of the following is satisfied:
 - (i) the trustee does not know, and could not reasonably be expected to know, that the related entity would derive a profit or advantage;
 - (ii) the creditors, by resolution, agree to the related entity deriving the profit or advantage;
 - (iii) it is not reasonably practicable in all the circumstances to obtain the agreement, by resolution, of the creditors to the related entity deriving the profit or advantage and the cost of employing or engaging the person to provide the services is reasonable in all the circumstances.

(4A) Despite paragraph (2)(c), subsection (1) does not apply to the extent that a related entity of the trustee directly or indirectly derives a profit or advantage:

- (a) from remuneration paid to the trustee in accordance with section 60-5 of this Schedule; or
- (b) from a profit or advantage covered by subsection (4).

(5) Subsection (1) does not apply to the extent that the profit or advantage is a payment that:

- (a) is made to the trustee by or on behalf of the Commonwealth or an agency or authority of the Commonwealth; and
- (b) is of a kind prescribed.

Offence

(6) A person commits an offence of strict liability if:

- (a) the person is subject to a requirement under subsection (1) and
- (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (4) and (5) (see subsection 13.3(3) of the *Criminal Code*).

Effect of contravention of this section

(7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

Inducements to be appointed as trustee

A person (the **first person**) commits an offence if:

- (a) the first person gives, or agrees or offers to give, to another person any valuable consideration; and

- (b) the first person does so with the intention of:
 - (i) securing the first person’s appointment or nomination as a trustee of a regulated debtor’s estate; or
 - (ii) securing or preventing the appointment or nomination of a third person as a trustee of a regulated debtor’s estate.

Penalty: Imprisonment for 6 months.

Payments in respect of performance by third parties

No payments for performance of trustee’s ordinary duties by another person

- (1) If a trustee of a regulated debtor’s estate receives remuneration for his or her services, a payment in respect of the performance by another person of the ordinary duties that are required by this Division to be performed by the trustee is not allowed in the trustee’s accounts.

Exception

- (2) Subsection (1) does not apply to a payment if the payment was authorised by resolution of:
 - (a) the creditors; or
 - (b) the committee of inspection (if any).

Offence

- (3) A person commits an offence of strict liability if:
 - (a) the person is subject to a requirement under subsection (1) and
 - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Division 65—Funds handling

Simplified outline of this Division

The trustee of a regulated debtor’s estate has duties to:

- (a) promptly pay all money of the estate into an account (called an administration account); and
- (b) promptly deposit instruments such as securities with a bank; and
- (c) not pay any money into the account unless it is money of a regulated debtor’s estate for which the account is held; and
- (d) only pay money out of the account if it is for a legitimate purpose.

The trustee may keep a single account for more than one estate.

People with a financial interest in the administration of a regulated debtor’s estate (such as creditors) may ask the Court to give directions to the trustee about the way money and other property of the estate is to be handled.

If the trustee of a regulated debtor’s estate does not comply with this Division, the trustee may have to pay penalties, be paid no remuneration or be removed as trustee.

Trustee must pay all money into the administration account

Trustee must pay money into the administration account

- (1) The trustee of a regulated debtor's estate must pay all money received by the trustee on behalf of, or in relation to, the estate into an administration account for the estate within 5 business days after receipt.

Exception

- (2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

Offence

- (3) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Administration accounts

A bank account is an **administration account** in relation to a regulated debtor's estate if:

- (a) the account is maintained in relation to the regulated debtor's estate; and
- (b) if any requirements are prescribed in relation to administration accounts of regulated debtors' estates, it complies with those requirements.

Trustee must not pay other money into the administration account

Trustee must not pay other money into the administration account

- (1) The trustee of a regulated debtor's estate must not pay any money into the administration account for the estate if it is not received by the trustee on behalf of, or in relation to:
- (a) the estate; or
 - (b) where the trustee maintains the account in relation to more than one estate of a regulated debtor or regulated debtors, one of those estates.

Exception

- (2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

Offence

- (3) A person commits an offence of strict liability if:
- (a) the person is subject to the requirement under subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in

Consequences for failure to pay money into administration account

Application of this section

- (1) This section applies if:
 - (a) the trustee of a regulated debtor's estate:
 - (i) is subject to a requirement under subsection 65-5 (paying money into administration account); and
 - (ii) fails to comply with the requirement in relation to amount of money; and
 - (b) the amount exceeds:
 - (i) \$50; or
 - (ii) if another amount is prescribed—that other amount

Exception

- (2) Subsection (1) does not apply if, on the application of the trustee of the regulated debtor's estate, the Court is satisfied that the trustee had sufficient reason for failing to comply with the requirement in relation to the amount.

Trustee must pay penalty on excess

- (3) The trustee must, as a penalty, pay interest to the Commonwealth on the excess, worked out:
 - (a) at the rate of 20% per year; or
 - (b) if another rate is prescribed—at that other rate;for the period during which the trustee fails to comply with the requirement.
- (4) The trustee is personally liable for, and is not entitled to be reimbursed by the estate in relation to, the payment of that interest.

Paying money out of administration account

Money only to be paid out of administration account in accordance with this Act etc.

- (1) The trustee of a regulated debtor's estate must not pay any money out of the administration account for the estate other than:
 - (a) for purposes related to the administration of the estate
 - (b) in accordance with this Act; or
 - (c) in accordance with a direction of the Court.

Offence

- (2) A person commits an offence of strict liability if:
 - (a) the person is subject to a requirement under subsection 65-5 and
 - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Interest on administration account

- (1) The trustee of a regulated debtor's estate is entitled, in his or her personal capacity, to each payment of interest on the administration account for the estate, less an amount equal to bank fees or charges (if any) paid or payable on the account d

the period to which the interest relates.

- (2) If, under subsection (1), the trustee is only entitled to part of the payment of interest, the rest of that payment:
- (a) if the administration account contains money from only one estate of a regulated debtor—forms part of that estate; or
 - (b) if the administration account contains money from more than one estate of a regulated debtor or regulated debtors—forms part of those estates in proportion to the respective amounts of money held in the administration account on the balance sheet date of each of those estates.
- (3) Interest on money in the administration account for a regulated debtor's estate is not subject to taxation under a law of the Commonwealth, a State or a Territory except as provided in Part 2-1 of the *Bankruptcy (Estate Charges) Act 1997*.

Reconciliation of administration account

Application of this section

- (1) This section applies if the trustee maintains a single bank account for more than one estate of a regulated debtor or regulated debtors.

Trustee must maintain separate records

- (2) The trustee must:
- (a) maintain a separate record for each of those estates of
 - (i) money received by the trustee from the regulated debtor in relation to the estate; and
 - (ii) payments made by the trustee in relation to the estate; and
 - (iii) the balance of money held by the trustee in relation to the estate; and
 - (b) at least once every 25 business days, reconcile the balance relating to each estate held in the account with the corresponding record maintained under paragraph (a).

Handling securities

Securities must be deposited with administration account bank

- (1) The trustee of a regulated debtor's estate must deposit in a bank account:
- (a) the bills of exchange; and
 - (b) the promissory notes; and
 - (c) any other negotiable instrument or security;
- payable to the regulated debtor or the trustee as soon as practicable after they are received by the trustee.

Exception

- (2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

Offence

- (3) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 5 penalty units.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: See also section 277B (about infringement notices).

Delivery of securities

- (4) The bills, notes or other instrument or security must be delivered out on the signed request of the trustee.

Handling of money and securities—Court directions

- (1) The Court may, on application, give directions regarding the payment, deposit or custody of:
- (a) money; and
 - (b) bills of exchange, promissory notes and other negotiable instruments and securities;
- that are payable to, or held by, the trustee of a regulated debt estate.
- (2) The Court may, on application, give directions authorising the trustee of a regulated debtor's estate to make payments into or out of a special bank account.
- (3) Without limiting subsection (2), the Court may:
- (a) authorise the payments for the time and on the terms it thinks fit; and
 - (b) if the Court thinks the account is no longer required—a time order it to be closed.
- (4) A copy of an order under paragraph (3)(b) must be served by the trustee on the bank with which the special bank account was opened.
- (5) An application under this section may be made by a person with a financial interest in the administration of the regulated debt estate.

Review of payments to third parties

- (1) The Insolvency Practice Rules may provide for and in relation to the review by the Inspector-General of a bill of costs for services provided by a person in relation to the administration of a regulated debtor's estate.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
- (a) the application for the review (including who may apply); and
 - (b) the powers available to the Inspector-General in relation to the review; and
 - (c) the provision of information or documents to the Inspector-General for the purposes of the review; and
 - (d) the decisions that may be made by the Inspector-General in relation to the review; and
 - (e) the notification of decisions made by the Inspector-General; and
 - (f) the consideration of the decisions made by the Inspector-General in relation to the review by the Court.

Rules in relation to consequences for failure to comply with this Division

The Insolvency Practice Rules may provide for and in relation to

- (a) the payment by the trustee of a regulated debtor's estate interest at such rate, on such amount and in respect of such period as is prescribed; and
 - (b) disallowance of all or of such part as is prescribed of the remuneration of the trustee of a regulated debtor's estate
 - (c) the removal from office of the trustee of a regulated debtor's estate by the Court; and
 - (d) the payment by the trustee of a regulated debtor's estate of any expenses occasioned by reason of his or her default;
- in cases where the trustee of a regulated debtor's estate contravenes or fails to comply with this Division (including Insolvency Practice Rules made under this Division).

Division 70—Information

Division A—Introduction

Simplified outline of this Division

The trustee of a regulated debtor's estate must:

- (a) give annual reports of the administration of the estate (called annual administrative returns) to the Inspector-General; and
- (b) keep books of meetings and other affairs of the estate and
- (c) allow those books to be audited if required to do so and
- (d) allow access to those books by creditors; and
- (e) give creditors and others requested information, documents and reports relating to the administration

The committee of inspection (if there is one) may also request information, documents and reports from the trustee under Division 80.

If the trustee does not comply with a request, the Inspector-General may direct the trustee to do so. If the trustee does not comply with the direction, the Inspector-General may ask the Court to order compliance. Alternatively, the person who requested the information may ask the Court to order compliance with the request.

Division B—Annual administration return

Annual administration return

Application of this section

- (1) This section applies if a person is the trustee of a regulated debtor's estate during all or part of a financial year.

Annual administration return to be lodged

- (2) The person must lodge a return in relation to the person's administration of that estate during that year or part of that year (as the case requires).
- (3) The return must:
 - (a) be in the approved form; and
 - (b) be lodged with the Inspector-General within 25 business days after the end of the financial year.

Late lodgement fee payable

- (4) If the person does not lodge the return within the period mentioned in paragraph (3)(b), the person must pay a late lodgement fee, determined by the Minister by legislative instrument, by way of penalty.

Division C—Record-keeping

Subdivision applies to the Official Trustee

This Subdivision applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate.

Administration books

Trustee must keep proper books

- (1) The trustee of a regulated debtor's estate must keep proper books in which the trustee must cause to be made:
- (a) entries or minutes of proceedings at meetings relating to the administration of the estate; and
 - (b) such other entries as are necessary to give a complete and correct record of the trustee's administration of the estate.
- (2) The trustee must:
- (a) ensure that the books are available at the trustee's office for inspection; and
 - (b) permit a creditor, or another person acting on the creditor's behalf, to inspect the books at all reasonable times.

Exception

- (3) Subsections (1) and (2) do not apply if the trustee has a reasonable excuse.

Offence

- (4) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1) or (2); and
 - (b) the person fails to comply with the requirement.

Penalty: 5 penalty units.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: See also section 277B (about infringement notices).

Trustee's books when trading

Trustee must keep trading books etc.

- (1) If the trustee of a regulated debtor's estate carries on a business previously carried on by the regulated debtor, the trustee must:
- (a) keep such books as are usually kept in relation to the carrying on of a business of that kind; and
 - (b) permit a creditor, or another person acting on the creditor's behalf, to inspect the books at all reasonable times.

Offence

- (2) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1) and
 - (b) the person fails to comply with the requirement.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

Audit of administration books—Inspector-General

Inspector-General may audit books, or cause them to be audited

- (1) The Inspector-General may audit, or cause to be audited, the books referred to in section 70-5 (annual administration return), 70-10 (administration books) or 70-11 (books when trading).

Audit on the Inspector-General's initiative or on request

- (2) The audit may be conducted:
- (a) on the Inspector-General's own initiative; or
 - (b) at the request of the regulated debtor; or
 - (c) at the request of a creditor.

Auditor must prepare a report

- (3) The person carrying out the audit must prepare a report on the audit.

Inspector-General must give a copy of the report

- (4) The Inspector-General must give a copy of the report to:
- (a) the trustee of the estate; and
 - (b) the person who requested the report (if any).

Costs of an audit

- (5) The costs of an audit under this section must be determined by the Inspector-General and is to be borne by the estate.

Qualified privilege in relation to audit reports

- (6) A person who conducts an audit under this section has qualified privilege (within the meaning of the *Corporations Act 2001*) in respect of any report prepared under subsection (3) that is given to a person under subsection (4) or otherwise published.

Audit of administration books—on order of the Court

- (1) The Court may order that the Inspector-General audit, or cause to be audited, the books referred to in section 70-5 (annual administration return), 70-10 (administration books) or 70-11 (books when trading).
- (2) The order may be made on application of any person with a financial interest in the administration of the regulated debtor's estate.
- (3) The Court may make such orders in relation to the audit as it thinks fit, including:
- (a) the preparation and provision of a report on the audit;
 - (b) orders as to the costs of the audit.

Trustee to comply with auditor requirements

Application of this section

- (1) This section applies if books are audited under section 70-10 or 70-20.

Trustee must give assistance etc.

- (2) The trustee of the estate must give to the person carrying out the audit

audit such books, information and assistance as the person reasonably requires.

Exception

- (3) Subsection (2) does not apply if the trustee has a reasonable excuse.

Offence

- (4) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: 5 penalty units.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: See also section 277B (about infringement notices).

Transfer of books to new trustee

Application of this section

- (1) This section applies if:
- (a) a person (the **former trustee**) ceases to be the trustee of the regulated debtor's estate; and
 - (b) a registered trustee (the **new trustee**) is appointed as trustee of the estate instead.

Transfer of books to new trustee

- (2) The former trustee must transfer to the new trustee, within the handover period, possession or control of any books relating to the administration of the estate that are in the former trustee's possession or control.
- (3) The **handover period** is:
- (a) the period of 10 business days beginning on the day after the new trustee is appointed; or
 - (b) if another period is agreed between the former trustee and the new trustee—that other period.
- (4) The former trustee may take a copy of any part of the books before transferring possession or control of them to the new trustee.

New trustee must accept the books

- (5) The new trustee must take possession or accept control of any books relating to the administration of the regulated debtor's estate.

New trustee must allow inspection etc.

- (6) After possession or control of the books is transferred, the new trustee must allow the former trustee to inspect them at any reasonable time and take a copy of any part of the books.

Offence

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (5) or (6); and
 - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

Lien against books not prejudiced

- (8) If the new trustee is entitled to take possession or control of books under this section:
- (a) a person is not entitled, as against the new trustee, to claim a lien on the books; and
 - (b) such a lien is not otherwise prejudiced.

Retention, return or destruction of books

Retention period for books

- (1) The last trustee to administer a regulated debtor's estate must retain all books that:
- (a) relate to the administration of the estate; and
 - (b) are in the last trustee's possession or control at the end of the administration;
- for a period (the **retention period**) of 7 years from the end of administration.

Exception—reasonable excuse

- (2) Subsection (1) does not apply if the trustee has a reasonable excuse.

Exception—books given by regulated debtor

- (3) Despite subsection (1), any books that the regulated debtor has given to the trustee of the estate may be returned to the regulated debtor within the retention period:
- (a) if there is a committee of inspection—as the committee directs; or
 - (b) otherwise—as the creditors by resolution direct.

Return or destruction of books at end of retention period

- (4) The trustee may return the books to the regulated debtor, or destroy the books, at the end of the retention period.

Offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) and
 - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

Relationship with other laws

- (6) Subsections (3) and (4) do not apply to the extent that the trustee is under an obligation to retain the books, or a part of the books, under another provision of this Act or under any other law.

Return or destruction of irrelevant books

- (1) The trustee of a regulated debtor's estate may, at any time during the administration of the estate, return to the regulated debtor, or destroy, any books that:

(a) the regulated debtor has given to any trustee of the estate;

- (a) the regulated debtor has given to any trustee of the estate the books to the regulated debtor, or to destroy them, if the trustee knows, or reasonably ought to know, that:
 - (a) another person had a lien over the books before the trustee took possession of them; or
 - (b) another person has a legal right to possession of the books; or
 - (c) the trustee is not permitted to return the books to the regulated debtor or destroy them (as the case requires), because of another provision of this Act, or a provision of any other law.

Division D—Giving information etc. to creditors and others

Subdivision applies to the Official Trustee

This Subdivision applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate.

Right of creditors to request information etc. from trustee

- (1) The creditors may by resolution request the trustee of a regulated debtor's estate to:
 - (a) give information; or
 - (b) provide a report; or
 - (c) produce a document;
 to the creditors.
- (2) The trustee must comply with the request unless:
 - (a) the information, report or document is not relevant to the administration of the regulated debtor's estate; or
 - (b) the trustee would breach his or her duties in relation to the administration of the regulated debtor's estate if the trustee complied with the request; or
 - (c) it is otherwise not reasonable for the trustee to comply with the request.
- (3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee to comply with a request of a kind mentioned in subsection (1).

Right of individual creditor to request information etc. from trustee

- (1) A creditor may request the trustee of a regulated debtor's estate to:
 - (a) give information; or
 - (b) provide a report; or
 - (c) produce a document;
 to the creditor.
- (2) The trustee must comply with the request unless:
 - (a) the information, report or document is not relevant to the administration of the regulated debtor's estate; or
 - (b) the trustee would breach his or her duties in relation to the administration of the regulated debtor's estate if the trustee complied with the request; or

complied with the request; or

(c) it is otherwise not reasonable for the trustee to comply with the request.

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for the trustee of a regulated debtor's estate to comply with a request of a kind mentioned in subsection (1).

Reporting to creditors

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of trustees of regulated debtors' estates:

- (a) to give information; and
- (b) to provide reports; and
- (c) to produce documents;

to creditors or the regulated debtor.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:

- (a) other circumstances in which the trustee of a regulated debtor's estate must give information, provide a report or produce a document to a creditor or the regulated debtor;
- (b) the manner and form in which information is to be given, a report provided or a document produced; and
- (c) the timeframes in which information is to be given, a report provided or a document produced; and
- (d) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may:

- (a) make different provision in relation to different kinds of estate administration; and
- (b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:
 - (i) the creditors; or
 - (ii) if there is a committee of inspection—the committee

Division E—Other requests for information etc.

Subdivision applies to the Official Trustee

This Subdivision applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate.

Commonwealth may request information etc.

Application of this section

(1) This section applies if either:

- (a) a former employee of a regulated debtor has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or
- (b) the Commonwealth considers that such a claim is likely to be made.

Commonwealth may request information etc.

(2) The Commonwealth may request the trustee of the regulated debtor's estate to provide specified information, reports or documents in relation to the administration of the regulated debtor's estate.

- (3) The trustee must comply with the request.
- (4) The Insolvency Practice Rules may provide for and in relation to who is to bear the cost of providing the information, reports or documents.

Right of regulated debtor to request information etc. from trustee

- (1) A regulated debtor may request the trustee of the regulated debtor's estate to:
 - (a) give information; or
 - (b) provide a report; or
 - (c) produce a document;to the regulated debtor.
- (2) The trustee must comply with the request unless:
 - (a) the information, report or document is not relevant to the administration of the regulated debtor's estate; or
 - (b) the trustee would breach his or her duties in relation to the administration of the regulated debtor's estate if the trustee complied with the request; or
 - (c) it is otherwise not reasonable for the trustee to comply with the request.
- (3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee of a regulated debtor's estate to comply with a request of a kind mentioned in subsection (1).

Division F—Reporting to the Inspector-General

Insolvency Practice Rules may provide for reporting to Inspector-General

- (1) The Insolvency Practice Rules may provide for and in relation to the obligations of trustees of regulated debtor's estates:
 - (a) to give information; and
 - (b) to provide reports; and
 - (c) to produce documents;to the Inspector-General.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
 - (a) the manner and form in which information is to be given, a report provided or a document produced; and
 - (b) the timeframes in which information is to be given, a report provided or a document produced; and
 - (c) who is to bear the cost of giving information, providing a report or producing a document.
- (3) The Insolvency Practice Rules may make different provision in relation to different kinds of estate administration.

Note: A failure to give information, provide a report or produce a document to the Inspector-General in accordance with the Insolvency Practice Rules may lead to disciplinary action under Subdivision B of Division 40 of this Schedule.

Division G—Trustee may be compelled to comply with requests for information etc.

Application of this Subdivision

- (1) This Subdivision applies if the trustee of a regulated debtor's estate refuses a request made by a person under:
- (a) Subdivision D; or
 - (b) a rule made under section 70-50; or
 - (c) Subdivision E; or
 - (d) section 80-40;
- to give information, provide a report or produce a document.

- (2) In this Subdivision:
- (a) the information, report or document is referred to as the **relevant material**; and
 - (b) the request is referred to as the **request for relevant material**; and
 - (c) giving the information, providing the report or producing the document is referred to as **giving** the relevant material.

Inspector-General may direct trustee to comply with the request for relevant material

- (1) The Inspector-General may, in writing, direct the trustee to give all or part of the relevant material to the person or persons who made the request for the relevant material within 5 business days after the direction is given.
- (2) A direction under subsection (1) is not a legislative instrument.

Inspector-General must notify trustee before giving a direction under section 70-70

- (1) Before giving the trustee a direction under section 70-70, the Inspector-General must give the trustee notice in writing:
- (a) stating that the Inspector-General proposes to give the trustee a direction under that section; and
 - (b) identifying:
 - (i) the relevant material, or the part of the relevant material, that the Inspector-General proposes to direct that the relevant material, or that part of the relevant material, be given; and
 - (ii) the person or persons to whom the Inspector-General proposes to direct that the relevant material, or that part of the relevant material, be given; and
 - (c) inviting the trustee to make a written submission to the Inspector-General within 10 business days after the notice is given, stating:
 - (i) whether the trustee has any objection to giving the relevant material, or that part of the relevant material, to the person or persons as proposed; and
 - (ii) if the trustee has such an objection—the reasons for that objection.
- (2) If the trustee objects to giving the relevant material, or part of the relevant material, to a person, the Inspector-General must take into account the reasons for that objection when deciding whether to direct that the relevant material, or that part of the relevant material, be given to the person.
- (3) A notice under subsection (1) is not a legislative instrument.

Inspector-General must not direct trustee to give the relevant material if trustee entitled not to comply with the request

The Inspector-General must not give a direction under

section 70-70 to give the relevant material, or part of the relevant material, to a person if the Inspector-General is satisfied that the trustee was entitled, under a provision of this Act or any other law, not to comply with the request for the relevant material, or the part of the relevant material, to the person.

Inspector-General may impose conditions on use of the relevant material

Inspector-General may, by notice, impose conditions

- (1) The Inspector-General may, by notice in writing to the person or persons to whom the relevant material is to be given, impose conditions on the use and disclosure of the relevant material, or part of the relevant material, by the person or persons.

Offence

- (2) A person commits an offence if:
- (a) the Inspector-General directs that the relevant material, or part of the relevant material, be given to the person; and
 - (b) the Inspector-General has given the person notice under subsection (1) imposing a condition in relation to the use and disclosure of that material by the person; and
 - (c) the person does not comply with the condition.

Penalty: 10 penalty units or imprisonment for 3 months, or both

Notice is not a legislative instrument

- (3) A notice under subsection (1) is not a legislative instrument

Court may order relevant material to be given

- (1) The person or persons who made the request for the relevant material may apply to the Court for an order that the trustee give the person all or part of the relevant material.

- (2) If:

- (a) the Inspector-General gives the trustee a direction under section 70-70 in relation to all or part of the relevant material; and
- (b) the trustee does not comply with the direction;

the Inspector-General may apply to the Court for an order that the trustee comply with the direction.

- (3) On application under subsection (1) or (2), the Court may:
- (a) order the trustee to give the person, or any or all of the persons, who made the request for the relevant material all or part of that material; and
 - (b) make such other orders, including orders as to costs, as the Court thinks fit.

Division 75—Meetings of creditors

Simplified outline of this Division

The trustee of a regulated debtor's estate may convene creditors' meetings at any time and must convene them in particular circumstances, for example when directed to do so by certain creditors or by the Inspector-General.

Requirements for convening and holding meetings (including notice, agenda, quorum, voting on proposals and costs) are set out in sections 75-1 to 75-10.

out in the Insolvency Practice Rules.

There is a mechanism for resolving a matter without holding meeting.

Division applies to the Official Trustee

This Division applies to the Official Trustee in the same way applies to the trustee of a regulated debtor's estate.

Other obligations to convene meetings not affected

Nothing in this Division limits the operation of any other provision of this Act, or any other law, imposing an obligation to convene a meeting in relation to a regulated debtor, or the administration of a regulated debtor's estate.

Trustee may convene meetings

The trustee of a regulated debtor's estate may convene a meeting of the creditors at any time.

Trustee must convene meeting in certain circumstances

- (1) The trustee of a regulated debtor's estate must convene a meeting of the creditors if:
 - (a) where there is a committee of inspection—the committee of inspection directs the trustee to do so; or
 - (b) the creditors direct the trustee to do so by resolution; or
 - (c) at least 25% in value of the creditors direct the trustee to do so in writing; or
 - (d) both of the following are satisfied:
 - (i) less than 25%, but more than 10%, in value of the creditors direct the trustee to do so in writing;
 - (ii) security for the cost of holding the meeting is given to the trustee before the meeting is convened.
- (2) However, the trustee of a regulated debtor's estate need not comply with the direction if the direction is not reasonable.
- (3) The Insolvency Practice Rules may prescribe circumstances in which a direction is, or is not, reasonable.
- (4) For the purposes of paragraphs (1)(c) and (d), the value of the creditors is to be worked out by reference to the value of the creditors' claims against the regulated debtor's estate that are known at the time the direction is given.

Trustee must convene meeting if required by the Inspector-General

- (1) The Inspector-General may, in writing, direct the trustee of a regulated debtor's estate to convene a meeting of the creditors.
- (2) The Inspector-General may include in the direction required to be complied with by the trustee in notifying the creditors of the meeting and in conducting the meeting.
- (3) The trustee must comply with a direction given under subsection (1), and any requirements included in the direction under subsection (2).
- (4) A direction given under subsection (1) is not a legislative instrument.

Trustee's representative at meetings

- (1) The trustee of a regulated debtor's estate may, in writing, appoint a person to represent the trustee at a meeting.
- (2) Subsection (1) does not apply to a meeting of a kind prescribed by the rules.
- (3) If the trustee is not personally present at a meeting, then a reference in a provision of this Act to a trustee, in respect of matters occurring at or in connection with the meeting, is a reference to a person appointed to represent the trustee at the meeting.

Inspector-General may attend meetings

- (1) The Inspector-General is entitled to attend any meeting of creditors held under this Act.
- (2) Subject to any provision of this Act (including any provision relating to voting), the Inspector-General is entitled to participate in any meeting of creditors held under this Act.

Commonwealth may attend certain meetings etc.

If:

- (a) a former employee of a regulated debtor has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or
- (b) the Commonwealth considers that such a claim is likely to be made;

the Commonwealth is entitled to nominate a representative to attend any meeting of creditors held in relation to the administration of the regulated debtor's estate.

Proposals to creditors without meeting

Proposal by notice to creditors

- (1) The trustee of a regulated debtor's estate may at any time propose a proposal to the creditors by giving notice, in writing, under this section.

Content and service of notice

- (2) The notice must:
 - (a) contain a single proposal; and
 - (b) include a statement of the reasons for the proposal and the likely impact it will have on creditors (if it is passed); and
 - (c) be given to each creditor who would be entitled to receive notice of a meeting of creditors; and
 - (d) invite the creditor to either:
 - (i) vote Yes or No on the proposal; or
 - (ii) object to the proposal being resolved without a meeting of creditors; and
 - (e) specify a reasonable time by which replies must be received by the trustee (in order to be taken into account).

Evidentiary certificate relating to proposals

- (3) A certificate signed by the trustee of the regulated debtor's estate stating any matter relating to a proposal under this section is prima facie evidence of the matter.

Insolvency Practice Rules relating to proposals

- (4) The Insolvency Practice Rules may provide for and in relation to

proposals without meeting under this section.

(5) Without limiting subsection (4), the Insolvency Practice Rules may provide for and in relation to:

- (a) the circumstances in which a proposal is taken to be passed and
- (b) whether a proposal, if passed, is to be taken to have been passed as a resolution or a special resolution; and
- (c) costs and security for those costs in relation to a proposal.

Rules relating to meetings

(1) The Insolvency Practice Rules may provide for and in relation to meetings of creditors.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:

- (a) the circumstances in which meetings must or may be convened; and
- (b) notice for convening meetings; and
- (c) agenda; and
- (d) information to be given to creditors; and
- (e) who is to preside at meetings; and
- (f) the number of creditors required to constitute a quorum; and
- (g) proxies and attorneys; and
- (h) motions; and
- (i) voting (including casting votes); and
- (j) the circumstances in which a resolution or a special resolution must or may be put to creditors in a meeting; and
- (k) the circumstances in which a resolution or a special resolution put to creditors in a meeting is passed; and
- (l) facilities, including electronic communication facilities, to be available at meetings; and
- (m) minutes; and
- (n) costs in relation to meetings and security for those costs.

Division 80—Committees of inspection

Simplified outline of this Division

Creditors of a regulated debtor's estate may decide that there is to be a committee of inspection to monitor the administration of the estate and to give assistance to the trustee.

Appointing the committee

Each of the following have rights to appoint members to the committee (and to remove those members and fill the vacancies):

- (a) the creditors by resolution;
- (b) a single creditor who is owed, or a group of creditors who together are owed, a large amount;
- (c) a single employee who is owed, or a group of employees who together are owed, a large amount.

Once a person exercises a right in one capacity to appoint a member, the person cannot exercise a right in another capacity to do so. A person can exercise the right in a particular capacity to appoint only one person (unless the person is filling a vacancy in that appointment).

Procedures and powers

This Division also deals with the procedures and powers of committees of inspection (including directing that information documents and reports be provided by the trustee and obtain specialist advice).

The trustee of a regulated debtor's estate must have regard to directions of the committee but is not obliged to comply.

Review

The Court may inquire into and make orders about the conduct of committees of inspection.

Division applies to the Official Trustee

This Division applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate.

Application of sections 80-10 to 80-25

The rules in sections 80-10 to 80-25 apply if the trustee of a regulated debtor's estate convenes a meeting of creditors for the purpose of determining either or both of the following:

- (a) whether there is to be a committee of inspection for the regulated debtor's estate;
- (b) if there is, or is to be, a committee of inspection—who are to be appointed members of the committee.

Committee of inspection

The creditors of a regulated debtor's estate may, by resolution, determine that there is to be a committee of inspection in relation to the administration of the estate.

Appointment and removal of members of committee of inspection by creditors generally

- (1) The creditors of a regulated debtor's estate may, by resolution, appoint members of a committee of inspection in relation to the administration of the estate.
- (2) The creditors of a regulated debtor's estate may by resolution
 - (a) remove a person appointed as a member of the committee under this section; and
 - (b) appoint another person to fill a vacancy in the office of member of the committee appointed under this section.
- (3) A person is not entitled to vote on a resolution to appoint or remove a member of a committee of inspection under this section if:
 - (a) the person, acting either alone or with others, appoints the person as a member of the committee under section 80-20;
 - (b) the person, acting either alone or with others, appoints the person as a member of the committee under section 80-21.

Appointment of committee member by large creditor

- (1) A creditor representing at least 10% in value of the creditors or a group of creditors who together represent at least 10% in value of the creditors, of a regulated debtor's estate may appoint a person as a member of a committee of inspection in relation to the administration of the estate.

- (2) If a creditor or a group of creditors appoints a person as a member of a committee of inspection under this section, the creditor or group of creditors may:
- (a) remove the person as a member of the committee; and
 - (b) appoint another person to fill a vacancy in the office of member of the committee.
- (3) A creditor, acting either alone or with others, is not entitled to appoint a person as a member of a committee of inspection under subsection (1) if:
- (a) the creditor votes on a resolution to appoint or remove a member of the committee under section 80-15; or
 - (b) the creditor, acting either alone or with others, appoints a member of the committee under subsection 80-25(1); or
 - (c) the creditor, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

Appointment of committee member by employees

- (1) Either:
- (a) an employee of the regulated debtor; or
 - (b) the employees of the regulated debtor;
- representing at least 50% in value of amounts owed to or in respect of employees by the regulated debtor, in respect of services rendered to or for the regulated debtor, may appoint a person as a member of a committee of inspection to represent the employees.
- (2) If an employee or a group of employees appoints a person under this section, the employee or group of employees may:
- (a) remove the person as a member of the committee; and
 - (b) appoint another person to fill a vacancy in the office of member of the committee.
- (3) An employee, acting either alone or with others, is not entitled to appoint a person as a member of a committee of inspection under subsection (1) if:
- (a) the employee votes on a resolution to appoint or remove a member of the committee under section 80-15; or
 - (b) the employee, acting either alone or with others, appoints a member of the committee under subsection 80-20(1); or
 - (c) the employee, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

Committees of inspection—procedures etc.

- (1) Subject to subsection (2), a committee of inspection is to determine its own procedures.
- (2) The Insolvency Practice Rules may provide for and in relation to committees of inspection.
- (3) Without limiting subsection (2), the Insolvency Practice Rules may provide for and in relation to:
- (a) eligibility to be appointed as a member of a committee of inspection; and
 - (b) the convening of, conduct of, and procedure and voting at meetings; and
 - (c) resignation and removal of members; and
 - (d) vacancies in membership.

Functions of committee of inspection

- (1) A committee of inspection has the following functions:
 - (a) to advise and assist the trustee of the regulated debtor estate;
 - (b) to give directions to the trustee of the regulated debtor estate;
 - (c) to monitor the conduct of the administration of the estate;
 - (d) such other functions as are conferred on the committee by this Act;
 - (e) to do anything incidental or conducive to the performance of any of the above functions.
- (2) The trustee of a regulated debtor's estate must have regard to any directions given to the trustee by the committee of inspection but the trustee is not required to comply with such directions.
- (3) If the trustee of a regulated debtor's estate does not comply with a direction, the trustee must make a written record of that fact along with the trustee's reasons for not complying with the direction.

Committee of inspection may request information etc.

- (1) A committee of inspection may request the trustee of a regulated debtor's estate to:
 - (a) give information; or
 - (b) provide a report; or
 - (c) produce a document;to the committee.
- (2) The trustee must comply with the request unless:
 - (a) the information, report or document is not relevant to the administration of the regulated debtor's estate; or
 - (b) the trustee would breach his or her duties in relation to the administration of the regulated debtor's estate if the trustee complied with the request; or
 - (c) it is otherwise not reasonable for the trustee to comply with the request.
- (3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee to comply with a request of a kind mentioned in subsection (1).

Reporting to committee of inspection

- (1) The Insolvency Practice Rules may provide for and in relation to the obligations of trustees of regulated debtors' estates:
 - (a) to give information; and
 - (b) to provide reports; and
 - (c) to produce documents;to committees of inspection.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
 - (a) other circumstances in which the trustee must give information, provide a report or produce a document to a committee of inspection; and
 - (b) the manner and form in which information is to be given, report provided or a document produced; and
 - (c) the timeframes in which information is to be given, a report provided or a document produced; and

provided or a document produced; and

(d) who is to bear the cost of giving information, providing report or producing a document.

(3) The Insolvency Practice Rules may:

(a) make different provision in relation to different classes regulated debtor, or regulated debtor's estates; and

(b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:

(i) the creditors; or

(ii) the committee of inspection.

Committee of inspection may obtain specialist advice or assistance

(1) A committee of inspection may resolve that a member of the committee obtain, on behalf of the committee, such advice or assistance as the committee considers desirable in relation to conduct of the administration of the regulated debtor's estate.

(2) The committee of inspection must obtain the approval of the trustee of the regulated debtor's estate or the Court before expenses are incurred in obtaining the advice or assistance.

(3) To avoid doubt, an expense incurred under subsection (2) is taken to be an expense of the administration of the estate, unless the Court orders otherwise.

Obligations of members of committee of inspection

Deriving profit or advantage from the estate

(1) A member of a committee of inspection must not directly or indirectly derive any profit or advantage from the administration of the regulated debtor's estate.

Circumstances in which profit or advantage is taken to be derived

(2) To avoid doubt, a member of a committee of inspection is taken to derive a profit or advantage from the administration of the regulated debtor's estate if:

(a) the member directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the estate; or

(b) the member directly or indirectly derives a profit or advantage from a creditor of the estate; or

(c) a related entity of the member directly or indirectly derives a profit or advantage from the administration of the estate.

Exceptions

(3) Subsection (1) does not apply if the creditors resolve otherwise.

(4) The member of the committee is not entitled to vote on the resolution referred to in subsection (3).

(5) Subsection (1) does not apply to the extent that:

(a) another provision of this Act, or of another law, requires or permits the member of the committee of inspection to derive the profit or advantage; or

(b) the Court gives leave to the member of the committee to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent a creditor from

(6) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:

- (a) the profit or advantage arises because the trustee employs or engages a person to provide services in connection with the administration of the regulated debtor's estate; and
- (b) the person is a related entity of a member of the committee of inspection; and
- (c) one of the following applies:
 - (i) the member does not know, and could not reasonably be expected to know, that the trustee has employed or engaged a related entity of the member;
 - (ii) the creditors, by resolution, agree to the related entity being employed or engaged.

Offence

(7) A person commits an offence of strict liability if:

- (a) the person is subject to a requirement under subsection (1) and
- (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

Effect of contravention of this section

(8) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

Obligations of creditor appointing a member of committee of inspection

Application of this section

- (1) This section applies if a creditor representing at least 10% of the value of the creditors of a regulated debtor's estate appoints a person under section 80-20 as a member of a committee of inspection in relation to the administration of the estate.
- (2) The creditor must not directly or indirectly become the purchaser of any part of the regulated debtor's estate.

Exceptions

- (3) Subsection (2) does not apply if the creditors resolve otherwise.
- (4) The creditor is not entitled to vote on the resolution referred to in subsection (3).
- (5) Subsection (2) does not apply to the extent that:
 - (a) another provision of this Act, or of another law, requires or permits the creditor to purchase the property; or
 - (b) the Court gives leave to the creditor to purchase the property.

Offence

(6) A person commits an offence of strict liability if:

- (a) the person is subject to a requirement under subsection (2) and
- (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3) and (5) (see subsection 13.3(3) of the *Criminal Code*).

Effect of contravention of this section

- (7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

The Inspector-General may attend committee meetings

The Inspector-General is entitled to attend any meeting of a committee of inspection.

The Court may inquire into conduct of the committee

The Court may inquire into the conduct of a committee of inspection and make such orders as it thinks fit to ensure the proper conduct of the committee.

Division 85—Directions by creditors

Simplified outline of this Division

The trustee of a regulated debtor's estate must have regard to directions given to the trustee by the creditors of the estate but is not obliged to comply with those directions.

Division applies to the Official Trustee

This Division applies to the Official Trustee in the same way that it applies to the trustee of a regulated debtor's estate.

Trustee to have regard to directions given by creditors

- (1) The creditors may, by resolution, give directions to the trustee of a regulated debtor's estate in relation to the administration of the estate.
- (2) The trustee must have regard to any directions mentioned in subsection (1), but the trustee is not required to comply with such directions.
- (3) If the trustee does not comply with a direction, the trustee must make a written record of that fact, along with the trustee's reasons for not complying with the direction.
- (4) If there is a conflict between directions given by the creditors under subsection (1) and by the committee of inspection under section 80-85, directions given by the creditors override any directions given by the committee.

Division 90—Review of the administration of a regulated debtor's estate

Division A—Introduction

Simplified outline of this Division

Review by the Court

The Court may inquire into the administration of a regulated debtor's estate either on its own initiative or on the application of the Inspector-General or a person with a financial interest in the administration of the regulated debtor's estate.

The Court has wide powers to make orders, including orders replacing the trustee or dealing with losses resulting from a breach of duty by the trustee.

Review by the Inspector-General

The Inspector-General may review a decision of the trustee of a regulated debtor's estate to withdraw funds from the estate for payment for the trustee's remuneration.

The Insolvency Practice Rules may set the powers and duties of the Inspector-General in conducting such a review and may deal with issues relating to the review process.

Removal of trustee by creditors

The creditors of a regulated debtor's estate may remove the trustee of the estate and appoint another. However, the trustee may apply to the Court to be reappointed.

Division B—Court powers to inquire and make orders

Subdivision applies to the Official Trustee

This Subdivision applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate.

Court may inquire on own initiative

- (1) The Court may, on its own initiative during proceedings before the Court, inquire into the administration of a regulated debtor's estate.
- (2) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the trustee of the regulated debtor's estate to:
 - (a) give information; or
 - (b) provide a report; or
 - (c) produce a document;to the Court in relation to the administration of the estate.
- (3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

Court may inquire on application of creditors etc.

- (1) The Court may, on the application of a person mentioned in subsection (2), inquire into the administration of a regulated debtor's estate.
- (2) Each of the following persons may make an application for an inquiry:
 - (a) a person with a financial interest in the administration of the regulated debtor's estate;
 - (b) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;
 - (c) the Inspector-General.
- (3) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the trustee of the regulated debtor's estate to:
 - (a) give information; or
 - (b) provide a report; or
 - (c) produce a document;

to the Court in relation to the administration of the estate.

- (4) If an application is made by a person referred to in paragraph (b), the reasonable expenses associated with the application are to be taken to be expenses of the administration of the estate unless otherwise ordered by the Court.
- (5) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

Court may make orders in relation to estate administration

Court may make orders

- (1) The Court may make such orders as it thinks fit in relation to the administration of a regulated debtor's estate.

Orders on own initiative or on application

- (2) The Court may exercise the power under subsection (1):
- (a) on its own initiative, during proceedings before the Court;
 - or
 - (b) on application under section 90-20.

Examples of orders that may be made

- (3) Without limiting subsection (1), those orders may include any one or more of the following:
- (a) an order determining any question arising in the administration of the estate;
 - (b) an order that a person cease to be the trustee of the estate;
 - (c) an order that another person be appointed as the trustee of the estate;
 - (d) an order in relation to the costs of an action (including proceedings) taken by the trustee of the estate or another person in relation to the administration of the estate;
 - (e) an order in relation to any loss that the estate has sustained because of a breach of duty by the trustee;
 - (f) an order in relation to remuneration, including an order requiring a person to repay to the estate of a regulated debtor or the creditors of a regulated debtor, remuneration paid to the person as trustee.

Matters that may be taken into account

- (4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
- (a) whether the trustee has faithfully performed, or is faithfully performing, the trustee's duties; and
 - (b) whether an action or failure to act by the trustee is in compliance with this Act and the Insolvency Practice Rules; and
 - (c) whether an action or failure to act by the trustee is in compliance with an order of the Court; and
 - (d) whether the regulated debtor's estate or any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the trustee; and
 - (e) the seriousness of the consequences of any action or failure to act by the trustee, including the effect of that action or failure to act on public confidence in registered trustees and the group.

Costs orders

(5) Without limiting subsection (1), an order mentioned in paragraph (3)(d) in relation to the costs of an action may include an order that:

- (a) the trustee or another person is personally liable for some or all of those costs; and
- (b) the trustee or another person is not entitled to be reimbursed by the regulated debtor's estate or creditors in relation to some or all of those costs.

Orders to make good loss sustained because of a breach of duty

(6) Without limiting subsection (1), an order mentioned in paragraph (3)(e) in relation to a loss may include an order that:

- (a) the trustee is personally liable to make good some or all of the loss; and
- (b) the trustee is not entitled to be reimbursed by the regulated debtor's estate or creditors in relation to the amount made good.

Section does not limit Court's powers

(7) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

Application for Court order

(1) Each of the following persons may apply for an order under section 90-15:

- (a) a person with a financial interest in the administration of the regulated debtor's estate;
- (b) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;
- (c) the Inspector-General.

(2) If an application is made by a person referred to in paragraph (b), the reasonable expenses associated with the application are to be taken to be expenses of the administration of the estate.

Division C—Review by Inspector-General

Review by Inspector-General

(1) The Inspector-General may carry out a review of the remuneration received by the trustee of a regulated debtor's estate for services performed by the trustee in relation to the administration of the estate.

(2) The Inspector-General may carry out a review under this Subdivision:

- (a) on his or her own initiative; or
- (b) on application by the regulated debtor or a creditor.

(3) The trustee, the regulated debtor or a creditor of the regulated debtor may apply to the Court for an order in relation to a decision of the Inspector-General in relation to the review.

(4) In making an order under subsection (3), the Court must have regard to whether the remuneration received by the trustee is reasonable, taking into account any or all of the following matters:

- (a) the extent to which the work by the trustee was necessary and properly performed;
- (b) the extent to which the work likely to be performed by the trustee is likely to be necessary and properly performed;

- (c) the period during which the work was, or is likely to be performed by the trustee;
- (d) the quality of the work performed, or likely to be performed by the trustee;
- (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the trustee;
- (f) the extent (if any) to which the trustee was, or is likely to be, required to deal with extraordinary issues;
- (g) the extent (if any) to which the trustee was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
- (h) the value and nature of any property dealt with, or likely to be dealt with, by the trustee;
- (i) the number, attributes and conduct, or the likely number, attributes and conduct, of the creditors;
- (j) if the remuneration is worked out wholly or partly on a time-cost basis—the time properly taken, or likely to be properly taken, by the trustee in performing the work;
- (k) any other relevant matters.

Rules about reviews

- (1) The Insolvency Practice Rules may provide for and in relation to reviews under this Subdivision.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to any or all of the following matters:
 - (a) the giving of notice to the trustee before beginning a review or making an application for a review, under this Subdivision;
 - (b) the powers and duties of the Inspector-General in carrying out a review;
 - (c) the decisions that may be made by the Inspector-General in relation to the review;
 - (d) the repayment of remuneration by the trustee as a consequence of a review under this Subdivision.

Division D—Removal by creditors

Subdivision applies to the Official Trustee

This Subdivision applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate.

Removal by creditors

Creditors may remove trustee and appoint another

- (1) The creditors may:
 - (a) by resolution at a meeting, remove the trustee of a regulated debtor's estate; and
 - (b) by resolution at the same or a subsequent meeting, appoint another person as trustee of the regulated debtor's estate.

Note: For the general rules relating to meetings, see Division 75.

- (2) However, the creditors may not do so unless at least 5 business days' notice of the meeting is given to all persons who are entitled to receive notice of creditors' meetings.

Former trustee may apply to Court to be reappointed

- (3) A person (the **former trustee**) who has been removed as trustee

of the regulated debtor's estate by resolution of the creditors :
apply to the Court to be reappointed as trustee of the regulate
debtor's estate.

- (4) If the former trustee makes such an application, the former trustee must:
- (a) record all costs incurred by the former trustee and the debtor's estate in relation to the application; and
 - (b) do so in a way that separates those costs from the cost incurred by the former trustee and the regulated debtor's estate in relation to other matters.
- (5) The Court may order that the former trustee be reappointed trustee of the regulated debtor's estate if the Court is satisfied the removal of the former trustee was an improper use of the powers of one or more creditors.
- (6) The Court may make such other orders in relation to the application as it thinks fit, including orders in relation to:
- (a) the costs of the application; and
 - (b) the remuneration of the former trustee.

Part 95—Other matters

Part 95—Introduction

Simplified outline of this Part

This Part deals with a variety of matters:

- (a) the trustee of a regulated debtor's estate may assign right to sue; and
- (b) the Minister has power to make rules to be called the Insolvency Practice Rules.

Part 96—Administrative review

Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of any of the following decisions:

- (a) a decision of a committee under section 20-20 in relation to an application for registration as a trustee;
- (b) a decision of a committee under section 20-55 in relation to an application for the variation or removal of a condition of registration;
- (c) a decision of the Inspector-General to give a direction to a registered trustee under section 40-15 not to accept further appointments;
- (d) a decision of the Inspector-General to suspend the registration of a person as a trustee under section 40-25;
- (e) a decision of the Inspector-General to cancel the registration of a person as a trustee under section 40-30;
- (f) a decision of a committee under section 40-55 (disciplinary action by committee);
- (g) a decision of a committee under section 40-85 in relation to an application to lift or shorten the suspension of a person's registration as a trustee.

Part 100—Other matters

Division applies to the Official Trustee

This Division applies to the Official Trustee in the same way applies to the trustee of a regulated debtor's estate.

Trustee may assign right to sue under this Act

- (1) Subject to subsections (2) and (3), the trustee of a regulated debtor's estate may assign any right to sue that is conferred on the trustee by this Act.
- (2) If the trustee's action has already begun, the trustee cannot assign the right to sue unless the trustee has the approval of the Court.
- (3) Before assigning any right under subsection (1), the trustee must give written notice to the creditors of the proposed assignment.
- (4) If a right is assigned under this section, a reference in this Act to the trustee in relation to the action is taken to be a reference to the person to whom the right has been assigned.

Division 105—The Insolvency Practice Rules

The Insolvency Practice Rules

- (1) The Minister may, by legislative instrument, make rules providing for matters:
 - (a) required or permitted by this Act to be provided by the rules; or
 - (b) necessary or convenient to be provided in order to carry out or give effect to this Act.
- (2) Rules made under subsection (1) may include offences.
- (3) The penalties for offences described in subsection (2) must be more than 50 penalty units for an individual or 250 penalty units for a body corporate.
- (4) To avoid doubt, the rules may not do the following:
 - (a) create a civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (5) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.
- (7) In this section:

this Act does not include the regulations or rules made under this section.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compilation law.

The following endnotes are included in every compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law has amended (or will amend) the compiled law. The information include commencement details for amending laws and details of any application saving or transitional provisions that are not included in this compilation

The amendment history in endnote 4 provides information about amend at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s)/sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Bankruptcy Act 1994	33, 1966	1 June 1966	4 Mar 1968 (s 2)	

1966		1966	and gaz 1968, p 119)	
Bankruptcy Act 1968	121, 1968	3 Dec 1968	31 Dec 1968	—
Judges' Remuneration Act 1969	40, 1969	14 June 1969	First Sch: 14 June 1969 (s 2)	—
as repealed by				
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	s 7 and Sch 5: 31 Dec 1973 (s 2)	s 7(2)
Bankruptcy Act 1970	122, 1970	11 Nov 1970	11 Nov 1970 (s 2)	s 21
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	s 9(1), 10 and Sch 1: 31 Dec 1973 (s 2)	s 9(1) and 10
Postal and Telecommunications Commissions (Transitional Provisions) Act 1975	56, 1975	12 June 1975	s 38(3): 1 July 1975 (s 2(1) and gaz 1975, No S122) Sch 2 and Sch 3: 12 June 1975 (s 2(2))	s 38(3)
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	s 4: 20 Sept 1976 (s 2(1)) Sch: 22 Dec 1975 (2(7))	s 4
Bankruptcy Amendment Act 1976	161, 1976	9 Dec 1976	1 Feb 1977 (s 2 and gaz 1977, No S3, p 2)	s 5, 6(2), (3) and 7-9
Remuneration and Allowances Amendment Act 1977	111, 1977	28 Oct 1977	s 7: 28 Oct 1977 (s 2(2))	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	Sch: 19 Oct 1979 (s 2(1))	—
Bankruptcy Amendment Act 1980	12, 1980	8 Apr 1980	s 1, 2, 3(1), 4-6, 8, 13, 14, 18-20, 23-25, 29, 30, 36-41, 45, 46, 47(1), (3), 48, 52-54, 56, 63, 66-68, 71, 73(1), 79, 89, 91, 93-95, 97, 99, 105, 115, 117, 120-123, 126, 128, 129, 131, 133, 135, 143, 149, 150, 153, 155-162, 165-170, 174 and 176: 8 Apr 1980 (s 2(1)) Remainder: 1 Feb 1981 (s 2(2) and gaz 1980, No S282)	s 12(2), 17(2), 23(2), 24(2), 26(2), 27(2), 28(2), 29(2), 31(2), 32(2), 33(2), 34(2), 35(2), (3), 36(2), (3), 38(2)-(4), 40(2), 41(2)-(4), 42(2), 43(2), 44(2), 45(2), (3), 47(3), 51(2), (3), 53(2), 54(2), 55(2)-(6), 56(2), 57(2), 58(2), 59(2), 60(2), 61(2), 63(2), 69(2), 70(2), 71(2), 72(2), 75(2), 82(2), (3), 85(2), (3), 91(2), 96(2), 99(2), 104(2), 105(2), 109(2)-(5), 112(2), 115(2), 122(2), 124(2), 125(2), 127(2), 129(2), 130(2), 132(2), 133(2), 134(2), 136(2), 137(2), 139(2), 141(2), 142(2), (3), 147(2), 148(2), 152(2), (3), 158(2), 175 and 176
Australian Federal Police (Consequential Amendments) Act 1980	70, 1980	28 May 1980	Sch: 28 May 1980 (s 2)	—
Commonwealth	74, 1981	18 June	s 122-147: 2 Nov	s 123(2),

Functions (Statutes Review) Act 1981	1981		1981 (s 2(10) and gaz 1981, No S229)	125(2), 126(2), 127(2), 128(2), 129(2), 132(2), 134(2), 135(2), 137(2), 146(2), 147(2) and 264
as amended by				
Statute Law (Miscellaneous Amendments) Act 1981	176, 1981	2 Dec 1981	s 36, 37: 2 Nov 1981 (s 2(6))	—
Statute Law (Miscellaneous Amendments) Act 1981	176, 1981	2 Dec 1981	s 28–30: 1 Feb 1982 (s 2(4) and gaz 1982, No S10)	s 30
Income Tax (Payments for Work) (Consequential Amendments) Act 1983	18, 1983	14 June 1983	s 3 and 4: 14 June 1983 (s 2)	—
Australian Government Solicitor (Consequential Amendments) Act 1984	10, 1984	10 Apr 1984	s 4(1), (2) and Sch: 1 July 1984 (s 2(1))	s 4(1) and (2)
Public Service Reform Act 1984	63, 1984	25 June 1984	s 151(1): 1 July 1984 (s 2(4) and gaz 1984, No S245) s 151(6): repealed before commencing (s 2(4))	s 151(9)
as amended by				
Prime Minister and Cabinet Legislation Amendment Act 1991	199, 1991	18 Dec 1991	Sch 1: 18 Dec 1991 (s 2)	—
Bankruptcy Amendment Act 1985	21, 1985	7 May 1985	19 May 1986 (s 2 and gaz 1986, No S224)	s 6(2), 7(2), 8(2), 14(2), 29(2), (3) and 35(2)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	s 7: 9 June 1986 (s 2(2) and 1986, No. S264) s 16 and Sch 1: 16 Dec 1985 (s 2(1))	s 7 and 16
Taxation Laws Amendment Act (No. 4) 1986	154, 1986	18 Dec 1986	s 15 and 16: 18 Dec 1986 (s 2(1))	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986	168, 1986	18 Dec 1986	s 5(1), 6(1) and (2): 18 Dec 1986 (s 2(2)) Sch 1: 2 Mar 1987 (s 2(2) and gaz 1987, No. S32)	s 5(1), 6(1) and (2)
Proceeds of Crime (Miscellaneous Amendments) Act 1987	73, 1987	5 June 1987	s 3–10: 5 June 1987 (s 2)	—
Bankruptcy Amendment Act 1987	119, 1987	16 Dec 1987	s 3, 4(1)(a)–(e), (g), (h), (2), 5, 7, 8, 12, 13, 15, 23, 33, 39, 40, 45, 48, 49, 50, 52, 61, 66, 67, 80, 81, 83, 84, 85, 88, 89, 91–96, 102, 104, 106 and 107: 13 Jan 1988 (s 2(3)) s 4(1)(f), 9–11, 19, 24–29, 31, 32, 34–37, 46, 47, 53–58, 97, 98, 101, 103 and 105: 3 Jan 1989 (s 2(1) and gaz 1988, No S392) s 6, 16–18, 20–	s 4(2), 8(2), 9(2), 10(2), 11(2), 13(2), 15(2), 16(2), 17(2), 18(2), 20(2), 21(2), 22(2), 23(2), 25(2), (3), 26(2), 27(2), 28(2), 29(2), 30(2), 31(2), 32(2), 34(2), 35(2), 36(2), 37(2), (4), 38(2), 39(2), 40(2), 41(2), 42(2), 43(2), (4), 44(2), (4), 45(2), 46(2), 47(2), (3),

			22, 30, 38, 41, 59, 60, 62–65, 68–79, 82, 86, 87, 90, 99 and 100: 31 July 1989 (s 2(1) and gaz 1989, No S245) s 14, 42–44 and 51: 1 Mar 1988 (s 2(1) and gaz 1988, No S49)	48(2), 49(2), 50(2), 51(2), 52(2), 53(3), 55(2), 57(2), 58(2), 59(2), 60(2), 62(2), 63(2), 64(2), 65(2), 68(2), 69(2), 70(2), 71(2), 72(2), 73(2), 74(2), 75(2), 76(2), 77(2), 78(2), 79(2), (5), 82(2), 83(2), 84(2), 85(2), 86(2), 89(2), 91(2), 97(2), 98(2), 99(2), 103(2), 106 and 107
Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988 as amended by	8, 1988	5 Apr 1988	s 34–36: 1 July 1988 (s 2(3) and gaz 1988, No S191)	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	s 34, 35): 5 Apr 1988 (s 2(6))	—
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	s 5(1) and Sch 1: 3 June 1988 (s 2(1))	s 5(1)
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	Sch: 2 Dec 1988 (s 2)	—
Banking Legislation Amendment Act 1989	129, 1989	7 Nov 1989	s 28 and Sch 4: 28 Dec 1989 (s 2(4) and gaz 1989, No S383)	s 28
Law and Justice Legislation Amendment Act 1990	115, 1990	21 Dec 1990	s 3, 5, 6, 8, 9, 16, 17, 20–23, 28, 30, 32, 33, 38 and 39: 4 Feb 1991 (s 2(2) and gaz 1991, No GN3, p. 278) s 4, 7, 10–15, 18, 19, 24–27, 29, 31 and 34–37: 21 June 1991 s 2(3))	s 14(2), 15(2), 25(2)–(4), 35(2) and 36(2)
Bankruptcy Amendment Act 1991	9, 1992	17 Jan 1992	s 3–50: 1 July 1992 (s 2(2) and gaz 1992, No S176)	s 51–58
Social Security Legislation Amendment Act 1992	81, 1992	30 June 1992	Sch 2 (Pt 6): 1 July 1992 (s 2(14)(c))	—
Law and Justice Legislation Amendment Act (No. 4) 1992	143, 1992	7 Dec 1992	Sch: 7 Dec 1992 (s 2(1)) Sch: 4 Jan 1993 (s 2(2))	—
Corporate Law Reform Act 1992	210, 1992	24 Dec 1992	s 20: 1 Feb 1993 (s 2(3) and gaz 1993, No S25)	—
Bankruptcy Amendment Act 1993	11, 1993	31 May 1993	31 May 1993 (s 2)	—
Insolvency (Tax Priorities) Legislation Amendment Act 1993	32, 1993	16 June 1993	s 30 and Sch 1: 1 June 1993 (s 2(2))	s 30
Superannuation Industry (Supervision)	82, 1993	30 Nov 1993	s 5–11: 1 July 1994 (s 2(2)(b))	s 11

Consequential
Amendments Act
1993

Law and Justice Legislation Amendment Act 1994	84, 1994	23 June 1994	s 89-91: 23 June 1994 (s 2(1))	s 91
as amended by				
Primary Industries and Energy Legislation Amendment Act 1994	94, 1994	29 June 1994	s 12 and Sch: 23 June 1994 (s 2(5))	s 12
Student Assistance (Youth Training Allowance- Transitional Provisions and Consequential Amendments) Act 1994	184, 1994	23 Dec 1994	Sch 3: 1 Jan 1995 (s 2)	—
Taxation Laws Amendment Act (No. 3) 1995	170, 1995	16 Dec 1995	Sch 2 (items 54- 57, 64): 16 Dec 1995 (s 2(1))	Sch 2 (items 56, 64)
Bankruptcy Legislation Amendment Act 1996	44, 1996	25 Oct 1996	Sch 1 (items 2- 500): 16 Dec 1996 (s 2(2) and gaz 1996, No GN49) Sch 2: 16 Dec 1996 (s 2(4))	Sch 1 (items 441- 500)
as amended by				
Bankruptcy Amendment Act 1997	11, 1997	13 Mar 1997	Sch 2: 25 Oct 1996 (s 2(4))	—
Law and Justice Legislation Amendment Act 1999	125, 1999	13 Oct 1999	Sch 4: 16 Dec 1996 (s 2(4))	—
Bankruptcy Amendment Act 1997	11, 1997	13 Mar 1997	Sch 1 and 3: 14 Apr 1997 (s 2(2))	Sch 3
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	Sch 3: 2 June 1997 (s 2)	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (items 584- 596): 1 Jan 1998 (s 2(2))	—
Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997	179, 1997	25 Nov 1997	Sch 2 (items 1- 3): 25 Nov 1997 (s 2)	—
Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998	45, 1998	17 June 1998	Sch 13 (item 4): 1 July 1998 (s 2(1))	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	s 4(2): 29 June 1998 (s 2(1)) Sch 1 (Items 10- 23): 1 July 1998 (s 2(2))	s 4(2)
Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998	93, 1998	15 July 1998	Sch 7 (item 1): 1 Apr 1998 (s 2(9))	—
Superannuation Legislation Amendment Act 1999	38, 1999	31 May 1999	Sch 1: 31 May 1999 (s 2(1))	—
Financial Sector Reform (Amendments and	44, 1999	17 June 1999	Sch 7 (items 1- 4): 1 July 1999 (s 3(2)(e), (16) and	Sch 8 (items 1- 9, 22)

Transitional Provisions) Act (No. 1) 1999			gaz 1999, No S283) Sch 8 (items 1-9, 22): 17 June 1999 (s 3(1))	
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Sch 4 (item 4): 18 Jan 2001 (s 2(1))	—
A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999	83, 1999	8 July 1999	Sch 11 (item 3): 1 July 2000 (s 2(2))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 280): 5 Dec 1999 (s 2(1), (2))	—
A New Tax System (Tax Administration) Act 1999	179, 1999	22 Dec 1999	Sch 11 (item 3): 1 July 2000 (s 2(9)(b))	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Sch 7: 23 Dec 1999 (s 2(1))	—
Dairy Industry Adjustment Act 2000	22, 2000	3 Apr 2000	Sch 2 (items 1-3): 3 Apr 2000 (s 2)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 52-59, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Family Law Amendment Act 2000	143, 2000	29 Nov 2000	Sch 3 (item 1E): 27 Dec 2000 (s 2(1))	—
Farm Household Support Amendment Act 2000	144, 2000	7 Dec 2000	Sch 2 (item 1) and Sch 3 (items 7(1), 8): 18 Dec 2000 (s 2(2) and gaz 2000, No S634)	Sch 3 (items 7(1), 8)
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 5: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Corporations (Repeals, Consequential and Transitionals) Act 2001	55, 2001	28 June 2001	s 4-14 and Sch 3 (items 80-87): 15 July 2001 (s 2(3) and gaz 2001, No S285)	s 4-14
Family Law Legislation Amendment (Superannuation) Act 2001	61, 2001	28 June 2001	s 5 and Sch 1 (items 1, 2): 28 Dec 2002 (s 2(2))	s 5
as amended by				
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Sch 5 (item 10): 1 Jan 2003 (s 2(1) item 4)	—
Higher Education Funding Amendment Act 2001	86, 2001	18 July 2001	Sch 2 (items 1, 2): 18 July 2001 (s 2(1))	—
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Sch 1 (item 216): 11 Mar 2002 (s 2(1), (6) and gaz 2001, No. GN42)	—
Taxation Laws Amendment (Superannuation) Act (No. 2) 2002	51, 2002	29 June 2002	Sch 6 (items 1, 2): 5 May 2003 (s 2(1) item 10)	Sch 6 (item 2)
Proceeds of Crime (Consequential Amendments and	86, 2002	11 Oct 2002	Sch 4: 1 Jan 2003 (s 2(1) item 2)	Sch 4 (items 12, 16)

Transitional Provisions) Act 2002				
Bankruptcy Legislation Amendment Act 2002	131, 2002	18 Dec 2002	Sch 1: 5 May 2003 (s 2(1) item 2 and gaz 2003, No S138)	Sch 1 (items 198-237)
as amended by				
Bankruptcy Legislation Amendment Act 2004	80, 2004	23 June 2004	Sch 7 (items 1, 2): 5 May 2003 (s 2(1) item 5) Sch 7 (item 3): 23 June 2004 (s 2(1) item 6)	Sch 7 (item 3)
Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003	150, 2003	19 Dec 2003	Sch 2 (items 96, 97): 1 Jan 2004 (s 2(1) item 8)	—
Law and Justice Legislation Amendment Act 2004	62, 2004	26 May 2004	Sch 1 (items 11, 12): 27 May 2004 (s 2(1) item 6)	—
Bankruptcy Legislation Amendment Act 2004	80, 2004	23 June 2004	Sch 1 (items 1-187, 212-215) and Sch 2-5: 1 Dec 2004 (s 2(1) items 2, 3 and gaz 2004, No GN34) Sch 6: 23 June 2004 (s 2(1) item 4)	Sch 1 (items 212-215), Sch 2 (items 11-13), Sch 5 (item 3) and Sch 6 (item 4)
as amended by				
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 2 (item 9): 1 Dec 2004 (s 2(1) item 30)	—
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s 4 and Sch 1 (items 97-108, 496): 22 Feb 2005 (s 2(1) items 1, 2, 10)	s 4 and Sch 1 (item 496)
Bankruptcy and Family Law Legislation Amendment Act 2005	20, 2005	18 Mar 2005	Sch 1 (items 1-8): 18 Sept 2005 (s 2(1) item 2) Sch 2: 18 Mar 2005 (s 2(1) item 3) Sch 3, 4: 15 Apr 2005 (s 2(1) item 4)	Sch 2 (item 5), Sch 3 (item 2) and Sch 4 (item 3)
Family Law Amendment Act 2005	98, 2005	6 July 2005	Sch 1 (item 138): 18 Sept 2005 (s 2(1) item 3)	—
Bankruptcy Legislation Amendment (Anti-avoidance) Act 2006	33, 2006	3 May 2006	Sch 1: 31 May 2006 (s 2(1) item 2)	Sch 1 (item 30)
Bankruptcy Legislation Amendment (Fees and Charges) Act 2006	34, 2006	3 May 2006	Sch 1 and Sch 3 (items 3-9): 1 July 2006 (s 2(1) items 2-4) Sch 4: 3 May 2006 (s 2(1) item 5)	Sch 1 (items 3, 5, 9, 13, 15, 18), Sch 3 (item 4) and Sch 4 (item 8)
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Sch 2 (items 25, 26) and Sch 6 (items 1, 6-11): 14 Sept 2006 (s 2(1) items 2, 4)	Sch 6 (items 1, 6-11)
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 4 (items 2-4): 15 Mar 2007 (s 2(1) item 44)	—
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Sch 3 (items 1-3): 1 July 2007 (s 2(1) items 4, 5)	Sch 3 (item 3)
Bankruptcy Legislation Amendment (Debt	44, 2007	10 Apr 2007	Sch 1: 11 Apr 2007 (s 2(1) item 2)	Sch 1 (items 21-23) and Sch 2

Agreements) Act 2007			Sch 2: 1 July 2007 (s 2(1) item 3)	(item 80)
Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007	57, 2007	15 Apr 2007	Sch 1 (items 1–13): 28 July 2006 (s 2(1) item 2) Sch 1 (items 15–37): 15 Oct 2007 (s 2(1) item 3) Sch 2 (items 1, 5–7): 27 Apr 2007 (s 2(1) items 4, 6) Sch 2 (items 2–4): 16 Apr 2007 (s 2(1) item 5) Sch 2 (item 8): 31 May 2006 (s 2(1) item 7) Sch 2 (item 9): 16 Dec 1996 (s 2(1) item 8)	Sch 2 (item 4)
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 3 (item 26): 3 July 2008 (s 2(1) item 63)	—
Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008	115, 2008	21 Nov 2008	Sch 2 (items 4–18): 1 Mar 2009 (s 2(1) item 3)	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 2 (items 11–23, 25, 27, 29–33): 10 Dec 2008 (s 2(1) items 5, 7, 9, 11) Sch 2 (items 24, 26, 28): 1 Mar 2009 (s 2(1) items 6, 8, 10)	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 5 (items 17–19): 1 July 2009 (s 2(1) item 11)	—
Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009	106, 2009	6 Nov 2009	Sch 1 (items 7–9): 4 Dec 2009 (s 2(1) item 2)	—
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Sch 5 (items 5–18): 30 Jan 2012 (s 2(1) item 7)	Sch 5 (item 18)
Crimes Legislation Amendment (Serious and Organised Crime) Act 2010	3, 2010	19 Feb 2010	Sch 1 (item 43): 19 Feb 2010 (s 2(1) item 2)	—
Bankruptcy Legislation Amendment Act 2010	106, 2010	14 July 2010	Sch 1, Sch 2 and Sch 4 (items 5–10, 12, 13): 1 Dec 2010 (s 2(1) items 2, 5) Sch 3: 15 July 2010 (s 2(1) item 3) Sch 4 (items 1–4): 11 Aug 2010 (s 2(1) item 4)	Sch 1 (item 17), Sch 2 (item 84), Sch 3 (item 17) and Sch 4 (items 4, 13)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 5 (items 44, 45) and Sch 7 (items 30, 31): 19 Apr 2011 (s 2(1) items 13, 18)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 289–291) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Crimes Legislation Amendment Act (No. 2) 2011	174, 2011	5 Dec 2011	Sch 2 (items 142–150): 1 Jan 2012 (s 2(1) item 3)	Sch 2 (item 150)

Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011	189, 2011	7 Dec 2011	Sch 2 (items 1, 2): 4 Jan 2012 (s 2(1) item 3) Sch 2 (item 31): 7 Dec 2011 (s 2(1) item 6)	Sch 2 (item 31)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 54– 57): 12 Apr 2013 (s. 2(1) item 2) Sch 2 (item 1): 12 Apr 2013 (s 2(1) items 2, 3)	Sch 1 (item 57)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 4 (items 9, 10, 60): 24 June 2014 (s 2(1) item 9)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 31), Sch 8 (items 10– 12) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Trade Support Loans (Consequential Amendments) Act 2014	82, 2014	17 July 2014	Sch 1 (item 1): 18 July 2014 (s 2(1) item 2)	—
Civil Law and Justice Legislation Amendment Act 2015	113, 2015	17 Aug 2015	Sch 1: 18 Aug 2015 (s 2(1) item 2)	Sch 1 (items 12, 15, 17)
Passports Legislation Amendment (Integrity) Act 2015	122, 2015	10 Sept 2015	Sch 1 (item 93): 8 Oct 2015 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 80, 81): 5 Mar 2016 (s 2(1) item 2)	—
Civil Law and Justice (Omnibus Amendments) Act 2015	132, 2015	13 Oct 2015	Sch 1 (items 8– 24): 14 Oct 2015 (s 2(1) item 2)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 3 (item 7) and Sch 4 (item 4): 10 Dec 2015 (s 2(1) item 7)	—
Labor 2013-14 Budget Savings (Measures No. 2) Act 2015	169, 2015	11 Dec 2015	Sch 1 (items 1, 111): 1 Jan 2016 (s 2(1) item 2)	Sch 1 (item 111)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 29–33, 337): 10 Mar 2016 (s 2(1) item 6)	—
Insolvency Law Reform Act 2016	11, 2016	29 Feb 2016	Sch 1 (items 1– 98, 101–178) and Sch 2 (item 36): 1 Mar 2016 (s 2(1) item 1)	Sch 1 (items 101– 178) (as amended by Sch 2 (item 36): 1 Mar 2016 (s 2(1) item 1))

			Sch 2 (item 30): 1 Mar 2017 (s 2(1) items 2, 3)	170) (as modified by F2016L01898)
Courts Administration Legislation Amendment Act 2016	24, 2016	18 Mar 2016	Sch 5 (items 4, 15, 16): 1 July 2016 (s 2(1) item 7) Sch 6: 18 Mar 2016 (s 2(1) item 9)	Sch 6
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016	26, 2016	23 Mar 2016	Sch 1 (items 8–11, 34, 35): 1 May 2016 (s 2(1) item 2)	Sch 1 (items 34, 35)
Trade Legislation Amendment Act (No. 1) 2016	31, 2016	23 Mar 2016	Sch 2 (item 11): 1 May 2016 (s 2(1) item 3)	—
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 5 (items 18, 19): 1 July 2016 (s 2(1) item 7)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 57–62): 21 Oct 2016 (s 2(1) item 1)	—
Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 1 (item 2): 17 Nov 2016 (s 2(1) item 2)	—
Treasury Laws Amendment (2017 Measures No. 2) Act 2017	55, 2017	22 June 2017	Sch 2 (items 1, 2): 22 June 2017 (s 2(1) item 8)	—
National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Act 2018	46, 2018	21 June 2018	Sch 2: 1 July 2018 (s 2(1) item 1)	—
Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018	116, 2018	25 Sept 2018	Sch 1 (item 25): 1 July 2019 (s 2(1) item 2)	—
Bankruptcy Amendment (Debt Agreement Reform) Act 2018	118, 2018	27 Sept 2018	Sch 1 (items 1–5, 13–42), Sch 2–5 and Sch 6 (items 1, 2): 27 June 2019 (s 2(1) items 2, 4–12) Sch 1 (items 6–12): 27 Sept 2019 (s 2(1) item 3)	Sch 1 (items 4, 5, 12, 16, 18, 22, 24, 42), Sch 2 (items 5, 13, 17, 22, 24, 28, 33, 35), Sch 3 (items 14, 20, 22, 25, 27, 29), Sch 4 (item 4), Sch 5 (item 5) and Sch 6 (item 2)
Civil Law and Justice Legislation Amendment Act 2018	130, 2018	25 Oct 2018	Sch 3: 26 Oct 2018 (s 2(1) item 5)	—
Coronavirus Economic Response Package Omnibus Act 2020	22, 2020	24 Mar 2020	Sch 12 (items 1–15): 25 Mar 2020 (s 2(1) item 8)	Sch 12 (item 15)

Name	Registration	Commencement	Application, saving and transitional provisions
Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI No. 50, 2006)	17 Mar 2006 (F2006L00820)	Sch 32: 27 Mar 2006 (r 2(b))	—

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 3.....	am No 122, 1970 rep No 216, 1973
s 4	am No 12, 1980
s 4A.....	ad No 11, 2016
Part IA	
Part IA heading.....	ad No 119, 1987
s 5.....	am No 121, 1968; No 122, 1970; No 155, 1979; No 12, 1980; No 70, 1980; No 21, 1985; No 73, 1987; No 119, 1987; No 8, 1988; No 129, 1989; No 115, 1990; No 9, 1992; No 210, 1992; No 82, 1993; No 44, 1996; No 62, 1997; No 48, 1998; No 194, 1999; No 143, 2000; No 55, 2001; No 123, 2001; No 86, 2002; No 131, 2002; No 80, 2004; No 20, 2005; No 33, 2006; No 34, 2006; No 8, 2007; No 44, 2007; No 57, 2007; No 115, 2008; No 144, 2008; No 54, 2009; No 31, 2009; No 3, 2010; No 106, 2010; No 5, 2011; No 174, 2011; No 13, 2013; No 62, 2014; No 11, 2016; No 24, 2016; No 26, 2016; No 33, 2016; No 22, 2020
s 5AA.....	ad No 44, 1996 am No 80, 2004 rep No 106, 2010
s 5A.....	ad No 119, 1987
s 5B.....	ad No 119, 1987 am No 44, 1996
s 5C.....	ad No 119, 1987 am No 44, 1996
s 5D.....	ad No 119, 1987
s 5E.....	ad No 119, 1987
s 5F.....	ad No 119, 1987
s 5G.....	ad No 119, 1987 am No 210, 1992; No 55, 2001; No 8, 2007
s 5H.....	ad No 119, 1987 am No 80, 2004
s 5J.....	ad No 119, 1987
s 5K.....	ad No 119, 1987
s 6A.....	ad No 119, 1987 rs No 9, 1992 am No 44, 1996; No 80, 2004; No 34, 2006; No 106, 2010
s 6B.....	ad No 9, 1992 am No 44, 1996; No 34, 2006
s 6C.....	ad No 86, 2002
s 6D.....	ad No 11, 2016
Part IB	
Part IB heading.....	ad No 119, 1987
s 7.....	am No 12, 1980; No 119, 1987; No 44, 1996
s 7A.....	ad No 24, 2001
s 8.....	rs No 12, 1980; No 145, 2015
s 9.....	am No 12, 1980
s 9A.....	ad No 33, 2016
Part II	
Division 1	
Division 1 heading.....	ad No 12, 1980
s 10.....	am No 91, 1976 rs No 119, 1987 am No 115, 1990; No 5, 2011; No 118, 2018
s 11.....	am No 44, 1996; No 131, 2002
s 12.....	am No 91, 1976; No 12, 1980; No 21, 1985; No 168, 1986; No 73, 1987; No 119, 1987; No 9, 1992; No 44, 1996; No 131, 2002; No 80, 2004; No 44, 2007; No 106, 2010; No 174, 2011; No 11, 2016; No 118, 2018
s 13.....	rs No 44, 1996 rep No 106, 2010 ad No 62, 2014
s 14.....	am No 12, 1980; No 21, 1985; No 115, 1990 rep No 44, 1996
s 14A.....	ad No 12, 1980 rep No 44, 1996

s 15.....	am No 12, 1980; No 44, 1996; No 131, 2002; No 106, 2010
s 16.....	am No 12, 1980; No 21, 1985; No 44, 1996; No 131, 2002
s 17.....	am No 91, 1976; No 12, 1980 rs No 12, 1980 am No 21, 1985; No 44, 1996; No 131, 2002; No 46, 2011
s 17A.....	ad No 12, 1980 am No 21, 1985 rep No 44, 1996
s 17AA.....	ad No 193, 1985 rep No 44, 1996
s 17B.....	ad No 12, 1980 am No 26, 2016
s 18.....	am No 91, 1976; No 12, 1980 rs No 12, 1980 am No 21, 1985; No 168, 1986; No 44, 1996; No 80, 2004; No 106, 2010; No 113, 2015
s 18AA.....	ad No 152, 1997 rs No 62, 2014
s 18A.....	ad No 12, 1980 am No 44, 1996; No 80, 2004
s 19.....	am No 12, 1980; No 74, 1981; No 21, 1985; No 119, 1987; No 115, 1990; No 9, 1992; No 143, 1992; No 44, 1996; No 131, 2002; No 11, 2016
s 19AA.....	ad No 119, 1987 rs No 44, 1996 am No 131, 2002
s 19A.....	ad No 12, 1980 am No 44, 1996
s 19B.....	ad No 12, 1980 rep No 44, 1996 ad No 11, 2016
s 20.....	am No 12, 1980 rs No 168, 1986 rep No 44, 1996
Division 2	
Division 2.....	ad No 12, 1980
s 20A.....	ad No 12, 1980 am No 168, 1986; No 152, 1997; No 8, 2005
s 20B.....	ad No 12, 1980 am No 21, 1985; No 168, 1986; No 115, 1990; No 44, 1996; No 48, 1998; No 44, 2007; No 106, 2010; No 113, 2015
s 20C.....	ad No 12, 1980 am No 63, 1984 rep No 168, 1986
s 20D.....	ad No 12, 1980 am No 168, 1986; No 119, 1987; No 44, 1996; No 11, 1997; No 48, 1998
s 20E.....	ad No 12, 1980 am No 168, 1986; No 44, 1996; No 48, 1998; No 5, 2011
s 20F.....	ad No 12, 1980 am No 168, 1986
s 20G.....	ad No 12, 1980 rs No 152, 1997; No 8, 2005 am No 62, 2014
s 20H.....	ad No 12, 1980 am No 21, 1985; No 168, 1986; No 152, 1997 rs No 8, 2005 am No 57, 2007
s 20J.....	ad No 12, 1980 am No 168, 1986; No 44, 1996 (as am by No 125, 1999); No 80, 2004
Part III	
Division 1.....	rep No 44, 1996
s 21.....	am No 12, 1980 rep No 44, 1996
s 22.....	rep No 44, 1996
s 23.....	am No 12, 1980 rep No 44, 1996
s 24.....	am No 12, 1980

	rep No 44, 1996
s 25.....	am No 40, 1969
	rs No 111, 1977
	rep No 44, 1996
s 26.....	am No 12, 1980
	rep No 44, 1996
Division 2	
s 27.....	am No 161, 1976; No 12, 1980; No 176, 1981; No 44, 1996; No 194, 1999; No 20, 2005; No 13, 2013; No 113, 2015
s 28.....	am No 161, 1976; No 12, 1980
	rep No 44, 1996
s 29.....	am No 12, 1980; No 44, 1996
s 30.....	am No 12, 1980; No 119, 1987; No 44, 1996; No 194, 1999
s 31.....	am No 12, 1980; No 119, 1987; No 143, 1992; No 44, 1996; No 80, 2004
s 31A.....	ad No 168, 1986
	am No 115, 1990; No 9, 1992
	rep No 44, 1996
s 33.....	am No 12, 1980; No 44, 1996; No 22, 2020
s 33A.....	ad No 131, 2002
s 34.....	am No 44, 1996
s 34A.....	ad No 119, 1987
s 35.....	am No 12, 1980
	rs No 12, 1980
	rep No 44, 1996
	ad No 20, 2005
	am No 115, 2008; No 130, 2018
s 35A.....	ad No 8, 1988
	am No 44, 1996; No 194, 1999; No 189, 2011; No 13, 2013
s 35B.....	ad No 98, 2005
	am No 115, 2008
s 36.....	am No 44, 1996
s 37.....	am No 12, 1980
	rs No 9, 1992
s 38.....	rs No 161, 1976
	am No 38, 1988
	rep No 44, 1996
s 39.....	rep No 161, 1976
Part IV	
Division 1	
s 40.....	am No 12, 1980; No 21, 1985; No 119, 1987; No 44, 1996; No 86, 2002; No 131, 2002; No 80, 2004; No 20, 2005; No 115, 2008; No 31, 2014; No 11, 2016; No 22, 2020
s 41.....	am No 12, 1980; No 193, 1985; No 44, 1996; No 131, 2002; No 80, 2004; No 106, 2010; No 22, 2020
s 42.....	am No 12, 1980; No 10, 1984; No 5, 2011; No 22, 2020
Division 2	
s 43.....	am No 12, 1980; No 143, 1992; No 131, 2002; No 11, 2016
s 44.....	am No 12, 1980; No 21, 1985; No 44, 1996; No 106, 2010; No 22, 2020
s 45.....	am No 44, 1996
s 46.....	am No 12, 1980
s 47.....	am No 44, 1996
s 48.....	am No 121, 1968; No 12, 1980
	rep No 12, 1980
s 50.....	am No 12, 1980; No 74, 1981; No 119, 1987; No 44, 1996; No 131, 2002
s 51.....	am No 12, 1980
s 52.....	am No 12, 1980; No 74, 1981 (as am by No 176, 1981); No 21, 1985; No 44, 1996; No 106, 2010
s 53.....	am No 121, 1968; No 12, 1980
s 54.....	am No 12, 1980; No 74, 1981; No 21, 1985; No 119, 1987; No 44, 1996; No 24, 2001; No 131, 2002; No 34, 2006; No 106, 2010; No 132, 2015; No 11, 2016
Division 2A	
Division 2A.....	ad No 119, 1987
s 54A.....	ad No 119. 1987

s 52A.....	ad No 120, 2001
s 54B.....	am No 44, 1996; No 106, 2010 ad No 119, 1987
s 54C.....	ad No 119, 1987 am No 44, 1996; No 106, 2010
s 54D.....	ad No 119, 1987 am No 44, 1996
s 54E.....	ad No 119, 1987 am No 44, 1996
s 54F.....	ad No 119, 1987 am No 44, 1996
s 54G.....	ad No 119, 1987 am No 44, 1996
s 54H.....	ad No 119, 1987 am No 44, 1996
s 54J.....	ad No 119, 1987
s 54K.....	ad No 119, 1987
s 54L.....	ad No 119, 1987
Division 3	
s 55.....	am No 122, 1970; No 12, 1980; No 74, 1981; No 21, 1985; No 119, 1987; No 115, 1990; No 143, 1992; No 44, 1996; No 131, 2002; No 80, 2004; No 34, 2006; No 132, 2015; No 11, 2016
s 56.....	am No 122, 1970; No 12, 1980 rs No 12, 1980 am No 74, 1981; No 21, 1985; No 119, 1987; No 115, 1990; No 143, 1992 rep No 44, 1996
s 56A.....	ad No 44, 1996 am No 80, 2004
s 56B.....	ad No 44, 1996
s 56C.....	ad No 44, 1996
s 56D.....	ad No 44, 1996
s 56E.....	ad No 44, 1996 am No 131, 2002; No 11, 2016
s 56F.....	ad No 44, 1996 am No 24, 2001; No 131, 2002; No 106, 2010; No 11, 2016
s 56G.....	ad No 44, 1996 am No 131, 2002; No 34, 2006
s 57.....	rs No 12, 1980 am No 74, 1981; No 21, 1985; No 119, 1987; No 115, 1990; No 143, 1992; No 44, 1996; No 131, 2002; No 80, 2004; No 34, 2006; No 11, 2016
s 57A.....	ad No 12, 1980 am No 44, 1996
Division 4	
s 58.....	am No 12, 1980; No 74, 1981; No 73, 1987; No 44, 1996; No 86, 2002; No 34, 2006
s 58A.....	ad No 86, 2002 am No 174, 2011
s 59.....	am No 12, 1980 rs No 12, 1980 am No 119, 1987; No 143, 1992; No 44, 1996; No 57, 2007
s 59A.....	ad No 20, 2005 am No 115, 2008
s 60.....	am No 12, 1980; No 73, 1987; No 44, 1996; No 86, 2002; No 144, 2008
s 61.....	am No 44, 1996
s 63.....	am No 44, 1996
Division 5 heading.....	am No 119, 1987; No 115, 1990 rs No 9, 1992 rep No 11, 2016
Division 5.....	rep No 11, 2016
Subdivision A heading.....	ad No 9, 1992 rep No 11, 2016
Subdivision A.....	rep No 11, 2016
s 63A.....	ad No 9, 1992 am No 44, 1996 rep No 11, 2016
s 63B.....	ad No 9, 1992 rep No 11, 2016
Subdivision B heading.....	ad No 9, 1992

	rep No 11, 2016
Subdivision B.....	rep No 11, 2016
s 64.....	rs No 12, 1980
	am No 74, 1981; No 21, 1985
	rs No 119, 1987
	am No 9, 1992; No 131, 2002
	rep No 11, 2016
s 64A.....	ad No 9, 1992
	am No 80, 2004; No 31, 2014
	rep No 11, 2016
s 64B.....	ad No 9, 1992
	rep No 11, 2016
s 64C.....	ad No 9, 1992
	am No 31, 2014
	rep No 11, 2016
s 64D.....	ad No 9, 1992
	am No 44, 1996
	rep No 11, 2016
s 64E.....	ad No 9, 1992
	rep No 11, 2016
s 64F.....	ad No 9, 1992
	rep No 11, 2016
s 64G.....	ad No 9, 1992
	am No 44, 1996
	rep No 11, 2016
Subdivision C.....	rep No 11, 2016
s 64H.....	ad No 9, 1992
	rep No 11, 2016
s 64J.....	ad No 9, 1992
	rep No 11, 2016
Subdivision D.....	rep No 11, 2016
s 64K.....	ad No 9, 1992
	rep No 11, 2016
s 64L.....	ad No 9, 1992
	rep No 11, 2016
s 64M.....	ad No 9, 1992
	am No 131, 2002
	rep No 11, 2016
s 64N.....	ad No 9, 1992
	am No 131, 2002
	rep No 11, 2016
s 64P.....	ad No 9, 1992
	rep No 11, 2016
s 64Q.....	ad No 9, 1992
	rep No 11, 2016
s 64R.....	ad No 9, 1992
	rep No 11, 2016
s 64S.....	ad No 9, 1992
	rep No 11, 2016
s 64T.....	ad No 9, 1992
	rep No 11, 2016
s 64U.....	ad No 9, 1992
	am No 44, 1996; No 131, 2002; No 106, 2010
	rep No 11, 2016
s 64V.....	ad No 9, 1992
	rep No 11, 2016
s 64W.....	ad No 9, 1992
	rep No 11, 2016
s 64X.....	ad No 9, 1992
	rep No 11, 2016
Subdivision E.....	rep No 11, 2016
s 64Y.....	ad No 9, 1992
	rep No 11, 2016
s 64Z.....	ad No 9, 1992
	am No 44, 1996; No 131, 2002
	rep No 11, 2016
s 64ZA.....	ad No 9, 1992
	am No 131, 2002
	rep No 11, 2016
s 64ZB.....	ad No 9, 1992
	am No 44, 1996; No 131, 2002

	rep No 11, 2016
s 64ZBA.....	ad No 131, 2002 am No 106, 2010 rep No 11, 2016
s 64ZC.....	ad No 9, 1992 rep No 11, 2016
s 64ZD.....	ad No 9, 1992 am No 106, 2010 rep No 11, 2016
s 64ZE.....	ad No 9, 1992 rep No 11, 2016
s 64ZF.....	ad No 9, 1992 rep No 11, 2016
s 65.....	am No 119, 1987 rep No 9, 1992
s 66.....	am No 12, 1980; No 119, 1987 rep No 9, 1992
s 67.....	am No 119, 1987 rep No 9, 1992
s 68.....	am No 12, 1980; No 119, 1987 rep No 9, 1992
s 69.....	am No 121, 1968 rs No 12, 1980 am No 74, 1981; No 21, 1985; No 119, 1987 rep No 115, 1990
Division 5A heading.....	ad No 9, 1992 rep No 11, 2016
Division 5A.....	rep No 11, 2016
s 70.....	am No 12, 1980; No 119, 1987; No 9, 1992; No 44, 1996 rep No 11, 2016
s 71.....	am No 12, 1980; No 44, 1996; No 80, 2004 rep No 11, 2016
s 72.....	rep No 11, 2016
Division 6	
s 73.....	am No 44, 1996; No 131, 2002; No 80, 2004; No 106, 2010; No 11, 2016
s 73A.....	ad No 131, 2002 rep No 11, 2016
s 73B.....	ad No 80, 2004 am No 11, 2016
s 73C.....	ad No 80, 2004 rep No 11, 2016
s 74.....	am No 12, 1980; No 119, 1987; No 9, 1992; No 44, 1996; No 106, 2010; No 11, 2016
s 74A.....	ad No 131, 2002 am No 11, 2016
s 75.....	am No 122, 1970; No 12, 1980; No 9, 1992; No 44, 1996; No 80, 2004
s 76.....	am No 119, 1987; No 44, 1996; No 11, 2016
s 76A.....	ad No 9, 1992; No 44, 1996 rep No 11, 2016
s 76B.....	ad No 80, 2004
Part V	
Division 1	
Division 1 heading.....	ad No 9, 1992
s 77.....	am No 119, 1987; No 44, 1996; No 131, 2002; No 122, 2015
s 77AA.....	ad No 9, 1992 am No 44, 1996; No 61, 2016
s 77A.....	ad No 119, 1987 am No 131, 2002
s 77B.....	ad No 119, 1987 rep No 131, 2002
s 77C.....	ad No 9, 1992 am No 33, 2006; No 34, 2006; No 113, 2015
s 77CA.....	ad No 106, 2010
s 77D.....	ad No 9, 1992
s 77E.....	ad No 9, 1992 am No 44, 1996
s 77F.....	ad No 9, 1992
s 78.....	am No 121, 1968; No 12, 1980; No 119, 1987; No 44, 1996

s 79.....	am No 56, 1975; No 12, 1980 rep No 44, 1996
s 80.....	am No 12, 1980; No 9, 1992; No 44, 1996; No 24, 2001; No 131, 2002
s 81.....	am No 121, 1968 rs No 12, 1980 am No 21, 1985; No 119, 1987; No 115, 1990; No 9, 1992; No 44, 1996; No 33, 2006

Division 2

Division 2.....	ad No 9, 1992
s 81A.....	ad No 9, 1992
s 81B.....	ad No 9, 1992
s 81C.....	ad No 9, 1992
s 81D.....	ad No 9, 1992
s 81E.....	ad No 9, 1992
s 81F.....	ad No 9, 1992

Division 3

Division 3.....	ad No 9, 1992
s 81G.....	ad No 9, 1992

Part VI

Division 1

s 82.....	am No 12, 1980; No 73, 1987; No 119, 1987; No 210, 1992; No 44, 1996; No 55, 2001; No 86, 2001; No 86, 2002; No 131, 2002; No 150, 2003; No 82, 2014; No 169, 2015; No 116, 2018
s 83.....	am No 44, 1996
s 84.....	am No 12, 1980; No 44, 1996; No 137, 2000
s 85.....	am No 12, 1980; No 44, 1996; No 137, 2000
s 86.....	am No 44, 1996
s 90.....	am No 12, 1980; No 44, 1996
s 91.....	am No 12, 1980; No 44, 1996
s 92.....	am No 44, 1996
s 93.....	am No 12, 1980; No 44, 1996
s 94.....	am No 12, 1980; No 44, 1996
s 95.....	am No 12, 1980; No 44, 1996
s 98.....	am No 44, 1996
s 99.....	am No 12, 1980; No 44, 1996 rep No 131, 2002
s 100.....	am No 12, 1980; No 44, 1996
s 101.....	am No 12, 1980; No 119, 1987
s 102.....	am No 12, 1980; No 44, 1996
s 103.....	am No 12, 1980 rs No 131, 2002
s 104.....	am No 12, 1980; No 131, 2002
s 105.....	am No 12, 1980
s 106.....	am No 12, 1980; No 44, 1996
s 107.....	am No 12, 1980; No 44, 1996

Division 2

Subdivision A

Subdivision A heading.....	ad No 86, 2002
s 108.....	am No 86, 2002
s 109.....	am No 122, 1970; No 12, 1980 rs No 12, 1980 am No 18, 1983; No 21, 1985; No 154, 1986; No 119, 1987; No 115, 1990; No 32, 1993; No 170, 1995; No 44, 1996; No 51, 2002; No 131, 2002; No 80, 2004; SLI 2006 No 50; No 101, 2006; No 54, 2009; No 11, 2016
s 109A.....	ad No 21, 1985
s 110.....	am No 44, 1996
s 111.....	am No 12, 1980 rep No 119, 1987
s 112.....	am No 12, 1980 rep No 119, 1987
s 113.....	am No 44, 1996
s 114.....	am No 44, 1996; No 80, 2004

Subdivision B

Subdivision B.....	ad No 86, 2002
s 114A.....	ad No 86, 2002
s 114B.....	ad No 86, 2002
s 114C.....	ad No 86, 2002 am No 174, 2011

Division 3

Subdivision A

Subdivision A heading.....	ad No 57, 2007
s 115.....	am No 12, 1980; No 44, 1996; No 131, 2002
s 116.....	am No 12, 1980; No 168, 1986; No 119, 1987; No 115, 1990; No 143, 1992; No 82, 1993; No 84, 1994; No 44, 1996; No 62, 1997; No 179, 1997; No 38, 1999; No 22, 2000; No 144, 2000; No 61, 2001; No 131, 2002; No 20, 2005; No 33, 2006; No 15, 2007; No 57, 2007; No 115, 2008; No 144, 2008; No 113, 2015; No 126, 2015; No 46, 2018
s 117.....	am No 12, 1980; No 44, 1996
s 118.....	am No 12, 1980 rs No 12, 1980 am No 44, 1996
s 119.....	am No 12, 1980 rs No 12, 1980 am No 44, 1996
s 119A.....	ad No 12, 1980 am No 168, 1986; No 44, 1996
s 120.....	am No 12, 1980; No 119, 1987 rs No 44, 1996 am No 33, 2006; No 115, 2008; No 144, 2008
s 121	rs No 44, 1996 am No 33, 2006; No 57, 2007; No 115, 2008; No 144, 2008
s 121A.....	ad No 33, 2006
s 122.....	am No 12, 1980; No 32, 1993; No 44, 1996
s 123.....	am No 12, 1980; No 119, 1987; No 32, 1993; No 44, 1996; No 57, 2007
s 124.....	am No 12, 1980; No 44, 1996
s 125.....	am No 12, 1980; No 21, 1985; No 44, 1996; No 48, 1998; No 44, 1999; No 20, 2005; No 11, 2016
s 126.....	am No 12, 1980; No 44, 1996; No 48, 1998
s 127.....	am No 12, 1980; No 44, 1996
s 128.....	am No 12, 1980; No 44, 1996

Subdivision B

Subdivision B.....	ad No 57, 2007
s 128A.....	ad No 57, 2007 am No 57, 2007
s 128B.....	ad No 57, 2007 am No 57, 2007
s 128C.....	ad No 57, 2007 am No 57, 2007
s 128D.....	ad No 57, 2007
s 128E.....	ad No 57, 2007
s 128F.....	ad No 57, 2007
s 128G.....	ad No 57, 2007
s 128H.....	ad No 57, 2007
s 128J.....	ad No 57, 2007
s 128K.....	ad No 57, 2007
s 128L.....	ad No 57, 2007
s 128M.....	ad No 57, 2007
s 128N.....	ad No 57, 2007 am No 57, 2007

Division 4

s 129.....	am No 12, 1980; No 119, 1987; No 44, 1996
s 129AA.....	ad No 131, 2002
s 129A.....	ad No 115, 1990
s 130.....	rs No 119, 1987 am No 115, 1990
s 131.....	am No 12, 1980 rep No 9, 1992
s 132.....	am No 12, 1980; No 74, 1981; No 21, 1985; No 44, 1996
s 133.....	am No 12, 1980; No 119, 1987; No 44, 1996
s 134.....	am No 12, 1980; No 119, 1987; No 44, 1996; No 131, 2002; No 144, 2008; No 11, 2016
s 135.....	am No 12, 1980; No 119, 1987; No 44, 1996 rep No 131, 2002
s 136.....	am No 12, 1980; No 44, 1996
s 137.....	am No 12, 1980; No 44, 1996
s 138.....	am No 44, 1996
s 139.....	am No 12, 1980; No 21, 1985; No 44, 1996

Division 4A

Division 4A heading.....	rs No 33, 2006
Division 4A.....	ad No 119, 1987
s 139A.....	ad No 119, 1987
s 139B.....	ad No 119, 1987
s 139C.....	ad No 119, 1987
s 139CA.....	ad No 33, 2006
s 139D.....	ad No 119, 1987
	am No 115, 1990; No 33, 2006
s 139DA.....	ad No 33, 2006
s 139E.....	ad No 119, 1987
	am No 115, 1990; No 33, 2006
s 139EA.....	ad No 33, 2006
s 139F.....	ad No 119, 1987
	am No 33, 2006
s 139G.....	ad No 119, 1987
	am No 33, 2006
s 139H.....	ad No 119, 1987
	am No 33, 2006

Division 4B

Division 4B.....	ad No 9, 1992
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Subdivision A

s 139J.....	ad No 9, 1992
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Subdivision B

s 139K.....	ad No 9, 1992
	am No 81, 1992; No 44, 1996; No 131, 2002; No 144, 2008

Subdivision C

s 139L.....	ad No 9, 1992
	am No 82, 1993; No 184, 1994; No 44, 1996; No 62, 1997; No 152, 1997; No 45, 1998; No 93, 1998, No 83, 1999; No 131, 2002; No 8, 2005; No 20, 2005
s 139M.....	ad No 9, 1992
s 139N.....	ad No 9, 1992
	am No 44, 1996; No 131, 2002

Subdivision D

s 139P.....	ad No 9, 1992
s 139Q.....	ad No 9, 1992
s 139R.....	ad No 9, 1992
s 139S.....	ad No 9, 1992
s 139T.....	ad No 9, 1992
	am No 44, 1996
	rs No 131, 2002

Subdivision E

s 139U.....	ad No 9, 1992
	am No 170, 1995; No 48, 1998; No 179, 1999; No 131, 2002
s 139V.....	ad No 9, 1992

Subdivision F

s 139W.....	ad No 9, 1992
	am No 44, 1996; No 131, 2002; No 80, 2004
s 139WA.....	ad No 131, 2002
s 139X.....	ad No 9, 1992
s 139Y.....	ad No 9, 1992
	am SLI 2006 No 50; No 54, 2009
s 139Z.....	ad No 9, 1992

Subdivision G

s 139ZA.....	ad No 9, 1992
	am No 131, 2002; No 132, 2015
s 139ZB.....	ad No 9, 1992
	rep No 44, 1996
s 139ZC.....	ad No 9, 1992
s 139ZD.....	ad No 9, 1992
s 139ZE.....	ad No 9, 1992
	am No 131, 2002; No 132, 2015
s 139ZF.....	ad No 9, 1992
	rs No 131, 2002

Subdivision H

s 139ZG.....	ad No 9, 1992
	am No 11, 1993; No 131, 2002; No 34, 2006
s 139ZH.....	ad No 9, 1992
s 139ZI.....	ad No 9, 1992

Subdivision HA

Subdivision HA.....	ad No 20, 2005
s 139ZIA.....	ad No 20, 2005
s 139ZIB.....	ad No 20, 2005
	am No 11, 2016
s 139ZIC.....	ad No 20, 2005
s 139ZID.....	ad No 20, 2005
s 139ZIDA.....	ad No 20, 2005
s 139ZIE.....	ad No 20, 2005
	am No 4, 2016; No 11, 2016
s 139ZIEA.....	ad No 20, 2005
	am No 4, 2016
s 139ZIF.....	ad No 20, 2005
	am No 4, 2016; No 11, 2016
s 139ZIG.....	ad No 20, 2005
	am No 4, 2016
s 139ZIH.....	ad No 20, 2005
	am No 4, 2016
s 139ZIHA.....	ad No 20, 2005
	am No 4, 2016
s 139ZII.....	ad No 20, 2005
	am No 4, 2016
s 139ZIHA.....	ad No 20, 2005
s 139ZIJ.....	ad No 20, 2005
s 139ZIK.....	ad No 20, 2005
s 139ZIL.....	ad No 20, 2005
s 139ZIM.....	ad No 20, 2005
s 139ZIN.....	ad No 20, 2005
s 139ZIO.....	ad No 20, 2005
	am No 132, 2015; No 11, 2016
s 139ZIP.....	ad No 20, 2005
s 139ZIR.....	ad No 20, 2005
s 139ZIS.....	ad No 20, 2005
	am No 132, 2015
s 139ZIT.....	ad No 20, 2005

Subdivision I

s 139ZJ.....	ad No 9, 1992
s 139ZK.....	ad No 9, 1992
s 139ZL.....	ad No 9, 1992
s 139ZM.....	ad No 9, 1992
	am No 132, 2015
s 139ZN.....	ad No 9, 1992
s 139ZO.....	ad No 9, 1992
	am No 4, 2016
s 139ZP.....	ad No 9, 1992

Subdivision J

s 139ZQ.....	ad No 9, 1992
	am No 57, 2007
s 139ZR.....	ad No 9, 1992
s 139ZS.....	ad No 9, 1992
	am No 132, 2015
s 139ZT.....	ad No 9, 1992
	am No 4, 2016

Subdivision K

Subdivision K.....	ad No 57, 2007
s 139ZU.....	ad No 57, 2007
s 139ZV.....	ad No 57, 2007
s 139ZW.....	ad No 57, 2007
Division 4C.....	ad No 9, 1992
	rep No 131, 2002
ss 139ZU, 139ZV.....	ad No 9, 1992
	am No 44, 1996
	rep No 131, 2002
s 139ZW.....	ad No 9, 1992
	rep No 131, 2002
s 139ZX.....	ad No 9, 1992
	rep No 131, 2002
s 139ZY.....	ad No 9, 1992
	am No 44, 1996
	rep No 131, 2002
s 139ZZ.....	ad No 9, 1992

	am No 44, 1996 rep No 131, 2002
Division 5	
s 140.....	am No 121, 1968; No 12, 1980; No 119, 1987; No 44, 1996; No 20, 2005; No 34, 2006; No 115, 2008
s 144.....	am No 44, 1996
s 145.....	rs No 12, 1980 am No 44, 1996; No 131, 2002
s 146.....	am No 44, 1996
s 147.....	rs No 12, 1980
Part VII	
Part VII heading.....	rs No 9, 1992
Division 1	
Division 1.....	ad No 9, 1992
s 148.....	am No 73, 1987 rs No 9, 1992
Division 2	
Division 2.....	ad No 9, 1992
Subdivision A	
s 149.....	ad No 9, 1992 am No 12, 1980 rs No 12, 1980 am No 74, 1981; No 115, 1990 rs No 9, 1992 am No 44, 1996; No 131, 2002
s 149A.....	ad No 115, 1990 rs No 9, 1992 am No 131, 2002; No 57, 2007; No 106, 2010
Subdivision B	
s 149B.....	ad No 9, 1992 am No 44, 1996; No 131, 2002
s 149C.....	ad No 9, 1992 am No 131, 2002; No 106, 2010
s 149D.....	ad No 9, 1992 am No 55, 2001; No 131, 2002; No 57, 2007; No 106, 2010
s 149E.....	ad No 9, 1992 rep No 44, 1996
s 149F.....	ad No 9, 1992 am No 44, 1996; No 131, 2002
s 149G.....	ad No 9, 1992 am No 44, 1996
ss 149H, 149J.....	ad No 9, 1992 rs No 44, 1996 am No 131, 2002
Subdivision C	
s 149K.....	ad No 9, 1992 am No 131, 2002; No 132, 2015
s 149L.....	ad No 9, 1992 rep No 44, 1996
s 149M.....	ad No 9, 1992 am No 131, 2002
s 149N.....	ad No 9, 1992 am No 131, 2002; No 106, 2010
s 149P.....	ad No 9, 1992 am No 131, 2002
s 149Q.....	ad No 9, 1992 rs No 131, 2002
Division 3.....	ad No 9, 1992 rep No 131, 2002
s 149R.....	ad No 9, 1992 am No 44, 1996 rep No 131, 2002
ss 149S–149Z.....	ad No 9, 1992 rep No 131, 2002
ss 149ZA–149ZC.....	ad No 9, 1992 rep No 131, 2002
s 149ZD.....	ad No 9, 1992 am No 55, 2001 rep No 131, 2002

s 149ZE.....	ad No 9, 1992 rep No 131, 2002
s 149ZF.....	ad No 9, 1992 am No 44, 1996 rep No 131, 2002
ss 149ZG, 149ZH.....	ad No 9, 1992 rep No 131, 2002
s 149ZI.....	ad No 9, 1992 rep No 44, 1996
ss 149ZJ-149ZM.....	ad No 9, 1992 rep No 131, 2002
s 150.....	am No 12, 1980; No 74, 1981; No 21, 1985; No 119, 1987 rep No 9, 1992
s 151.....	am No 12, 1980 rep No 9, 1992
Division 4	
Division 4 heading.....	ad No 9, 1992
s 152.....	am No 12, 1980 rs No 9, 1992
s 153.....	am No 12, 1980; No 73, 1987; No 9, 1992; No 44, 1996; No 86, 2001; No 86, 2002
Division 5	
Division 5.....	ad No 9, 1992
s 153A.....	ad No 9, 1992 am No 44, 1996; No 131, 2002; No 8, 2005; No 106, 2010; No 118, 2018
s 153B.....	ad No 9, 1992 am No 44, 1996; No 131, 2002; No 106, 2010
s 154.....	am No 12, 1980 rs No 9, 1992 am No 86, 2002; No 174, 2011
Part VIII	
Division 1	
s 154A.....	ad No 115, 1990 rs No 44, 1996 am No 11, 1997; No 34, 2006 rep No 11, 2016
s 155.....	am No 12, 1980; No 21, 1985; No 119, 1987; No 115, 1990 rs No 44, 1996 am No 11, 1997; No 131, 2002 rep No 11, 2016
s 155A.....	ad No 115, 1990 rs No 44, 1996 am No 131, 2002; No 44, 2007 rep No 11, 2016
s 155B.....	ad No 115, 1990 rs No 44, 1996 rep No 11, 2016
s 155C.....	ad No 44, 1996 am No 11, 1997; No 34, 2006 rep No 11, 2016
s 155D.....	ad No 44, 1996 am No 11, 1997; No 131, 2002; No 34, 2006 rep No 11, 2016
s 155E.....	ad No 44, 1996 am No 11, 1997; No 131, 2002; No 34, 2006 rep No 11, 2016
s 155F.....	ad No 44, 1996 rep No 11, 2016
s 155G.....	ad No 44, 1996 rep No 11, 2016
s 155H.....	ad No 44, 1996 am No 131, 2002; No 80, 2004; No 44, 2007 rep No 11, 2016
s 155I.....	ad No 44, 1996 rep No 11, 2016
s 155J.....	ad No 44, 1996 am No 24, 2001; No 106, 2010 rep No 11, 2016
s 155K.....	ad No 34, 2006

	rep No 11, 2016
s 156.....	am No 12, 1980; No 21, 1985; No 115, 1990 rep No 44, 1996
s 156A.....	ad No 74, 1981 am No 44, 1996; No 11, 2016
s 157.....	am No 12, 1980; No 74, 1981; No 119, 1987; No 44, 1996; No 11, 2016
s 158.....	am No 12, 1980; No 74, 1981
s 159.....	am No 12, 1980; No 119, 1987
s 160.....	am No 12, 1980 rs No 74, 1981
s 161.....	am No 12, 1980; No 44, 1996; No 20, 2005
s 161A.....	ad No 21, 1985 rs No 44, 1996 rep No 11, 2016
Division 2	
Division 2 heading.....	rs No 11, 2016
s 161B.....	ad No 9, 1992 am No 44, 1996; No 131, 2002; No 106, 2010 rep No 11, 2016
s 162.....	am No 12, 1980; No 9, 1992; No 44, 1996; No 131, 2002; No 106, 2010 rep No 11, 2016
s 163.....	am No 12, 1980 rs No 12, 1980 am No 44, 1996; No 11, 1997; No 80, 2004; No 8, 2005; No 34, 2006
s 163A.....	ad No 9, 1992 am No 44, 1996; No 8, 2005; No 34, 2006
s 164.....	am No 12, 1980 rs No 44, 1996 am No 131, 2002 rep No 11, 2016
s 165.....	am No 12, 1980; No 9, 1992; No 44, 1996 rep No 11, 2016
s 166.....	rep No 74, 1981 ad No 106, 2010 rep No 11, 2016
s 167.....	am No 12, 1980; No 44, 1996 rs No 106, 2010 rep No 11, 2016
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s 169.....	am No 12, 1980; No 44, 1996; No 11, 1997; No 48, 1998 rep No 11, 2016
s 170.....	am No 12, 1980; No 44, 1996 rep No 11, 2016
s 170A.....	ad No 106, 2010 rep No 11, 2016
s 171.....	am No 12, 1980 rs No 11, 1997 rep No 11, 2016
s 172.....	am No 12, 1980; No 74, 1981; No 129, 1989 rep No 11, 1997
s 173.....	am No 11, 1997; No 24, 2001; No 106, 2010 rep No 11, 2016
s 174.....	am No 12, 1980; No 44, 1996 rep No 11, 2016
s 175.....	am No 12, 1980; No 74, 1981; No 115, 1990; No 44, 1996 (as am by No 11, 1997); No 11, 1997; No 24, 2001; No 106, 2010 rep No 11, 2016
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s 60-20..... ad No 11, 2016

am No 55, 2017

s 60-21..... ad No 11, 2016

rs No 118, 2018

s 60-26..... ad No 11, 2016

Division 65

s 65-1..... ad No 11, 2016

s 65-5..... ad No 11, 2016

s 65-10..... ad No 11, 2016

s 65-15..... ad No 11, 2016

s 65-20..... ad No 11, 2016

s 65-25..... ad No 11, 2016

s 65-31..... ad No 11, 2016

s 65-32..... ad No 11, 2016

s 65-40..... ad No 11, 2016

s 65-45..... ad No 11, 2016

s 65-46..... ad No 11, 2016

s 65-50..... ad No 11, 2016

Division 70**Subdivision A**

s 70-1..... ad No 11, 2016

Subdivision B

s 70-5..... ad No 11, 2016

Subdivision C

s 70-6..... ad No 11, 2016

s 70-10..... ad No 11, 2016

s 70-11..... ad No 11, 2016

s 70-15..... ad No 11, 2016

s 70-20..... ad No 11, 2016

s 70-25..... ad No 11, 2016

s 70-30..... ad No 11, 2016

s 70-35..... ad No 11, 2016

s 70-36..... ad No 11, 2016

Subdivision D

s 70-37..... ad No 11, 2016

s 70-40..... ad No 11, 2016

s 70-45..... ad No 11, 2016

s 70-50..... ad No 11, 2016

Subdivision E

s 70-51..... ad No 11, 2016

s 70-55..... ad No 11, 2016

s 70-56..... ad No 11, 2016

Subdivision F

s 70-60..... ad No 11, 2016

Subdivision G

s 70-65..... ad No 11, 2016

s 70-70..... ad No 11, 2016

s 70-75..... ad No 11, 2016

s 70-80..... ad No 11, 2016

s 70-85..... ad No 11, 2016

s 70-90..... ad No 11, 2016

Division 75

s 75-1..... ad No 11, 2016

s 75-2..... ad No 11, 2016

s 75-5..... ad No 11, 2016

s 75-10..... ad No 11, 2016

s 75-15..... ad No 11, 2016

s 75-20..... ad No 11, 2016

s 75-25..... ad No 11, 2016

s 75-30.....	ad No 11, 2016
s 75-35.....	ad No 11, 2016
s 75-40.....	ad No 11, 2016
s 75-50.....	ad No 11, 2016

Division 80

s 80-1.....	ad No 11, 2016
s 80-2.....	ad No 11, 2016
s 80-5.....	ad No 11, 2016
s 80-10.....	ad No 11, 2016
s 80-15.....	ad No 11, 2016
s 80-20.....	ad No 11, 2016
s 80-25.....	ad No 11, 2016
s 80-30.....	ad No 11, 2016
s 80-35.....	ad No 11, 2016
s 80-40.....	ad No 11, 2016
s 80-45.....	ad No 11, 2016
s 80-50.....	ad No 11, 2016
s 80-55.....	ad No 11, 2016
s 80-60.....	ad No 11, 2016
s 80-65.....	ad No 11, 2016
s 80-70.....	ad No 11, 2016

Division 85

s 85-1.....	ad No 11, 2016
s 85-2.....	ad No 11, 2016
s 85-5.....	ad No 11, 2016

Division 90

Subdivision A

s 90-1.....	ad No 11, 2016
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Subdivision B

s 90-2.....	ad No 11, 2016
s 90-5.....	ad No 11, 2016
s 90-10.....	ad No 11, 2016
s 90-15.....	ad No 11, 2016
s 90-20.....	ad No 11, 2016

Subdivision C

s 90-21.....	ad No 11, 2016
s 90-22.....	ad No 11, 2016

Subdivision D

s 90-30.....	ad No 11, 2016
s 90-35.....	ad No 11, 2016

Part 4

Division 95

s 95-1.....	ad No 11, 2016
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Division 96

s 96-1.....	ad No 11, 2016
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Division 100

s 100-1.....	ad No 11, 2016
s 100-5.....	ad No 11, 2016

Division 105

s 105-1.....	ad No 11, 2016 am No 118, 2018
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Third Schedule.....	rep No 12, 1980
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Fourth Schedule.....	rep No 12, 1980
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