



Bankruptcy Act 1966

No. 33, 1966

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About this compilation

This is a compilation of the *Bankruptcy Act 1966* that shows the text of the law as amended and in force on 5 June 1987 (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 Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the 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 this compilation, details are included in the endnotes.

Editorial changes

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

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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

Part I—Preliminary

1 Short title

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

2 Commencement

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

4 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- (1) The Acts specified in Schedule 1 are repealed.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*, as amended by the *Bankruptcy Act 1959*, continue to apply to a purported extension of time or a purported fixing of a time to 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.

5 Interpretation

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

affidavit includes affirmation and statutory declaration;

Section 5

approved bank means a trading bank as defined by subsection 5(1) of the *Banking Act 1959* or another bank approved, by instrument in writing, for the purposes of this definition by the Treasurer or a person authorized by the Treasurer in writing to give approvals for the purposes of this definition;

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

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 any jurisdiction or proceedings under or by virtue of this Act;

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

confiscation order has the same meaning as in the *Proceeds of Crime Act 1987*;

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 a company;

corresponding law has the same meaning as in the *Proceeds of Crime Act 1987*;

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;

Section 5

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

debt includes liability;

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

Deputy Registrar means a Deputy Registrar in Bankruptcy, and includes a person acting as a Deputy Registrar;

District means a part of Australia declared to be a Bankruptcy District for the purposes of this Act;

forfeiture order has the same meaning as in the *Proceeds of Crime Act 1987*;

goods includes all chattels personal;

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 1987*;

interstate pecuniary penalty order has the same meaning as in the *Proceeds of Crime Act 1987*;

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 Magistrate of the Northern Territory, being a person in respect of whom an arrangement under subsection 17B(2) applies; or

Section 5

(c) a person who holds office as a Magistrate of a Territory of the Commonwealth (other than the Northern Territory);

maintenance agreement means 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 any other agreement with respect to the maintenance of a person that has been so registered or approved;

maintenance order means an order with respect to the maintenance of a person, including an order with respect to the payment of arrears of maintenance, being an order made or registered under a law of the Commonwealth or of a State or Territory of the Commonwealth;

oath includes affirmation and statutory declaration;

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;

pecuniary penalty order has the same meaning as in the *Proceeds of Crime Act 1987*;

petition means a petition under this Act;

policy for pure endowment means a policy under which an amount is payable at a specified date if the person to whom the policy relates survives to that date, but a lesser amount is payable if that person dies before that date, being an amount not exceeding the sum of the premiums that have been paid and any interest payable on those premiums;

prescribed means prescribed by this Act or by rules under this Act;

proceeding means proceeding under this Act;

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

Section 5

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;

public examination means an examination under section 69;

registered trustee means a person who is registered under this Act as qualified to act as a trustee;

Registrar means a Registrar in Bankruptcy, and includes a person acting as a Registrar;

resolution means a resolution passed by a majority in value of the creditors present personally, by attorney or by proxy at a meeting of creditors and voting on the resolution;

secured creditor, in relation to a debtor, means a person holding a mortgage, charge or lien on property of the debtor as a security for a debt due to him from the debtor;

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

special resolution means a resolution passed by a majority in number and at least three-fourths in value of the creditors present personally, by attorney or by proxy at a meeting of creditors and voting on the resolution;

State Court means a State Court having jurisdiction under this Act;

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;

Section 5

Territory, except in the expression ***Territory of the Commonwealth***, means the Australian Capital Territory or the Northern Territory of Australia;

the commencement of the bankruptcy, in relation to a bankrupt, means the time at which his 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 estate or, if he became a bankrupt by virtue of the presentation of a debtor's petition, the date on which he became a bankrupt by force of section 55, 56 or 57, as the case requires;

the first meeting of creditors, in relation to a bankrupt, means the meeting of his creditors held in pursuance of section 64;

the property of the bankrupt, in relation to a bankrupt, means the property divisible amongst the creditors of the bankrupt and includes any rights and powers in relation to that property that would have been exercisable by the bankrupt if he had not become a bankrupt;

the repealed Act means the *Bankruptcy Act 1924*;

the rules means the rules made under this Act;

the trustee means—

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt;
- (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;
- (c) in relation to a deed of assignment, a deed of arrangement or a composition under Part X—the trustee of the deed or the composition; 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;

this Act includes the rules and the regulations.

- (2) A reference in this Act, in relation to a bankrupt or the estate of a bankrupt, to the Official Receiver shall, unless the contrary intention appears, be read as a reference to—
 - (a) the Official Receiver for the District in which the sequestration order was made against the estate of the bankrupt; or
 - (b) if the bankrupt became a bankrupt by virtue of the presentation of a debtor's petition, the Official Receiver for the District in which the petition was presented.
- (3) A reference in this Act to **the Registrar** shall, unless the contrary intention appears, be read as a reference to any Registrar in Bankruptcy.
- (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 deed of assignment or deed of arrangement executed, or of a composition accepted, under Part X, shall—
 - (a) in relation to an estate or a deed or composition 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 deed or composition in respect of which there are 2 or more joint and several trustees—be read as a reference to all of the trustees or any one or more of the trustees.

6 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 read as including an intent to defraud, or to defeat or delay, any one or more of those creditors.

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7 Application of Act

- (1) This Act extends to debtors being married women, 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 debtor's petition presented by—
 - (a) a corporation; or
 - (b) a partnership, association or company registered under a law of the Commonwealth or of a State or Territory which provides for the winding-up of such a partnership, association or company.
- (3) Subject to such modifications and adaptations, if any, as are prescribed by the rules, the provisions of this Act apply to and 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.
- (4) In this section, *modification* includes the addition or omission of a provision or the substitution of a provision for another provision.

8 Act to bind the Crown

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

9 Laws 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.

Part II—Administration

Division 1—General

10 Delegation by Attorney-General

- (1) The Minister or the Attorney-General may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand, delegate any of his powers and functions under this Act except this power of delegation.
- (2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister or the Attorney-General.

11 Inspector-General in Bankruptcy

- (1) For the purposes of this Act, there shall be an Inspector-General in Bankruptcy.
- (2) The Inspector-General has such powers and functions as are conferred or imposed on him by this Act.

12 Functions of Inspector-General

- (1) The Inspector-General—
 - (a) shall make such inquiries and investigations as the Minister directs;
 - (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 in relation to—
 - (i) a bankruptcy;
 - (ii) a composition or scheme of arrangement under Division 6 of Part IV;

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- (iii) a deed of assignment, deed of arrangement or composition under Part X;
 - (iv) an administration under Part XI; or
 - (v) property in relation to which a direction has been given under subsection 50(1);
 - (ba) may make such inquiries and investigations as the Inspector-General thinks fit with respect to the conduct, trade dealings, property and affairs of—
 - (i) a bankrupt;
 - (ii) a bankrupt or debtor under a composition or scheme of arrangement under Division 6 of Part IV; or
 - (iii) a debtor under a deed of assignment, deed of arrangement or composition under Part X; and
 - (c) shall from time to time obtain from Registrars, Official Receivers and other officers and from registered trustees reports as to the operation of this Act.
- (1A) Where the Inspector-General requests a registered trustee, for the purposes of subsection (1), to provide a report as to the operation of this Act, the registered trustee shall forthwith provide the report requested.
- (1B) Where the Inspector-General makes an inquiry or investigation referred to in paragraph (1)(b) or (ba), the Inspector-General shall file with the Registrar a report setting out the results of the inquiry or investigation and may file such supplementary reports as 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 Director of Public Prosecutions; or
 - (b) if the Inspector-General is satisfied that the request relates to an application, or proposed application, for an interstate

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confiscation order—a person who is entitled, under a corresponding law, to apply for an order of that kind.

- (2) For the purposes of discharging his functions under this Act, the Inspector-General may—
- (a) require the production of any books kept by a Registrar, Deputy Registrar or Official Receiver or by a trustee;
 - (b) require a trustee to answer an inquiry made to him in relation to a bankruptcy, an administration under Part XI or a deed of assignment, deed of arrangement, scheme of arrangement or composition in which the trustee is, or has been, engaged;
 - (c) at any time investigate the books of a trustee; and
 - (d) appoint an Official Receiver, Registrar, Deputy Registrar or any other person, in writing, to conduct an inquiry or investigation on behalf of the Inspector-General.
- (3) For the purposes of conducting an inquiry or investigation on behalf of the Inspector-General, an Official Receiver, Registrar, Deputy Registrar or other person, appointed by the Inspector-General under subsection (2), may exercise all or any of the powers referred to in that subsection other than the power referred to in paragraph (2)(d).

13 Bankruptcy Districts

The Governor-General may, by Proclamation, declare any part of Australia to be a Bankruptcy District for the purposes of this Act.

14 Registrars and Deputy Registrars

- (1) There shall be for each District—
- (a) a Registrar in Bankruptcy; and
 - (b) such number of Deputy Registrars in Bankruptcy as is determined by the Minister, by notice published in the *Gazette*.
- (2) Each Registrar and Deputy Registrar has such powers and functions as are conferred or imposed on a Registrar by this Act.

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- (2A) A power or function conferred or imposed on a Registrar by this Act, when exercised or performed by a Deputy Registrar, shall, for all purposes, be deemed to have been exercised or performed by the Registrar.
- (3) A Registrar or a Deputy Registrar may exercise such of the powers and functions of an administrative nature exercisable by the Court as the Court directs or authorizes him to exercise.
- (4) A Registrar or a Deputy Registrar may—
 - (a) take evidence in proceedings before him under this Act either orally or otherwise; and
 - (b) administer such oaths as are necessary in proceedings before him under this Act.
- (5) An order or direction made or given, or an act done, by a Registrar or a Deputy Registrar under this Act is subject to review on summary application to the Court.

14A Stamps of Registrars

- (1) The Registrar for each District shall have a stamp.
- (2) The design of the stamp shall be as determined by the Minister by writing under his hand.
- (3) The stamp may be affixed on documents issued by the Registrar under this Act or the rules and on other documents as provided by the rules.
- (4) All courts (whether exercising federal jurisdiction or not), and all persons acting judicially, shall take judicial notice of the mark of the stamp affixed on a document and shall, in the absence of proof to the contrary, presume that it was duly affixed.

15 Official Receivers

- (1) There shall be for each District an Official Receiver and such officers to assist the Official Receiver in the performance of his functions under this Act as are necessary.

- (2) The Official Receivers shall be under the control of the Court.
- (3) Each Official Receiver has such powers and functions as are conferred or imposed on an Official Receiver by this Act.
- (4) The Inspector-General may, by writing under his hand, direct an officer to exercise or perform, for such period as is specified in the direction or until the direction is terminated, all of the powers, functions or duties of an Official Receiver under this Act or such of those powers, functions or duties as are specified in the direction.
- (5) A power, function or duty of an Official Receiver under this Act, when exercised or performed by an officer in accordance with a direction given by the Inspector-General under subsection (4), shall, for the purposes of this Act, be deemed to have been exercised or performed, as the case requires, by an Official Receiver.

16 Appointment of Inspector-General, Registrars, &c.

The Inspector-General, each Registrar and Deputy Registrar and each Official Receiver shall be appointed by the Secretary to the Department.

17 Acting Inspector-General and Acting Official Receivers

- (1) The Secretary to the Department may appoint a person to act as Inspector-General or Official Receiver—
 - (a) during a vacancy in the office of Inspector-General or Official Receiver, as the case may be; or
 - (b) during any period, or during all periods, when the Inspector-General or Official Receiver, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

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- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Secretary to the Department may terminate such an appointment at any time.
- (4) Where a person is acting as Inspector-General or Official Receiver in accordance with paragraph (1)(b) and the office of Inspector-General or Official Receiver, as the case may be, becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue so to act until the Secretary to the Department otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (5) The appointment of a person to act as Inspector-General or Official Receiver ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Secretary to the Department.
- (6) While a person is acting as Inspector-General or Official Receiver, he has and may exercise all the powers, and shall perform all the functions and duties, of the Inspector-General or Official Receiver as the case may be, under this Act or any other law of the Commonwealth.
- (7) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

17A Acting Registrars and Deputy Registrars

- (1) The Secretary to the Department may appoint a person to act as Registrar or Deputy Registrar—

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- (a) during a vacancy in the office of Registrar or Deputy Registrar, as the case may be; or
 - (b) during any period, or during all periods, when the Registrar or Deputy Registrar, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Secretary to the Department may terminate such an appointment at any time.
- (4) Where a person is acting as Registrar or Deputy Registrar in accordance with paragraph (1)(b) and the office of Registrar or Deputy Registrar, as the case may be, becomes vacant while that person in so acting, then, subject to subsection (2), that person may continue so to act until the Secretary to the Department otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (5) The appointment of a person to act as Registrar or Deputy Registrar ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Secretary to the Department.
- (6) While a person is acting as Registrar or Deputy Registrar, he has and may exercise all the powers, and shall perform all the functions, of the Registrar or Deputy Registrar, as the case may be, under this Act or any other law of the Commonwealth.
- (7) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the

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appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

17AA Functions of Registrar may be exercised by certain officials

- (1) The Registrar of the Federal Court of Australia may exercise all the powers, and shall perform all the functions, of a Registrar under this Act or any other law of the Commonwealth.
- (2) A Deputy Registrar of the Federal Court of Australia may exercise all the powers, and may perform all the functions, of a Registrar under this Act or any other law of the Commonwealth.
- (3) A power or function conferred or imposed on a Registrar by this Act, when exercised or performed by the Registrar of the Federal Court of Australia or by a Deputy Registrar of the Federal Court of Australia, shall, for all purposes, be deemed to have been exercised or performed by the Registrar.

17B Arrangements for services of State and Northern Territory Magistrates

- (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 Magistrates of the Territory.

18 The Official Trustee in Bankruptcy

- (1) The body corporate known as the Official Trustee in Bankruptcy that was in existence immediately before the commencement of this subsection continues in existence, under that name, constituted as a corporation sole

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- (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.
- (3) The Secretary to the Department constitutes the Official Trustee in Bankruptcy.
- (4) The Official Trustee shall have such seals as the Minister directs by writing under his hand.
- (5) The designs of the seals of the Official Trustee shall be as determined by the Minister by writing under his 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 proof to the contrary, presume that it was duly affixed.
- (8) An Official Receiver may, in the name of, and on behalf of, the Official Trustee, exercise any of the powers, or perform any of the functions, of the Official Trustee.
- (8A) All acts and things done in the name of, or on behalf of, the Official Trustee by, or under the authority of, any Official Receiver, shall be deemed to have been done by the Official Trustee.
- (8B) In, or in respect of, the doing of any act or thing by an Official Receiver in the name of, or on behalf of, the Official Trustee, the Official Receiver is responsible to the Official Trustee, and shall comply with such directions (if any) as are given to him or her by the Official Trustee.
- (8C) The Official Trustee shall consult with the Inspector-General and the Official Receivers concerning the conduct of the business of the Official Trustee, and its practices and procedures.

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- (9) Where, under a provision of this Act or of the repealed Act in its continued application by virtue 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, or with the authority of, any Official Receiver, in the name of, or on behalf of, the Official Trustee upon the opinion, belief or state of mind in relation to that matter of the person exercising the power or performing the function; and
 - (b) any act or thing done by, or with the authority of, any Official Receiver, in the exercise of such a power, or performance of such a function, 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 deed of assignment, deed of arrangement, composition or scheme of arrangement, a 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.
- (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.

18A 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;
 - (b) the trustee of the estate of a deceased debtor;
 - (c) the trustee of a composition or scheme of arrangement accepted under Division 6 of Part IV;
 - (d) the controlling trustee in relation to a debtor whose property is subject to control under Division 2 of Part X;
 - (e) the trustee of a deed of assignment or deed of arrangement executed, or a composition accepted, under Part X; or
 - (f) the trustee of—
 - (i) a composition or scheme of arrangement accepted and approved under Division 5 of Part IV of the repealed Act;
 - (ii) a composition or scheme of arrangement accepted, or a deed of assignment executed, under Part XI of the repealed Act; or
 - (iii) a deed of arrangement executed under Part XII of the repealed Act,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.

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- (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 any 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.

19 Duties, &c., of trustees and Official Receiver

- (1) Where a person becomes a bankrupt, it is the duty of the trustee—
 - (a) to notify, as prescribed, the fact of the bankruptcy;
 - (b) to ascertain the assets and liabilities of the bankrupt;
 - (c) if the trustee, having regard to all the circumstances of the case, considers it desirable to do so, to investigate—
 - (i) the conduct, dealings, and transactions of the bankrupt;
 - (ii) the cause of bankruptcy; and
 - (iii) the books, accounts and records kept by the bankrupt, and, if he conducts such an investigation, to file with the Registrar a report showing the result of the investigation;
 - (d) to summon the first meeting of creditors and to attend that meeting or arrange for a person authorized in writing by the trustee to attend on his behalf;
 - (e) if the trustee has made an application under section 69 for the examination of the bankrupt—to advertise, as prescribed, the date, time and place on and at which that examination is to be held;
 - (f) to take such part as he thinks fit in any public examination of the bankrupt (including an examination pursuant to an application under section 69 by the Official Receiver);
 - (g) if an investigation referred to in paragraph (c) is made in relation to the bankrupt, to file from time to time such

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supplementary reports in relation to the matters specified in that paragraph as the trustee considers desirable, having regard to all the circumstances of the case; and

- (h) to take reasonable steps to ensure that the bankrupt complies with section 54.
- (1A) Where an Official Receiver makes an application under section 69 for the examination of a bankrupt, the Official Receiver shall advertise, as prescribed, the date, time and place on and at which that examination is to be held.
- (1B) The Official Receiver shall take such part as the Official Receiver thinks fit in any public examination of a bankrupt (including an examination pursuant to an application under section 69 by the trustee of the estate of the bankrupt).
- (1C) Where a registered trustee indicates to the Official Receiver that the registered trustee does not intend to conduct an investigation of a kind referred to in paragraph (1)(c) with respect to a bankrupt, the Official Receiver may, if the Official Receiver thinks fit, conduct such an investigation, and, if the Official Receiver does so, the Official Receiver shall file with the Registrar a report setting out the results of the investigation and may file such supplementary reports as the Official Receiver thinks fit.
- (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.

19A Liability of Inspector-General, Registrars, Deputy Registrars, Official Receivers, &c.

- (1) The Commonwealth shall indemnify a person to whom this section applies against any liability incurred by him—
 - (a) for any act done negligently, or negligently omitted to be done, by him in the course of the performance of his duties under this Act or under the *Bankruptcy Act 1924* in its continued application by virtue of this Act; and

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- (b) for any act done by him in good faith in the purported performance of his duties under this Act or under the *Bankruptcy Act 1924* in its continued application by virtue of 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 duties under this Act or the *Bankruptcy Act 1924* in its continued application by virtue of this Act as a master has for acts of, or omissions by, his 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, a Deputy 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, a Deputy Registrar or an Official Receiver in the performance of his functions or duties or the exercise of his powers.

19B Officers to act in aid of each other

All Registrars, Deputy Registrars, Official Receivers, officers and other persons having functions, powers or duties under this Act shall, within the limits of their respective functions, powers and duties under this Act, severally act in aid of and be auxiliary to each other in all matters of bankruptcy.

20 Records, returns and bank accounts

- (1) Subject to this Act, the Registrars shall keep such books of account and records and make such returns as the Secretary to the Department, in writing, directs.
- (2) The Registrars shall open and maintain such bank accounts with an approved bank or approved banks as the Secretary, in writing, directs.
- (3) The Registrars shall comply with any directions in writing given by the Secretary to the Department with respect to the banking of

moneys in bank accounts maintained in pursuance of
subsection (2).

Division 2—Common Investment Fund

20A 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 established by section 20G.

20B 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 approved bank or approved banks, such accounts for the purposes of the Common Fund as are necessary for the purposes of the Common Fund.
- (5) The Official Trustee shall ensure that at all times one account referred to in subsection (4) is maintained for each District, or, if the Official Trustee thinks fit, for any 2 or more Districts having the same Official Receiver.

- (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 or of the *Bankruptcy Act 1924* in its continued application by virtue 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.
- (8) This subsection applies to moneys held or received by the Official Trustee—
 - (a) under a direction given, or order made, under section 50; or
 - (c) as the controlling trustee in relation to a debtor whose property is subject to control under Division 2 of Part X.

20D Investment of moneys 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;
 - (b) in a loan the repayment of which is guaranteed by the Commonwealth, a State or a Territory;
 - (c) in a loan to a municipal corporation or other local governing body in Australia; or
 - (d) in a loan to, or on deposit with, an approved bank.
- (4) The Official Trustee—
 - (a) shall endeavour to ensure that the moneys in the Common Fund lodged in accounts at call with a bank or banks are, as far as practicable, at all times sufficient to meet the payments that 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 a bank or banks in accordance with

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paragraph (a) are, as far as practicable, invested in accordance with subsection (1).

- (5) The Official Trustee shall, from time to time, consult with the Official Receivers concerning the amount of moneys in the Common Fund that should be retained in accounts at call with a bank or banks.
- (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, and the Official Trustee is not otherwise subject to taxation under such 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 company the principal business of which is the supply and 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

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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 a bank as defined by subsection 5(1) of the *Banking Act 1959*.

20E 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 a bank or banks 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 Minister for Finance to borrow from the Commonwealth under this section moneys not exceeding such amount as is specified in the instrument.
- (2) The Minister for Finance may, on behalf of the Commonwealth, lend to the Official Trustee, on such terms and conditions as he 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 by 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.

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20F Moneys in Common Fund not held on account of particular estates, &c.

- (1) No moneys in the Common Fund shall be held, or be deemed for any purpose 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 any 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 or become part of 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)(b).

20G Common Investment Fund Equalization Account

- (1) There shall be an account to be known as the Common Investment Fund Equalization Account.
- (2) The Equalization Account is a Trust Account for the purposes of section 62A of the *Audit Act 1901*.

20H Payment of moneys into and out of Equalization Account

- (1) Interest derived from the investment of moneys in the Common Fund shall be paid into the Equalization Account.
- (2) An amount equal to the amount of any capital profit made upon the realization of an investment made from moneys in the Common Fund shall be paid out of the Common Fund into the Equalization Account.
- (3) An amount equal to—
 - (a) the amount of any capital loss incurred upon the realization of an investment made from moneys in the Common Fund; or
 - (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);
 - (ii) forms part of a fund referred to in paragraph 20J(1)(b) by virtue of subsection 20J(2) or (3A); or
 - (iii) is payable to a person by virtue of subsection 20J(4),is payable out of the Equalization Account into the Common Fund.
- (4) The Official Trustee shall, at such times as it 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 (3), and, if the Official Trustee determines that any amounts are not so required, it may direct that the amounts not so required, or any part of those amounts, shall be paid out of that Account into the Consolidated Revenue Fund.

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- (5) Where, at any time, an amount required by subsection (3) to be paid out of the Equalization Account exceeds the amount standing to the credit of that Account, an amount equal to the excess is payable into that Account out of moneys available under an appropriation made by the Parliament.

20J 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 by reason of being—
 - (i) the trustee of a composition, or of a scheme of arrangement, accepted under Division 6 of Part IV;
 - (ii) the trustee of a deed of assignment or deed of arrangement executed, or a composition accepted, under Part X; or
 - (iii) the trustee of—
 - (A) a composition or scheme of arrangement accepted and approved under Division 5 of Part IV of the repealed Act;
 - (B) a composition or scheme of arrangement accepted, or a deed of assignment executed, under Part XI of the repealed Act; or
 - (C) a deed of arrangement executed under Part XII of the repealed Act,
- 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 of a

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fund referred to in paragraph (1)(b), for not less than one year longer than those moneys would have been held, or would be likely to be held, by the Official Trustee but for that reason or those reasons, the Registrar may direct, by writing under his hand, that interest on those moneys, at the rate prescribed for the purposes of this section and in respect of such period as he 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 (in 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 forms 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 in 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 date—the amount of the interest forms part of the appropriate fund; or

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- (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 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, interest on those moneys is payable to the person to whom those moneys are payable, out of the Common Fund, at the rate prescribed 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 have 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.

Part III—Courts

Division 1—The Federal Court of Bankruptcy

21 Continuance of existing Federal Court of Bankruptcy

- (1) The Federal Court of Bankruptcy in existence immediately before the commencement of this Act shall, subject to this Act, continue in existence as the Federal Court of Bankruptcy.
- (2) The Federal Court of Bankruptcy as so continued in existence is a superior court of record and shall consist of a Judge or 2 Judges appointed by Commission.
- (3) A person holding office as a Judge of the Federal Court of Bankruptcy immediately before the commencement of this Act shall continue, without further appointment, to be a Judge of that Court as so continued in existence.

22 Exercise of jurisdiction of Federal Court of Bankruptcy

The jurisdiction of the Federal Court of Bankruptcy may be exercised by one Judge.

23 Qualification for appointment as Judge

A person is not eligible to be appointed to be a Judge of the Federal Court of Bankruptcy unless—

- (a) he is, or has been, a Judge of a federal court or of the Supreme Court of a State; or
- (b) he is, or has been, a practising barrister or solicitor of the High Court or of the Supreme Court of a State or of a Territory of not less than 5 years' standing.

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24 Oath of allegiance and office

A Judge of the Federal Court of Bankruptcy, other than a Judge to whom subsection 21(3) applies, shall, before proceeding to discharge the duties of his office, take before a Justice of the High Court or a Judge of the Supreme Court of a State an oath or affirmation in accordance with the form in the Schedule 2.

25 Salary and allowances of Judges of Federal Court of Bankruptcy

- (1) A Judge of the Federal Court of Bankruptcy shall be paid salary, an annual allowance and travelling allowance at such respective rates as are fixed from time to time by the Parliament.
- (2) The salary and annual allowance to which a Judge is entitled under this section accrue from day to day and are payable monthly.
- (3) The Consolidated Revenue Fund is appropriated to the extent necessary for payment of salaries and allowances in accordance with subsection (1).

26 Seal of Federal Court of Bankruptcy

- (1) The Federal Court of Bankruptcy shall have a seal, the design of which shall be determined by the Attorney-General.
- (2) The design so determined shall include—
 - (a) the Coat of Arms of the Commonwealth, that is to say, the armorial ensigns and supporters granted to the Commonwealth by Royal Warrant dated 19 September 1912; and
 - (b) the words “The Federal Court of Bankruptcy”.
- (3) The seal of the Federal Court of Bankruptcy shall be kept at such place, and in the custody of such person, as the Judge of the Court or, if the Court consists of 2 Judges, the senior Judge of the Court directs.

Division 2—Jurisdiction and Powers of Courts in Bankruptcy

27 Bankruptcy courts

- (1) The Courts having jurisdiction in bankruptcy are—
 - (a) the Federal Court of Australia;
 - (b) the Supreme Court of the State of New South Wales;
 - (c) the Supreme Court of the State of Victoria;
 - (d) the Supreme Court of the State of Queensland;
 - (e) the Supreme Court of the State of South Australia;
 - (f) the Supreme Court of the State of Western Australia;
 - (g) the Supreme Court of the State of Tasmania; and
 - (h) the Supreme Court of the Northern Territory of Australia.
- (1A) Where proceedings under this Act were instituted in the Federal Court of Bankruptcy before the date of commencement of this subsection and the hearing of the proceedings had commenced or been completed before that day, that Court continues to have jurisdiction in bankruptcy under this Act in relation to those proceedings and in relation to proceedings incidental to those proceedings.
- (2) The State Courts specified in subsection (1) are invested with federal jurisdiction in bankruptcy and jurisdiction in bankruptcy is conferred on the Supreme Court of the Northern Territory of Australia.
- (3) The jurisdiction with which State Courts are invested by this section is subject to the conditions and restrictions specified in subsection 39(2) of the *Judiciary Act 1903* so far as they are applicable and the jurisdiction conferred on the Supreme Court of the Northern Territory of Australia is subject to the restrictions specified in section 28 of this Act.

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28 Jurisdiction and powers of courts in bankruptcy

- (1) The Federal Court of Australia and each State Court invested with jurisdiction in bankruptcy by section 27 has jurisdiction in bankruptcy throughout Australia.
- (2) The Supreme Court of the Northern Territory of Australia shall not—
 - (a) exercise any powers in relation to a creditor's petition, or make a sequestration order against the estate of a debtor on a creditor's petition, unless, at the time of the presentation of the petition or, in the case of proceedings, or a motion or application, transferred to that Supreme Court under section 35, at the time of the transfer of the proceedings, or of the motion or application, the debtor was—
 - (i) personally present, or ordinarily resident, in that Territory;
 - (ii) carrying on business in that Territory either personally or by means of an agent or manager; or
 - (iii) a member of a firm or partnership carrying on business in that Territory;
 - (b) exercise any powers in relation to a bankrupt, unless the bankrupt is personally present, or ordinarily resident, in that Territory or became a bankrupt in that Territory;
 - (c) exercise any powers under Part X in relation to a debtor, unless the debtor is, or was at the time when he signed an authority under section 188—
 - (i) personally present, or ordinarily resident, in that Territory;
 - (ii) carrying on business in that Territory either personally or by means of an agent or manager; or
 - (iii) a member of a firm or partnership carrying on business in that Territory; or
 - (d) exercise any powers under Part XI in relation to a deceased person, unless the deceased person was, at the time of his death—

- (i) personally present, or ordinarily resident, in that Territory;
 - (ii) carrying on business in that Territory either personally or by means of an agent or manager; or
 - (iii) a member of a firm or partnership carrying on business in that Territory.
- (3) An order of the Supreme Court of the Northern Territory of Australia made in exercise of jurisdiction conferred on it by this Act has force and effect throughout Australia.
- (4) The Federal Court of Bankruptcy and the Supreme Court of the Northern Territory of Australia each has, in relation to the jurisdiction conferred on it by this Act, the same power to punish contempts of its power and authority as is possessed by the High Court in respect of contempts of the High Court.

29 Courts to act in aid of 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.

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- (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 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.

30 General powers of Courts in bankruptcy

- (1) The Court—
 - (a) has full power to decide all questions, whether of law or of fact, in any case of bankruptcy or any matter under Part X or Part 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 Court under this Act a question of fact arises that a party desires to have tried before a jury, the 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.
- (4) The provisions of section 15 of the *High Court Procedure Act 1903* apply in relation to the trial of questions of fact before a jury in a proceeding before the Federal Court of Bankruptcy as if the references in that section to the High Court were references to the Federal Court of Bankruptcy and the reference in subsection (2) of

that section to the Principal Registrar or a District Registrar of the High Court were a reference to a Registrar in Bankruptcy.

(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 of an Official Receiver or trustee, under this Act; or
- (b) a trustee has failed to comply with an order or direction of a Registrar, or with a requirement 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 or requirement to comply with it; or
 - (d) if it thinks fit, make an immediate order for the committal 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 or requirement.

31 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;
 - (ba) applications for leave to enter or withdraw an objection to the discharge of a bankrupt from bankruptcy by force of section 149, for an order in respect of the period at the expiration of which such an objection will lapse or for an order that a bankrupt shall not be discharged from bankruptcy by force of section 149;
 - (c) applications for an order of discharge or annulment of a bankruptcy;
 - (d) applications to approve a composition or scheme of arrangement under Division 6 of Part IV;

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- (da) applications for an order of annulment of a composition or scheme of arrangement under Division 6 of Part IV;
 - (e) applications to set aside or avoid a charge, charging order, settlement, disposition, conveyance, transfer, security or payment;
 - (f) applications to declare for or against the title of the trustee 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;
 - (h) applications to expunge a proof of debt, to reduce the amount of the admitted debt in respect of a proof of debt or to review a decision of the trustee in respect of a proof of debt, in cases where the amount involved in the proof exceeds \$500 or such amount as is prescribed for the purposes of this paragraph;
 - (i) applications for the trial of questions of fact with a jury and the trial of those questions;
 - (j) applications under Part X—
 - (i) for an order under subsection 222(2) declaring a deed of assignment, a deed of arrangement or a composition, or a provision of such a deed, to be void or otherwise;
 - (ii) for an order under subsection 222(4) declaring a deed of assignment, a deed of arrangement or a composition, or a provision of such a deed or of a composition, to be void;
 - (iii) for an order terminating a deed of arrangement or a composition or setting aside a composition; or
 - (iv) 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.

31A Exercise of Powers by certain officials

- (1) Subject to subsection (2), the following powers of the Court under this Act may, if a Judge of the Court, in writing, directs, be exercised by a Registrar of the Court in relation to a proceeding:
- (a) the power to make orders or give directions in relation to the service of a notice or other document under this Act;
 - (b) the power to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of a party to the proceeding or of any other person;
 - (c) the power to make orders in relation to interrogatories;
 - (d) the power to allow the amendment of any written process, proceeding or notice under this Act;
 - (e) a power referred to in paragraph 33(1)(c);
 - (f) the power to make an order adjourning the hearing of the proceeding;
 - (g) the power to make an order as to costs;
 - (h) the power to set aside a bankruptcy notice;
 - (j) the power under subsection 47(2) to grant leave to withdraw a creditor's petition after presentation;
 - (k) the power under section 49 to substitute another creditor or other creditors for a creditor in relation to a petition;
 - (m) the power under subsection 52(5) to extend the period at the expiration of which a creditor's petition will lapse;
 - (n) the power to make a sequestration order against the estate of a debtor under subsection 52(1) and the power under subsection 52(2) to dismiss a creditor's petition;
 - (p) the power to make an order under subsection 244(9), (10), (11) or (12) in relation to a petition;
 - (q) the power to grant leave to present a petition under subsection 244(13);
 - (r) the power under subsection 247(1A) in relation to a petition;
 - (s) a power of the Court prescribed by the rules.

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- (2) A Registrar shall not exercise the powers referred to in paragraph (1)(g) except in relation to costs for or in connection with a proceeding heard by a Registrar.
- (3) Without limiting the generality of subsection (1), the power to issue a direction under that sub-section in relation to the exercise of powers by a Registrar in a proceeding includes the power to issue a direction providing for the exercise of a specified power or powers in a specified class or specified classes of powers—
 - (a) in relation to a proceeding in a specified class of proceedings or specified classes of proceedings; or
 - (b) by a specified Registrar, a Registrar in a specified class of Registrars or Registrars in specified classes of Registrars.
- (4) The provisions of this Act and the rules that relate to the exercise by the Court of a power that is, by virtue of subsection (1), exercisable by a Registrar apply in relation to the exercise of the power by a Registrar under this section as if the references in those provisions to the Court were references to the Registrar.
- (5) Notwithstanding any other provision of this Act and any provision of the *Public Service Act 1922* or of any other law, a Registrar is not subject to the direction or control of any person or body in relation to the manner in which the Registrar exercises the powers pursuant to subsection (1).
- (6) A party to a proceeding in which a Registrar has exercised any of the powers of the Court under subsection (1) may, within the time prescribed by the rules, or within any further time allowed in accordance with the rules, apply to the Court to review that exercise of power.
- (7) The Court may, on application under subsection (6) or of its own motion, review an exercise of power by a Registrar pursuant to this section and may make such order or orders as it thinks fit with respect to the matter with respect to which the power was exercised.

- (8) Where at a hearing of a proceeding that involves the exercise of a power referred to in paragraph (1)(n) in relation to a sequestration order or in paragraph (1)(p) to make an order for the administration of the estate of a deceased debtor under Part XI, a person opposes the making of that order, the Registrar shall not hear, or continue to hear, the proceeding and shall make appropriate arrangements for the proceeding to be heard by the Court.
- (9) Where at any time before or during the hearing of a proceeding that involves the exercise of a power referred to in subsection (1) by a Registrar—
- (a) the Registrar considers that it is not appropriate for the proceeding to be heard by the Registrar under this section; or
 - (b) an application is made to the Registrar for the proceeding to be heard by a Court,
- the Registrar shall not hear, or continue to hear, the proceeding and shall make appropriate arrangements for the proceeding to be heard by the Court.
- (10) In this section—

Registrar means the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar, of the Court;

the Court means the Federal Court of Australia when exercising jurisdiction under this Act.

32 Costs

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

33 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;

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- (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 expressly provide to the contrary, after its expiration, any time limited by this Act, or any time fixed by the Court or the Registrar under this Act (other than the time fixed for compliance with the requirements of a bankruptcy notice), for doing an act or thing or abridge any such time.
- (2) The Registrar may—
- (a) upon such terms as he thinks fit, at any time adjourn any proceeding before him 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 expressly provide to the contrary, after its expiration, any time limited by this Act, or any time fixed by the Registrar under this Act (other than the time fixed for compliance with the requirements of a bankruptcy notice), for doing an act or thing or abridge any such time.

34 Orders 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 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.

35 Transfer of proceedings

- (1) Proceedings under this Act in a court having jurisdiction under this Act or any application in such proceedings may, upon the application of the Official Trustee or of any other person interested, be transferred by that court to another court having jurisdiction under this Act.
- (2) Where proceedings are so transferred or any application is so transferred—
 - (a) all documents in respect of the proceedings or the application, as the case may be, filed with a Registrar shall, if it is appropriate having regard to the court to which the proceedings are, or the application is, transferred for another Registrar to have the custody of those documents, be transmitted by that Registrar to that other Registrar; and
 - (b) the court to which the proceedings are, or the application is, transferred shall proceed—
 - (i) in the case where proceedings are transferred—as if the same proceedings had been taken in that court as were taken in the court by which they are transferred; and
 - (ii) in the case where an application in any proceedings is transferred—as if the same proceedings had been taken in that court as were taken in the court by which the application is transferred and the application had been made in that court.

36 Enforcement of orders, &c.

- (1) An order of the Court made, or a warrant issued, under this Act 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 may be issued under the hand of the Registrar and the seal of the Court.
- (3) Where the Court commits a person to prison under this Act, the committal may be to such prison as the Court thinks fit.

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37 Power of Court to rescind orders, &c.

- (1) Subject to subsections (2) and (3), the Court may rescind, vary or discharge an order made by it under this Act or suspend the operation of such an order.
- (2) The Court shall not, after a sequestration order has been signed and sealed as provided by the rules, rescind or suspend the operation of the order.
- (3) The Court shall not, after an order for the administration of the estate of a deceased person under Part XI has been signed and sealed as provided by the rules, rescind or suspend the operation of the order.

38 Appeals to Federal Court of Australia

An appeal from a judgment, order or sentence given or pronounced after the commencement of this section by a State Court exercising jurisdiction in bankruptcy or by the Federal Court of Bankruptcy may be brought to the Federal Court of Australia and not otherwise.

Part IV—Proceedings in Connexion with Bankruptcy

Division 1—Acts of Bankruptcy

40 Acts of bankruptcy

- (1) A debtor commits an act of bankruptcy in each of the following cases:—
- (a) if in Australia or elsewhere he makes a conveyance or assignment of his property for the benefit of his creditors generally;
 - (b) if in Australia or elsewhere—
 - (i) he makes a conveyance, transfer, settlement or other disposition of his property or of any part of his property;
 - (ii) he creates a charge on his property or on any part of his property;
 - (iii) he makes a payment; or
 - (iv) he incurs an obligation, that would, if he became a bankrupt, be void as against the trustee;
 - (c) if, with intent to defeat or delay his creditors—
 - (i) he departs or remains out of Australia;
 - (ii) he departs from his dwelling-house or usual place of business;
 - (iii) he otherwise absents himself; or
 - (iv) he begins to keep house;
 - (d) if—
 - (i) execution has been issued against him under process of a court and any of his property has, in consequence, either been sold by the sheriff or held by the sheriff for 21 days; or

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- (ii) execution has been issued against him under process of a court and has been returned unsatisfied;
- (e) if, at a meeting of any of his creditors—
 - (i) he consents to present a debtor's petition under this Act and does not, within 7 days from the date on which he so consented, present the petition; or
 - (ii) he consents to sign an authority under section 188 and does not, within 7 days from the date on which he so consented, sign such an authority and inform the chairman 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 creditors, he admits that he is in insolvent circumstances and, having been requested by a resolution of a majority of the creditors present at the meeting either in person or by attorney to bring his affairs under the provisions of this Act, he 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 chairman 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 by the Registrar by whom the notice was issued; or
 - (ii) where the notice was served elsewhere—within the time fixed for the purpose by the order giving leave to effect the service,comply with the requirements of the notice or satisfy the Court that he 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

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- a counter-claim, set-off or cross demand that he could not have set up in the action or proceeding in which the judgment or order was obtained;
- (h) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;
 - (i) if he signs an authority under section 188;
 - (j) if a meeting of his creditors is called in pursuance of such an authority;
 - (k) if, without sufficient cause, he fails to attend a meeting of his creditors called in pursuance of such an authority or to submit to such a meeting the statement referred to in section 195;
 - (l) if, having been required by a special resolution of a meeting of his creditors so called to execute a deed of assignment or a deed of arrangement or to present a debtor's petition, he fails, without sufficient cause—
 - (i) to comply with the requirements of this Act as to the execution of the deed by him; or
 - (ii) to present a debtor's petition within the time specified in the resolution,as the case may be;
 - (m) if a deed of assignment or a deed of arrangement executed by him under Part X or a composition accepted by a meeting of his creditors under that Part is declared to be void by the Court or is terminated by the Court or the creditors under that Part or such a composition is set aside by the Court under that Part; or
 - (n) if a composition or scheme of arrangement accepted by the debtor's creditors under Division 6 of Part IV is annulled by the Court and, before the annulment, the debtor's bankruptcy has been annulled.
- (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 on the
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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 on 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 proceeding 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;
 - (c) a judgment or order against a married woman that is otherwise final shall be deemed to be a final judgment or final order notwithstanding that it may not be enforceable at law by execution;
 - (d) a person who is for the time being entitled to enforce a final 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, being maintenance that was—
 - (i) payable periodically where any periodic payment was payable at a time during the 12 months immediately preceding the making of the order; or

- (ii) payable (whether in one amount or by instalments) as a lump sum,
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 by post to the creditors in accordance with section 194 or, if they are not 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 period within which the deed 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 deed or composition is declared void or terminated or the composition is set aside, 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 annulled.
- (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 and things occurring, after the commencement of this Act.

41 Bankruptcy notices

- (1) A bankruptcy notice—
- (a) shall be in accordance with the prescribed form; and
 - (b) shall be issued by the Registrar.

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- (2) The prescribed form of bankruptcy notice shall be such that the notice—
- (a) requires the debtor named in it, within a specified time (being the time referred to in subparagraph (40)(1)(g)(i) or (ii), whichever is appropriate) to—
 - (i) pay the judgment debt or sum ordered to be paid in accordance with the judgment or order; or
 - (ii) secure the payment of the debt or sum to the satisfaction of the Court or the creditor or his agent, if any, specified in the notice or compound the debt or sum to the satisfaction of the creditor or his agent, if any, specified in the notice; and
 - (b) states the consequences of non-compliance with the requirements of the notice.
- (2A) Where the judgment debt or sum ordered to be paid in accordance with the judgment or order is expressed by the judgment or order as an amount in the currency of a foreign country (in this subsection referred to as the ***amount of foreign currency***), the bankruptcy notice shall state that payment is to be made in either—
- (a) the amount of foreign currency; or
 - (b) a specified amount of Australian dollars, being an amount that is the equivalent in Australian dollars of the amount of foreign currency on the second business day before the day on which application was made for the issue of the bankruptcy notice.
- (2B) The rate for ascertaining on a particular day for the purposes of paragraph (2A)(b) the equivalent in Australian dollars of an amount of foreign currency is the average of the rates at which Australian dollars may be bought in that foreign currency at—
- (a) 11 o'clock in the morning; or
 - (b) if another time is prescribed for the purposes of this subsection—that other time,
- on that day from 3 authorised foreign exchange dealers selected by the creditor who applied for the issue of the bankruptcy notice.

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(2C) In this section—

authorised foreign exchange dealer means a person authorised by a general authority issued by the Reserve Bank of Australia under regulation 38A of the Banking (Foreign Exchange) Regulations to buy and sell foreign currency;

business day, in relation to an application for the issue of a bankruptcy notice, means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the application is made.

(3) A bankruptcy notice shall not be issued in relation to a debtor—

- (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;
- (b) if, at the time of the application for its issue, execution of the judgment or order to which it relates has been stayed; or
- (c) in respect of a judgment or order for the payment of money made by the Court in the exercise of the jurisdiction conferred on it by this Act 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.

(4) Service of a bankruptcy notice shall be effected as prescribed.

(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 allowed for payment, gives notice to the creditor that he 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 shall be deemed to have complied with the notice if, within the time allowed for

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payment, he 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 by the Court or the Registrar for compliance with the requirements of a bankruptcy notice—

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

(b) an application to set aside the bankruptcy notice has been filed with the Registrar,

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

(6B) Where, before the expiration of the time fixed by the Registrar for compliance with the requirements of a bankruptcy notice—

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

(b) an application to set aside the bankruptcy notice has been filed with the Registrar,

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

(6C) Where—

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

(b) the Court or the Registrar, as the case may be, 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 or the Registrar, as the case may be, shall not extend the time for compliance with the bankruptcy notice.

- (7) Where, before the expiration of the time fixed for compliance with the requirements of a bankruptcy notice, the debtor has filed with the Registrar an affidavit to the effect that he 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 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.
- (8) Where a bankruptcy notice is issued in respect of a judgment or order that is expressed in the currency provided for by the *Coinage Act 1909*, the amount of the judgment debt or sum ordered to be paid shall be expressed in the bankruptcy notice in the currency provided for by the *Currency Act 1965* and, for that purpose, the amount shall, subject to subsection (9) of this section, be ascertained by reference to the equivalents specified in subsection 8(4) of that Act.
- (9) For the purposes of subsection (8), where the amount referred to in subsection (8) in the currency provided for by the *Coinage Act 1909* is an amount of pounds, shillings and pence or pounds and pence, the corresponding amount in the currency provided for by the *Currency Act 1965* shall be calculated on the basis that an amount of pence specified in the first column in the table set out in subsection 11(3) of the *Currency Act 1965* corresponds to the amount of cents specified in the second column of that table opposite to that amount of pence.

42 Payment &c., of debt to 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 allowed by the notice, the debtor pays the

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amount required to be paid by the notice to, or secures it or compounds it to the satisfaction of—

- (a) the Secretary to 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

43 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 partners or 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 is discharged by force of section 149;
 - (b) he is discharged by order of the Court; or
 - (c) his bankruptcy is annulled under section 74 or 154.

44 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 \$1,500 or 2 or more debts that amount in the aggregate to \$1,500, 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 \$1,500;

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- (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 exceeds the value of his security.
 - (3) A secured creditor may present, or join in presenting, a creditor's petition as if he were an unsecured creditor if he includes in the petition a statement that he is willing to surrender his 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 shall set out in the petition particulars of his security.
 - (5) Where a secured creditor has presented, or joined in presenting, a creditor's petition as if he were an unsecured creditor, he shall, upon request in writing by the trustee within the prescribed time after the making of a sequestration order, surrender his 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 security when requested to do so by the trustee in accordance with that subsection is guilty of contempt of court.

45 Creditor's petition against partnership

- (1) A creditor of a partnership may present a petition against the partnership if he is entitled to present a petition against any 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.

46 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 or others.

47 Requirements as to creditor's petition

- (1) A creditor's petition—
 - (a) shall be in accordance with the prescribed form;
 - (b) shall be verified by the affidavit of a person who has knowledge of the facts; and
 - (c) shall be served as prescribed.
- (2) Except with the leave of the Court, a creditor's petition shall not be withdrawn after presentation.

49 Change 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.

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50 Court may direct Official Trustee or registered trustee to take control of property before sequestration

- (1) If, on application by a creditor, it is shown to be necessary in the interests of the creditors, the Court may, at any time after the presentation of a creditor's petition and before sequestration, direct the Official Trustee or a specified registered trustee to take control of the property of the debtor and may make such orders in relation to that property as the Court considers just.
- (2) Without limiting the generality of subsection (1), the Court may, at any time after giving a direction under subsection (1), summon—
 - (a) the debtor or the spouse of the debtor; or
 - (b) any person who is known or suspected to have in his possession any of the property of the debtor, or is supposed to be indebted to the debtor or to be able to give information concerning the debtor or his trade dealings, property or affairs,to attend, on a date and at a time and place fixed in the summons, before the Court or the Registrar or, if the Court thinks fit, before a magistrate, to give evidence concerning, and produce any books in his custody or power relating to, the debtor or his trade dealings, property or affairs, and, where the Court issues such a summons, the provisions of section 81 apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, for the purpose of such an examination of the person so summoned under this section as if the debtor were a bankrupt and the examination were an examination under section 81.
- (3) In this section, *modification* includes the addition or omission of a provision or the substitution of a provision for another provision.

51 Costs of prosecuting creditor's petition

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

52 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 a sequestration order against the estate of the debtor.
- (2) If the Court is not satisfied with the proof of any of those matters, or is satisfied by the debtor—
 - (a) that he is able to pay his 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,

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commencing on the date of presentation of the petition as is specified in the order.

53 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 of 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 that is the commencement of the bankruptcy in respect of all those estates,and, if the Court does so, those estates shall be administered accordingly.

54 Bankrupt's statement of affairs

- (1) Where a sequestration order is made, the person against whose estate it is made shall, within 14 days from the day on which he is notified of the bankruptcy—
 - (a) make out and file in the office of the Registrar for the District in which the sequestration order was made a statement of his affairs in accordance with the prescribed form and verified by affidavit; and
 - (b) furnish a copy of the statement to the trustee.

- (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 affairs), within 14 days from the day on which he is notified of the bankruptcy, and either on his own account or jointly with another or others of those debtors—
 - (a) make out and file in the office of the Registrar for the District in which the sequestration order was made a statement of the joint affairs of those persons in accordance with the prescribed form and verified by affidavit; and
 - (b) furnish a copy of the statement to the trustee.
- (3) A bankrupt who fails to file a statement of affairs as required by subsection (1) or (2) is guilty of contempt of court.
- (3A) Where a trustee to whom a copy of a statement has been furnished under subsection (1) or (2) is not the Official Trustee, the trustee shall, as soon as practicable after that copy has been furnished, furnish a further copy to the Official Receiver.
- (4) A person who states in writing that he 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 other person may on payment of the prescribed fee, 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 make copies of, or take extracts from, the statement or statements.

Division 3—Debtors' Petitions

55 Debtor's petition

- (1) Subject to this section, a debtor may present to the Registrar a petition against himself accompanied by a statement of his affairs, verified by affidavit, and a copy of that statement.
- (2) The petition and statement of affairs shall each be in accordance with the prescribed form.
- (3) Where it appears to the Registrar that a petition presented to him under this section is in accordance with the prescribed form and that the statement of affairs accompanying the petition is also in accordance with the prescribed form or the Court directs, under subsection (4), the Registrar to accept the petition—
 - (a) the petition shall be accepted by the Registrar, who shall endorse it accordingly; and
 - (b) thereupon, by force of this subsection, the debtor becomes a bankrupt by virtue of the presentation of the petition.
- (4) Where it appears to the Registrar that a petition presented to him under this section, or the statement of affairs accompanying such a petition, is not in accordance with the prescribed form, the Registrar shall not accept the petition unless the Court, upon reference by the Registrar, directs him to accept it.
- (5) Where a debtor becomes a bankrupt by force of this section, the Registrar shall forthwith—
 - (a) in a case where the trustee is the Official Trustee—give notice of the bankruptcy to the Official Receiver and forward to the Official Receiver a copy of the statement of affairs that accompanied the petition presented by the bankrupt; and
 - (b) in a case where the trustee is not the Official Trustee—give notice of the bankruptcy to the Official Receiver and to the trustee and forward to the Official Receiver and to the trustee

a copy of the statement of affairs that accompanied the petition presented by the bankrupt.

- (6) A debtor who has executed a deed of assignment or deed of arrangement under Part X or whose creditors have accepted a composition under that Part is not, except with the leave of the Court, entitled to present a petition against himself unless—
 - (a) the deed of assignment has been declared void or the final dividend has been paid under it;
 - (b) the deed of arrangement has been declared void or has been terminated; or
 - (c) the composition has been declared void, has been set aside or terminated or the final payment under it has been made.
- (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.
- (7) Where a petition is presented by a debtor against himself in contravention of subsection (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 is discharged by force of section 149;
 - (b) he is discharged by order of the Court; or
 - (c) his bankruptcy is annulled under section 74 or 154.
- (9) A person who states in writing that he 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 prescribed fee, inspect, personally or by an agent, the statement of affairs that accompanied the petition presented by the bankrupt, and may make copies of, or take extracts from, the statement.

56 Debtor's petition against partnership

- (1) A debtor's petition against a partnership may be presented to the Registrar by all the members of the partnership or by a majority of

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the members of the partnership who are resident in Australia at the time of the presentation of the petition.

- (2) A petition under this section shall be accompanied by—
- (a) a statement of affairs of each member of the partnership by whom the petition is presented, verified by affidavit;
 - (b) a statement of the partnership affairs, verified by affidavit; and
 - (c) a copy of each of those statements.
- (3) A petition under this section, and a statement of affairs referred to in subsection (2), shall each be in accordance with the prescribed form.
- (4) Subject to subsection (6), where—
- (a) it appears to the Registrar that a petition presented to him under this section is in accordance with the prescribed form and that each of the statements of affairs accompanying the petition is also in accordance with the prescribed form; or
 - (b) the Court directs, under subsection (5), the Registrar to accept the petition,
- the petition shall be accepted by the Registrar, who shall endorse it accordingly, and thereupon, by force of this section—
- (c) except in a case to which paragraph (d) applies—each of the members of the partnership becomes a bankrupt by virtue of the presentation of the petition; or
 - (d) in a case where the petition is accepted by the Registrar in pursuance of an order of the Court under paragraph (7)(b)—the petitioning partner, or each of the petitioning partners, who gave his consent for the purposes of that paragraph becomes a bankrupt by virtue of the presentation of the petition.
- (5) Where it appears to the Registrar that a petition presented to him under this section, or any statement of affairs accompanying such a petition, is not in accordance with the prescribed form, the Registrar shall not accept the petition unless the Court, upon reference by the Registrar, directs him to accept it.

- (6) Where a petition is presented under this section against a partnership by some, but not all, of the members of the partnership, the Registrar—
- (a) shall not accept the petition, but shall refer it to the Court; and
 - (b) shall cause notice in accordance with the rules to be given to each of the partners who did not join in presenting the petition.
- (7) Upon a reference of a petition under subsection (6), the Court—
- (a) may direct the Registrar to accept the petition;
 - (b) may, with the consent of any one or more of the petitioning partners, direct the Registrar—
 - (i) to amend the petition by deleting from the petition the name of the partner, or of each partner, as the case requires, who did not give his consent for the purpose of this paragraph; and
 - (ii) to accept, under subsection (4), the petition as so amended; or
 - (c) may direct the Registrar not to accept the petition.
- (8) The Court shall not make an order under subsection (5) or (7) of this section in relation to a petition in relation to which subsection 253D(1) applies unless the relevant authority referred to in that last-mentioned subsection has had an opportunity of being heard.
- (9) Where members of a partnership become bankrupts by force of this section, the Registrar shall forthwith—
- (a) in a case where the trustee is the Official Trustee—give notice of the bankruptcies to the Official Receiver and furnish to the Official Receiver a copy of each statement of affairs that accompanied the petition presented by members of the partnership; and
 - (b) in a case where the trustee is not the Official Trustee—give notice of the bankruptcies to the Official Receiver and the trustee and furnish to the Official Receiver and to the trustee

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a copy of each statement of affairs that accompanied the petition presented by the members of the partnership.

- (10) A member of a partnership who has executed a deed of assignment or deed of arrangement under Part X or whose creditors have accepted a composition under that Part is not, except with the leave of the Court, entitled to join in presenting a petition against the partnership under this section unless—
- (a) the deed of assignment has been declared void or the final dividend has been paid under it;
 - (b) the deed of arrangement has been declared void or has been terminated; or
 - (c) the composition has been declared void, has been set aside or terminated or the final payment has been made under it,
- as the case requires.
- (11) A member of a partnership 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 against the partnership.
- (12) Where a petition is presented against a partnership in contravention of subsection (10) or (11), the presentation of the petition does not have any effect.
- (13) Where a debtor's petition against a partnership is accepted by the Registrar in pursuance of an order of the Court under paragraph (7)(a), each partner resident in Australia, not being a partner who joined in presenting the petition, shall, within 14 days from the day on which he is notified of the bankruptcy—
- (a) make out and file in the office of that Registrar a statement of his affairs and furnish a copy of that statement of affairs to the trustee; and
 - (b) either on his own account or jointly with another or others of the non-petitioning partners—
 - (i) make out and file in the office of that Registrar a statement of the partnership affairs; and
 - (ii) furnish a copy of that statement of affairs to the trustee.

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- (14) A statement of affairs referred to in subsection (13) shall be in accordance with the prescribed form and verified by affidavit.
- (15) If a member of a partnership required by subsection (13) to make out and file a statement of his affairs and a statement of the partnership affairs fails to file those statements, or either of those statements, as required by this section, he is guilty of contempt of court.
- (16) A person who becomes a bankrupt by force of this section continues to be a bankrupt until—
 - (a) he is discharged by force of section 149;
 - (b) he is discharged by order of the Court; or
 - (c) his bankruptcy is annulled under section 74 or 154.
- (17) A person who states in writing that he is a creditor of a bankrupt who has become a bankrupt by virtue of the presentation of a debtor's petition against the members of a partnership, or a creditor of a partnership some or all of the members of which have become bankrupt by force of this section, may without fee, and any other person may on payment of the prescribed fee, inspect, personally or by an agent, any statement of affairs that accompanied, or has been filed in relation to, the petition presented by members of the partnership, and may make copies of, or take extracts from, any such statement of affairs.

57 Debtor's petition by joint debtors who are not partners

- (1) Where joint debtors are not in partnership with one another, the debtors, or any 2 or more of the debtors, may present to the Registrar a petition jointly against themselves.
- (2) A petition under this section shall be accompanied by—
 - (a) a statement of affairs of each of the petitioning debtors, verified by affidavit;
 - (b) a statement of their joint affairs, verified by affidavit; and
 - (c) a copy of each of those statements.

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- (3) A petition under this section, and a statement of affairs referred to in subsection (2), shall each be in accordance with the prescribed form.
- (4) Where it appears to the Registrar that a petition presented to him under this section is in accordance with the prescribed form, and that each of the statements of affairs accompanying the petition is also in accordance with the prescribed form, or the Court directs, under subsection (5), the Registrar to accept the petition—
 - (a) the petition shall be accepted by the Registrar, who shall endorse it accordingly; and
 - (b) thereupon, by force of this section, each of the petitioning debtors becomes a bankrupt by virtue of the presentation of the petition.
- (5) Where it appears to the Registrar that a petition presented to him under this section, or any statement of affairs accompanying such a petition, is not in accordance with the prescribed form, the Registrar shall not accept the petition unless the Court, upon reference by the Registrar, directs him to accept it.
- (6) Where joint debtors become bankrupts by force of this section, the Registrar shall forthwith—
 - (a) in a case where the trustee is the Official Trustee—give notice of the bankruptcies to the Official Receiver and furnish to the Official Receiver a copy of each statement of affairs that accompanied the petition presented by the debtors; or
 - (b) in a case where the trustee is not the Official Trustee—give notice of the bankruptcies to the Official Receiver and the trustee and furnish to the Official Receiver and to the trustee a copy of each statement of affairs that accompanied the petition presented by the debtors.
- (7) A debtor who has executed a deed of assignment or a deed of arrangement under Part X or whose creditors have accepted a composition under that Part is not, except with the leave of the Court, entitled to join in presenting a petition under this section unless—

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- (a) the deed of assignment has been declared void or the final dividend has been paid under it;
 - (b) the deed of arrangement has been declared void or has been terminated; or
 - (c) the composition has been declared void, has been set aside or terminated or the final payment has been made under it, as the case requires.
- (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 is discharged by force of section 149;
 - (b) he is discharged by order of the Court; or
 - (c) his bankruptcy is annulled under section 74 or 154.
- (11) A person who states in writing that he 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 prescribed fee, inspect, personally or by an agent, any statement of affairs that accompanied the petition presented by the joint debtors, and may make copies of, or take extracts from, any such statement of affairs.

57A 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 Registrar.

Division 4—Effect of Bankruptcy on Property and Proceedings

58 Vesting of property upon bankruptcy

- (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.
- (2) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered and enables the trustee of the estate of a bankrupt to be 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 so 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 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 maintenance order (whether entered into or made, as the case may be, before or after the commencement of this subsection); or
 - (b) a pecuniary penalty order or interstate pecuniary penalty order.
- (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.

59 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 on 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 presentation 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—

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- (i) that is acquired by, or devolves on, the bankrupt on 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 it 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 expenses in the earlier bankruptcy, the liabilities incurred by him 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 has lodged a proof of debt in the later bankruptcy, amend that proof of debt, without the consent of the trustee in the later bankruptcy, for the purpose of adding—
 - (A) his expenses in the earlier bankruptcy that have accrued after the proof of debt was lodged;
 - (B) liabilities incurred by him in administering the estate in the earlier bankruptcy after the proof of debt was lodged; or
 - (C) debts proved in the earlier bankruptcy after the 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;
- (e) a transaction that, by virtue of section 120, 121 or 122, is void as against the trustee in the earlier bankruptcy continues to be void as against that trustee; and

- (f) subsection 131(2) ceases to apply in relation to the trustee in the earlier bankruptcy and any order in force under that subsection immediately before the date of the later bankruptcy has, by force of this paragraph, effect on and after that date as if the income of the bankrupt payable under the order were payable to the trustee in the later bankruptcy for the benefit of the bankrupt's creditors in the later bankruptcy.
- (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 that 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 any 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 of the Commonwealth requires the transmission of property to be registered, and enables the trustee of the estate of a bankrupt to be 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.

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- (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 in the bankruptcy.

60 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 the debtor is imprisoned or otherwise held in custody under such a 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 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 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 a bankrupt is, upon his 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 by a defendant or other

party to the action, he shall be deemed to have abandoned the action.

- (4) Notwithstanding anything contained in this section, a bankrupt may continue, in his own name, an action commenced by him before he became a bankrupt in respect of—
 - (a) any personal injury or wrong done to the bankrupt, his spouse or a member of his family; or
 - (b) the death of his spouse or of a member of his family.
- (4A) Notwithstanding paragraph (1)(b), this section does not empower the Court to stay any proceedings under the *Proceeds of Crime Act 1987* or a corresponding law.
- (5) In this section, **action** means any civil proceeding, whether at law or in equity.

61 Actions by bankrupt partners trustee

- (1) Where a member of a partnership becomes a bankrupt, the Court 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 any of 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 is entitled as a partner.
- (4) If a partner does not claim any benefit from the action, the Court may order that he be indemnified against costs in respect of the action.
- (5) Unless the Court otherwise orders, a release by a partner of the debt or demand to which the action relates made after notice has been given to him under this section is void as against the trustee.

Section 62

- (6) This section applies to and in relation to joint debtors who are not partners as if they were partners.

62 Actions on joint contracts

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

63 Death of bankrupt

Where a bankrupt dies before he 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 were alive.

Division 5—First Meeting of Creditors, Public Examination and Committee of Inspection

64 First meeting of creditors

- (1) The trustee shall cause a meeting of the creditors of a bankrupt to be held, for the purposes of considering and deciding upon any matters relating to the bankruptcy, within the prescribed period if—
 - (a) a creditor requests him to do so; or
 - (b) he is of the opinion that it is desirable that he should do so.
- (2) For the purposes of subsection (1), the *prescribed period*, in relation to a bankrupt, means—
 - (a) subject to paragraph (b), the period of 28 days immediately succeeding—
 - (i) in a case where the bankrupt becomes bankrupt on a creditor's petition or by virtue of a sequestration order under Division 6 of Part IV or under Part X—
 - (A) the day on which the statement of the bankrupt's affairs is filed under section 54; or
 - (B) if no statement of the bankrupt's affairs is filed under section 54, the last day on which such a statement could have been filed in compliance with that section; or
 - (ii) in a case where the bankrupt becomes bankrupt by virtue of the presentation of a debtor's petition—the date of bankruptcy; or
 - (b) if the Registrar, on the application of the trustee, extends the period within which the first meeting of creditors may be held—the extended period fixed by the Registrar.

Section 65

65 Election of chairman

The majority in number of the creditors present at the first meeting of creditors in person, by attorney or by proxy shall elect a chairman to preside at the meeting.

66 Entitlement to vote at first meeting of creditors

- (1) Subject to this section, each creditor who is entitled to prove a debt in the bankruptcy is entitled to vote at the first meeting of creditors.
- (2) A creditor is not entitled to vote at the first meeting of creditors (otherwise than in respect of the election of a chairman of the meeting) unless he has made known to the chairman particulars of his debt.
- (3) Except as provided by subsection (4), a secured creditor is not entitled to vote in respect of a secured debt unless he surrenders his security.
- (4) A secured creditor may, if he has furnished to the chairman, in writing, particulars of his security and of the value at which he estimates it, vote in respect of the balance (if any) of the secured debt after deducting the value at which he has estimated the security.
- (5) The spouse of the bankrupt is not entitled to vote at the first meeting of creditors.

67 Manner of voting

- (1) A creditor may vote at the first meeting of creditors either in person or by his attorney or by a proxy appointed in writing by the creditor or his attorney.
- (2) A proxy may be appointed to vote on all matters arising at the meeting or on particular matters specified in the instrument of appointment.

- (3) A person claiming to be the proxy of a creditor is not entitled to vote as proxy (otherwise than in respect of the election of a chairman of the meeting) unless the instrument by which he is appointed has been lodged with the chairman.
- (4) A person claiming to be the attorney of a creditor is not entitled to vote as attorney (otherwise than in respect of the election of a chairman of the meeting) unless—
 - (a) the instrument by which he is appointed has been produced to the chairman; or
 - (b) the chairman is otherwise satisfied that he is the duly authorized attorney of the creditor.

68 Admission and rejection of claim to vote

Any question as to the persons entitled to vote at the first meeting of creditors of a bankrupt, or as to the amount of the debt in respect of which a creditor is entitled to vote at the meeting, shall be determined by the chairman, who may, if he thinks it necessary to do so, adjourn the meeting for a period, not exceeding 14 days, to enable him to investigate the matter.

69 Public examination of bankrupt

- (1) The Official Receiver or the trustee of the estate of a bankrupt may, at any time, make an application, in writing, to the Registrar for the examination of the bankrupt, on oath, as to the conduct, trade dealings, property and affairs of the bankrupt.
- (2) The Registrar shall, on receipt by him of an application under subsection (1), fix a date, time and place for the commencement of the examination, under this section, of the bankrupt to whom the application relates and shall summon the bankrupt to attend on the date, and at the time and place, so fixed.
- (4) Subject to subsection (5), the examination of a bankrupt under this section shall be held in public before the Registrar or, if the Registrar so directs by instrument in writing, before a magistrate.

Section 69

- (5) The Registrar or a magistrate may—
 - (a) at any time adjourn the examination of the bankrupt either to a fixed date or generally;
 - (b) at any time adjourn the examination of the bankrupt for further hearing before the Court; or
 - (c) conclude the examination of the bankrupt.
- (6) 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 such report with respect to the examination as he thinks fit.
- (7) 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.
- (8) A bankrupt is entitled to be represented, on his examination under this section, by counsel or a solicitor, who may re-examine him after his examination.
- (9) The Official Receiver, the trustee or a creditor of the bankrupt 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.
- (10) Without limiting the generality of subsection (9), 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.
- (11) The Court, the Registrar or the magistrate may put to the bankrupt, or allow to be put to the bankrupt, such questions as the Court, the Registrar or the magistrate, as the case may be, thinks proper.

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- (12) The bankrupt shall answer all questions that the Court, the Registrar or the magistrate puts or allows to be put to him and, unless the Court, the Registrar or the magistrate, as the case may be, otherwise directs, is not excused from answering any such question by reason only of the fact that the answer to it may tend to incriminate him.
- (18) The Court, the Registrar or the magistrate, as the case may be, may cause such notes of the examination of the bankrupt 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 bankrupt shall sign the notes.
- (19) The power conferred on the Court, the Registrar or the magistrate, as the case may be, by subsection (18) is in addition to the powers of the Court, the Registrar or the magistrate, as the case may be, under section 255.
- (20) Notes taken down and signed by the bankrupt in pursuance of subsection (18), and the transcript of the evidence given at the examination of the bankrupt under this section (being a transcript certified, or certified, signed and sealed, in pursuance of section 255)—
 - (a) may be used in evidence in any proceedings under this Act in which the bankrupt is a party; and
 - (b) shall be open to inspection by the bankrupt, the trustee, the Official Receiver or a person who states in writing that he is a creditor of the bankrupt without fee and by any other person on payment of the prescribed fee.

70 Committee of inspection

- (1) The creditors who are qualified to vote may, at the first meeting of creditors or at a subsequent meeting, by resolution appoint a committee of inspection for the purpose of advising and superintending the trustee.
- (2) The committee of inspection shall consist of not more than 5 and not less than 3 persons.

Section 71

- (3) A person is not eligible for appointment as a member of a committee of inspection unless—
 - (a) he is a creditor or a person authorized by a creditor to act for the creditor in relation to the bankruptcy; or
 - (b) he is a person whom a creditor intends to authorize to act for him in relation to the bankruptcy.
- (4) A creditor or other person referred to in paragraph (3)(a) is not qualified to act as a member of the committee of inspection until, in the case of a creditor, his proof of debt or, in the case of another person, the creditor's proof of debt, has been admitted and a person referred to in paragraph (3)(b) is not qualified so to act until the creditor has authorized him to act for the creditor in relation to the bankruptcy and the creditor's proof of debt has been admitted.
- (5) Subject to subsection (6), the committee of inspection shall meet at such times as the committee appoints from time to time.
- (6) The trustee or a member of the committee may call a meeting of the committee at any time.
- (7) The committee may act by a majority of its members present at a meeting but, except as provided by the next succeeding section, shall not act unless a majority of its members is present at the meeting.

71 Vacation of office, &c.

- (1) A member of a committee of inspection may resign his office by notice in writing signed by him and delivered to, or sent by post to, the trustee.
- (2) The office of a member of such a committee becomes vacant if—
 - (a) he becomes a bankrupt;
 - (b) he executes a deed of assignment or a deed of arrangement under Part X or makes a composition with his creditors under that Part;

Section 72

- (c) he is absent from 5 consecutive meetings of the committee;
or
 - (d) in the case of a member who is not a creditor, he ceases to be a person authorized by a creditor to act for him in relation to the bankruptcy.
- (3) A member of such a committee may be removed from office by resolution at a meeting of creditors of which 7 days' notice, stating the object of the meeting, has been given.
- (4) Where—
 - (a) a vacancy has occurred in the membership of such a committee; and
 - (b) there are 2 or more continuing members,the continuing members may act notwithstanding the vacancy and may appoint an eligible person to fill the vacancy.
- (5) Where the number of members of such a committee is at any time less than 2, a creditor may request the trustee to convene a meeting of creditors for the purpose of filling the vacancy or all or any of the vacancies and the trustee shall convene a meeting accordingly.

72 Member of committee not to purchase part of estate

- (1) A member of the committee of inspection shall not, while acting as such a member, except by leave of the Court, either directly or indirectly, become purchaser of any part of the property of the bankrupt.
- (2) Where a member of the committee of inspection is a person authorized by a creditor to act for the creditor in relation to the bankruptcy, the creditor shall not, while that person is acting as a member of the committee, except by leave of the Court, either directly or indirectly, become purchaser of any part of the property of the bankrupt.
- (3) A purchase made in contravention of this section may be set aside by the Court on the application of a creditor.

Division 6—Composition or Arrangement with Creditors

73 Composition or arrangement

- (1) Where a bankrupt desires to make a proposal to his creditors for—
 - (a) a composition in satisfaction of his debts; or
 - (b) a scheme of arrangement of his affairs,he may lodge with the trustee a proposal in writing signed by him setting out the terms of the proposed composition or scheme of arrangement and particulars of any sureties or securities forming part of the proposal.
- (2) The trustee shall call a meeting of creditors and shall send to each creditor before the meeting a copy of the proposal accompanied by a report on it.
- (3) The bankrupt may, at the meeting, amend the terms of his proposal.
- (4) The creditors may, by special resolution, accept the proposal.
- (5) A creditor who has proved his debt may assent to or dissent from the proposal by written notice to that effect delivered to the trustee before the meeting or sent by post to the trustee and received by him before the meeting, and in that case the creditor shall, for the purposes of this Division, be deemed to have been present at the meeting and to have voted according to his assent or dissent.

74 Approval by the Court

- (1) If a bankrupt's proposal for a composition or a scheme of arrangement is accepted by his creditors in accordance with section 73, the bankrupt or the trustee may apply to the Court for approval of the composition or scheme of arrangement.
- (2) The trustee shall give notice of the time appointed for hearing the application to each creditor who did not assent to the proposal.
- (3) The Court shall, upon the hearing of the application, hear—

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- (a) a report by the trustee as to the terms of the composition or scheme of arrangement, and as to the conduct, trade dealings, property and affairs of the bankrupt: and
 - (b) any objections to the composition or scheme of arrangement made by or on behalf of a creditor.
- (4) The Court may approve, or refuse to approve, the composition or scheme of arrangement.
- (5) Where the Court approves a composition or scheme of arrangement under this section, it may make an order annulling the bankruptcy.
- (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 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 of the Commonwealth 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 equity in such person as the Court appoints or in the bankrupt, as the case may be, does not vest in that person or the bankrupt at law until the requirements of that law have been complied with.

75 Effect of composition or scheme of arrangement

- (1) Subject to this section, a composition or scheme of arrangement accepted and approved 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.

Section 75

- (2) The acceptance and approval 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 not be released by his discharge from bankruptcy; or
 - (b) release any other person from any liability from which he would not be released by the discharge of the bankrupt.
- (3) The provisions of a composition or scheme of arrangement that has been accepted and approved 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 a contempt of the Court and is punishable accordingly.
- (4) If—
 - (a) default is made in any respect under such a composition or scheme of arrangement; or
 - (b) it is made to appear to the Court that—
 - (i) the composition or scheme of arrangement cannot be proceeded with without injustice or undue delay to the creditors or to the bankrupt; or
 - (ii) the approval of the Court was obtained by fraud,the Court may, if it thinks fit, on application by the trustee or a creditor, annul the composition or scheme of arrangement.
- (5) The annulment of a composition or scheme of arrangement does not affect the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme of arrangement before the annulment.
- (6) The trustee or a creditor may include in an application under subsection (4) an application for a sequestration order against the estate of the debtor and, if the Court makes an order on the first-mentioned application annulling the composition or scheme of arrangement, it may, if it thinks fit, forthwith make the sequestration order sought.

- (7) The Court may, if it thinks fit, dispense with the service on the debtor of notice of an application under subsection (4), either unconditionally or subject to conditions.
- (8) The making of an application for a sequestration order under this section shall, for the purposes of this Act, be deemed 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.

76 Application of Part VIII to trustee of composition on scheme of arrangement

- (1) The provisions of Part VIII apply subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to the trustee of a composition or scheme of arrangement under this Division as if the debtor were a bankrupt and the trustee were the trustee in his bankruptcy.
- (2) If, after taking into account the modifications and adaptations made by the rules, a provision of Part VIII is incapable of application to or 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.
- (3) In this section, **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.

Section 77

Part V—Control over Person and Property of Debtors and Bankrupts

77 Duties of bankrupt as to discovery, &c., of property

A bankrupt shall, unless excused by the trustee or prevented by illness or other sufficient cause—

- (a) forthwith after he becomes a bankrupt, deliver to the trustee all the books, documents, papers and writings in his possession relating to his trade dealings, property or affairs and, if he has a passport, his passport;
- (b) wait at such times on the trustee as the trustee reasonably requires and give such information concerning his conduct, trade dealings, property and affairs as the trustee requires;
- (c) attend the first meeting of his creditors and, if so required by the trustee, attend any subsequent meeting of creditors;
- (d) at each meeting of his creditors at which he is present, give such information concerning his conduct, trade dealings, property and affairs as the meeting requires;
- (e) execute such instruments and generally do all such acts and things in relation to his 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;
- (f) disclose to the trustee, as soon as practicable, property that is acquired by him, or devolves on him, before his discharge, being property divisible amongst his creditors; and
- (g) aid to the utmost of his power in the administration of his estate.

78 Arrest 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 debts or to preventing or delaying proceedings against him 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 property with a view to preventing or delaying possession of it being taken under this Act in the event of his 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, any of his books, documents, papers or writings relating to his trade dealings, property or affairs;
- (d) that a bankrupt has concealed, or, without the permission of the trustee, has removed, any of his property; or
- (f) that a bankrupt has, without good cause shown, neglected or failed to comply with an order of the Court or with any other 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 committal to such gaol as the Court appoints until the Court otherwise orders and may, by the same warrant, order that any property, books, documents, papers and writings 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, books, documents, papers and writings delivered into the custody of a person in pursuance of an order under subsection (1) shall be retained by him 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 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.

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79 Re-direction of postal articles

The Registrar may, on the application of the trustee, from time to time direct that postal articles and telegrams addressed to a bankrupt at any place or places mentioned in the direction shall, for such period, not exceeding 6 months, as the Registrar specifies, be re-directed, sent or delivered by the Australian Postal Commission or the Australian Telecommunications Commission, as the case requires, to the trustee, and the postal articles and telegrams shall be re-directed, sent or delivered accordingly.

80 Notification of change in name or address, &c.

- (1) A bankrupt shall forthwith notify the Registrar and the trustee in writing of any change in his name or address that occurs during his bankruptcy.

Penalty: \$100 or imprisonment for 6 months.

- (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.
- (3) A bankrupt shall, at such times (if any) as are prescribed and at such times as he is required to do so by the Registrar or the trustee, notify the trustee in writing of the nature of the employment, occupation, business or profession in which he is engaged.

Penalty: \$100 or imprisonment for 6 months.

- (4) In this section, *the Registrar* means the Registrar for the District in which the sequestration order was made or the debtor's petition was presented, as the case may be.

81 Discovery of bankrupt's property

- (1) The Court or the Registrar may, on the application of a creditor who has proved his debt and on such terms as to costs as the Court or the Registrar thinks fit to impose, or on the application of the Official Receiver or the trustee, at any time summon—

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- (a) the bankrupt or the spouse of the bankrupt; or
 - (b) a person who is known or suspected to have in his possession any of the property of the bankrupt, or is supposed to be indebted to the bankrupt or to be able to give information concerning the bankrupt or his trade dealings, property or affairs,
- to attend, on a date and at a time and place fixed in the summons, before the Court or the Registrar or, if the Court or the Registrar thinks fit, before a magistrate, to give evidence concerning, and produce any books (whether or not in existence at the time the bankrupt became a bankrupt) in his custody or power relating to, the bankrupt or his trade dealings, property or affairs.
- (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 date 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 such report with respect to the examination as he 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

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represented, on his examination, by counsel or a solicitor, who may re-examine him after his examination.

- (8) The trustee or a creditor of the bankrupt 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 to a person being examined under this section, or allow to be put to a person being examined under this section, such questions concerning the bankrupt or his trade dealings, property or affairs, as the Court, the Registrar or the magistrate, as the case may be, thinks proper.
- (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.
- (12) Where a person admits on examination under this section that he is indebted to the bankrupt, then, the Court, the Registrar or the magistrate, as the case may be, may, on the application of the trustee or a creditor who has proved his debt, order the person to pay to 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 is indebted to the bankrupt.
- (13) Where the bankrupt or another person admits on examination under this section that he has in his possession or power any of the property of the bankrupt, then, the Court, the Registrar or the magistrate, as the case may be, may, on the application of the trustee or a creditor who has proved his debt, order the bankrupt or the other person, as the case may be, to deliver that property to the trustee at or by such time, in such manner and on such terms as the Court, the Registrar or the magistrate, as the case may be, thinks fit.

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- (14) The Court, the Registrar or the magistrate, as the case may be, may direct that the costs of a person examined under this section shall be paid out of the estate of the bankrupt.
- (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.
- (16) The power conferred on the Court, the Registrar or the magistrate, as the case may be, by subsection (15) is in addition to the powers of the Court, the Registrar or the magistrate, as the case may be, under section 255.
- (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 (being a transcript certified, or certified, signed and sealed, in pursuance of section 255)—
 - (a) may be used in evidence in any proceedings under this Act in which the person is a party; and
 - (b) shall be open to inspection by the person, the bankrupt, the trustee or a person who states in writing that he is a creditor of the bankrupt without fee and by any other person on payment of the prescribed fee.

Part VI—Administration of Property

Division 1—Proof of Debts

82 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 may become subject before his discharge by reason of an obligation incurred before the date of the bankruptcy, are provable in his bankruptcy.
- (1A) Without limiting the generality of subsection (1), debts and liabilities referred to in that subsection shall be taken to include a debt or liability by way of the whole or a part of—
 - (a) a periodical sum that became payable by the bankrupt before, but not more than one year before, the date of the bankruptcy under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this subsection); and
 - (b) a lump sum (whether payable in one amount or by instalments) that became payable by the bankrupt before the date of the bankruptcy under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this subsection).
- (2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust are not provable in bankruptcy.
- (3) Subject to subsection (3A), 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.
- (3A) An amount payable under a pecuniary penalty order or an interstate pecuniary penalty order is provable in bankruptcy.

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- (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.
- (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 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.

83 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 in respect of that debt has been admitted.

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84 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 prescribed 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 the matters, or some of the matters, contained in a proof of debt lodged with him by a creditor should be verified by statutory declaration, the trustee may serve on the creditor a notice, in accordance with the prescribed form, informing the creditor that he 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 the creditor or by a prescribed person on behalf of the creditor.
- (5) Where the trustee serves a notice on a creditor under subsection (3) in respect of a proof of debt, the proof of debt shall, for the purposes of this Act (other than section 263 or 263B), be deemed not 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.

85 Proof by employees

- (1) Where it appears from the bankrupt's statement of affairs that he is indebted to numerous persons employed by him 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 prescribed form.
- (2A) Where the trustee is of the opinion that it is desirable that all the matters, or some of the matters, contained in a proof of debt lodged with him by a person in pursuance of this section should be verified by statutory declaration, the trustee may serve on the person a notice, in accordance with the prescribed form, informing the person that he 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 in pursuance of this section may be made by the person or by a prescribed person on behalf of that person.
- (2C) Where the trustee serves a notice on a person under subsection (2A) in respect of a proof of debt, the proof of debt shall, for the purposes of this Act (other than section 263 or 263B), be deemed not 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

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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.

86 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 has become 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 party to the other in respect of those mutual dealings;
 - (b) the sum due from the one party shall be set off against any 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, as 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 had notice of an available act of bankruptcy committed by that person.

87 Deduction 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.

88 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.

89 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.

90 Proof of debt by secured creditor

- (1) A secured creditor is entitled to prove the whole or a part of his secured debt in the debtor's bankruptcy in accordance with the succeeding provisions of this Division, and not otherwise.

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- (2) A secured creditor who surrenders his security to the trustee for the benefit of creditors generally may prove for the whole of his debt.
- (3) A secured creditor who realizes his security may prove for any balance due to him after deducting the net amount realized, unless the trustee is not satisfied that the realization has been effected in good faith and in a proper manner.
- (4) A secured creditor who has not realized or surrendered his security may—
 - (a) estimate its value; and
 - (b) prove for the balance due to him after deducting the value so estimated.
- (5) A secured creditor to whom subsection (4) applies shall state particulars of his security, and the value at which he estimates it, in his proof of debt.

91 Redemption of security by trustee, &c.

- (1) Where a secured creditor has lodged a proof of debt in respect of the balance due after deducting the estimated value of his 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 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 or, in default of agreement, as the Registrar directs.
- (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 for, and purchase, the property.
- (4) The creditor may at any time, by notice in writing, require the trustee to elect whether he will, or will not, exercise his power of redeeming the security or of requiring it to be realized and if the trustee does not, within 3 months after receiving the notice, notify the creditor, in writing, that he elects to exercise the power—

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- (a) he 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 purposes 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.

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

93 Repayment 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 would have been entitled under the

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amended proof of debt, he 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 would have been entitled under the amended proof of debt, he 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.

94 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 security subsequently realizes his security, or it is realized under section 91, the net amount realized shall be substituted for the estimated value of the security and section 93 applies as if the proof of debt had been amended accordingly by the creditor under section 92.

95 Proof in respect of distinct contracts

Where a person was, at the time when he became a bankrupt, liable in respect of distinct contracts as a member of 2 or 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.

96 Proof in respect of proportionate part of periodical payment

Where a person who is liable to make any periodical payments (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.

97 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 not, subject to any order of the Court to the contrary, be admitted, unless the bill, note, instrument or security is produced to the trustee.

98 Amendment of proof of debt

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

99 Application to the Court where creditor or bankrupt considers proof wrongly admitted

- (1) Where a creditor or the bankrupt considers that, by virtue of a decision of the trustee under subsection 102(1), (3) or (4), a proof of debt has been wrongly admitted, he may apply to the Court for an order that the proof be expunged or that the amount of the admitted debt be reduced, and the Court may make an order accordingly.
- (2) Notice of an application under subsection (1) shall be given, in accordance with the rules, to the creditor by whom the proof of debt was lodged.
- (3) The costs in relation to an application under subsection (1) are in the discretion of the Court.
- (4) Where the Court makes an order under this section that a proof of debt be expunged or that the amount of an admitted debt be

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reduced, the person who proved the debt shall forthwith repay to the trustee any amount received by way of dividend in respect of the expunged proof of debt or any amount received by way of dividend in excess of the amount that he would have been entitled to receive if his debt had been originally admitted for the reduced amount, as the case requires.

100 Costs of proving debts &c.

- (1) A creditor shall, unless the Court in the particular case otherwise orders, bear his 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.

101 Inspection of proofs by creditors, &c.

- (1) A creditor who has lodged a proof of debt is entitled to examine the proofs of debt of other creditors before the first meeting of creditors and at all reasonable times.
- (2) The trustee shall, upon request in writing by a creditor who has lodged a proof of 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.

102 Admission or rejection of proofs

- (1) The trustee shall examine each proof of debt and the grounds of 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 expiration 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, he 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 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 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 and rejects it in whole or amends such a decision by reducing the amount of the admitted debt—
 - (a) he shall inform the creditor by whom it was lodged, in writing, of his 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 or any amount received by way of dividend in excess of the amount that the creditor would have been entitled to receive if his 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

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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.

103 Debts to be admitted to nearest dollar

- (1) A proof of debt shall be admitted to the nearest dollar.
- (2) For the purposes of subsection (1), where the amount of a debt sought to be proved is 50 cents or a number of dollars and 50 cents, the nearest dollar shall be deemed to be that ascertained by adding to the amount of the debt the sum of 50 cents.

104 Appeal against decision of trustee in respect of proof

- (1) A creditor who is dissatisfied with a decision of the trustee under subsection 102(1), (3) or (4) in respect of a proof of debt may apply to the Court to review the decision.
- (2) The Court may, upon the application, confirm, reverse or vary the 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.

105 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.

106 Trustee may administer oaths, &c.

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

107 Creditor not to receive more than the amount of his 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 under this Act.

Division 2—Order of Payment of Debts

108 Debts proved to rank equally except as otherwise provided

Except as otherwise provided by this Act, all debts proved in a 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.

109 Priority payments

- (1) Subject to this Act and to sections 221P, 221YHJ, 221YHZD and 221YU of the *Income Tax Assessment Act 1936*, the trustee shall, 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 rules, 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 175, not being an audit carried out by the Auditor-General;
 - (b) second, in the case of a bankrupt who had, before the date of the bankruptcy, signed an authority under section 188, in payment of—
 - (i) if the authority was given to a registered trustee—the remuneration of the trustee and the costs, charges and expenses properly and reasonably incurred by the trustee during the period in which the authority is in force, including any debts incurred by the trustee that are provable in the bankruptcy;
 - (ii) if the authority was given to a solicitor—any taxed costs due to the solicitor in respect of services rendered by him in relation to the authority;
 - (c) third, in the case of a bankruptcy that occurs within 2 months after a deed of assignment or a deed of arrangement executed

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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 declared to be void or been annulled, 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 award or agreement regulating conditions of employment, 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 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, being 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 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 113;
- (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

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- (ii) such costs, charges and expenses incurred in the interests of creditors before the date of the bankruptcy, as a general meeting of creditors, by special resolution, resolves.
- (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 right of priority in respect of the moneys so advanced as the person who received the payment 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 who received the payment would have been entitled to priority has been diminished by reason of the payment.
- (4) The right of priority conferred by subsection (2) in respect of moneys advanced for the purpose referred to in that subsection applies, notwithstanding section 111, in respect of moneys advanced by the spouse of the bankrupt for that purpose.
- (5) Paragraph (1)(f) does not apply to the extent to which the bankrupt is indemnified under a contract of insurance against the 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 workers 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 the law under which those periodical payments are made.
- (7) A special resolution shall not be deemed to have been duly passed for the purposes of paragraph (1)(j) unless the notice convening the meeting at which it was passed contained a copy of the proposed resolution.
- (8) A payment shall not be made under paragraph (1)(j) until 28 days after—
- (a) a certificate that the notice convening the meeting was duly forwarded to the bankrupt and to each person shown as a creditor in the statement of affairs; and
 - (b) a copy of the special resolution,
- have been filed in the office of the Registrar.
- (9) The bankrupt or a creditor may, before the expiration of the period referred to in subsection (8), apply to the Court to reverse or vary 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 so 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

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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).

109A 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 by 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 or 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)(g).

110 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 joint debts, and the separate estate of each joint debtor shall be applied in the first instance in payment of his 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.

111 Postponement of spouse's claims

Any money or other property of the spouse of a bankrupt lent or made available by the spouse to the bankrupt shall be treated as assets of the bankrupt's estate, and the spouse is not entitled to any dividend as a creditor in respect of that money or other property until all claims of the other creditors (other than claims in respect of excess interest under section 112 and claims for interest on interest-bearing debts in respect of a period after the date of the bankruptcy) have been satisfied.

112 Interest on debts

- (1) Where a creditor has proved a debt that is for, or includes, interest, or is founded on a claim that is for, or includes, interest, the interest or claim shall, for the purposes of dividend, be allowed at a rate not exceeding 12% per annum or such other rate as is prescribed for the purposes of this section.
- (2) Subsection (1) does not prevent the creditor from receiving a higher rate of interest than 12% per annum or such other rate as is prescribed for the purposes of this section after all claims of the other creditors (including any claim by the spouse of the bankrupt under section 111) have been satisfied.

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- (3) In this section, *interest* includes a pecuniary consideration in lieu of interest.

113 Apprenticeship, &c., claims

- (1) Where, at the time of the presentation of a petition on which, or 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 behalf gives notice in writing to the trustee that 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 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 behalf, execute a transfer of the indenture of apprenticeship or articles of agreement to some other person.

114 Payment of liabilities, &c., incurred under terminated deed, &c.

- (1) Where a debtor becomes a bankrupt after a deed of assignment or a deed of arrangement executed by him, or a composition or scheme of arrangement accepted by his creditors, has, whether before or after the commencement of this Act, been declared to be void or been annulled, set aside or terminated—
- (a) any unpaid liabilities incurred in good faith, and any unpaid commitments entered into in good faith, under the terminated

deed, composition or scheme of arrangement by the trustee or the debtor;

- (b) any expenses reasonably incurred in good faith under the terminated deed, composition or scheme of arrangement by the trustee, being expenses for which he has not been reimbursed; and
- (c) such proportionate part of the unpaid remuneration of the trustee as the creditors in relation to the terminated deed, composition or scheme of arrangement determine by resolution,

are debts provable in the bankruptcy.

- (2) In this section—

composition includes a composition under Division 5 of Part IV of the repealed Act or under Part XI of the repealed Act;

deed of arrangement includes a deed of arrangement under Part XII of the repealed Act;

deed of assignment includes a deed of assignment under Part XI of the repealed Act;

scheme of arrangement includes a scheme of arrangement under Division 5 of Part IV of the repealed Act or under Part XI of the repealed Act;

the terminated deed, composition or scheme of arrangement means the deed, composition or scheme of arrangement that has been declared to be void or has been annulled, set aside or terminated.

Division 3—Property Available for Payment of Debts

115 Commencement of bankruptcy

- (1) The bankruptcy of a person who becomes a bankrupt on a creditor's petition or by virtue of a sequestration order made under Division 6 of Part IV or under Part X shall be deemed to have relation back to, and to have commenced at, the time of the commission of the earliest act of bankruptcy committed by that person within the period of 6 months immediately preceding the date on which the creditor's petition was presented or the application for the making of the sequestration order was made, as the case may be.
- (2) The bankruptcy of a person who becomes a bankrupt by virtue of the presentation of a debtor's petition shall—
 - (a) if he has committed any act or acts of bankruptcy within the period of 6 months immediately preceding the date on which the petition was presented—be deemed to have relation back to, and to have commenced at, the time of the commission of that act, or the first of those acts, as the case may be; or
 - (b) if he has not committed any such act of bankruptcy—be deemed to have commenced at the time of the presentation of the petition.
- (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.

116 Property divisible amongst 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 has devolved or devolves on him,

after the commencement of the bankruptcy and before his discharge; and

- (b) the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of the bankruptcy or at any time after the commencement of the bankruptcy and before his discharge,

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) necessary wearing apparel, necessary household property of the bankrupt (including any sewing machine used for domestic purposes) and such other household property of the bankrupt, if any, as the creditors by resolution determine;
- (c) ordinary tools of trade, plant and equipment, professional instruments and reference books of the bankrupt not exceeding in the aggregate \$500, or such greater amount as is prescribed for the purposes of this paragraph, in value, and such other tools of trade, plant and equipment, professional instruments and reference books of the bankrupt, if any, as the creditors by resolution determine or as the Court, on the application of the bankrupt, determines;
- (d) policies of life assurance or endowment assurance (other than policies for pure endowment) in respect of the life of the bankrupt or the spouse of the bankrupt that have been in force for not less than 2 years before the commencement of the bankruptcy and the proceeds of such policies received on or after the date of the bankruptcy or not earlier than one year before that date;
- (e) policies for pure endowment that have been in force for not less than 5 years before the commencement of the bankruptcy and the proceeds of such policies received on or after the date of the bankruptcy or not earlier than one year before that date;

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- (f) policies for annuities that have been in force for not less than 5 years before the date of the bankruptcy to the extent to which they provide for payment of an annuity not exceeding in the aggregate \$1,200 or such greater amount as is prescribed for the purposes of this paragraph;
- (fa) payments made on or after the date of the bankruptcy under policies for annuities to the extent to which those payments do not exceed, in the aggregate, \$1,200 per annum or such greater amount per annum as prescribed for the purposes of this paragraph;
- (g) any right of the bankrupt to recover damages or compensation—
 - (i) for personal injury or wrong done to the bankrupt, the spouse of the bankrupt or a member of the family of the bankrupt; or
 - (ii) in respect of the death of the spouse 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 became a bankrupt) in respect of such an injury or wrong or the death of such a person;
- (h) subject to section 131, the separate property of a married woman the income of which is subject to a restraint on anticipation;
- (k) amounts paid to the bankrupt under a scheme established and operated by a State in accordance with the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Reconstruction) Act 1971*, or in accordance with that agreement as subsequently amended, being amounts paid by way of loan as assistance for the purpose of rehabilitation;
- (m) amounts paid to the bankrupt under a scheme established and operated by a State or the Northern Territory in accordance with 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), being amounts paid by way of grant or loan as assistance for the purpose of rehabilitation or household support;
- (ma) amounts paid to the bankrupt under a scheme established and operated by a State or the Northern Territory in accordance with 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 in accordance with that agreement as subsequently amended, being amounts paid by way of grant or loan as assistance for the purpose of rehabilitation or household support;
- (n) property to which, by virtue of subsection (3), this paragraph applies; and
- (o) amounts paid to the bankrupt under subsection (4).
- (3) Where the whole, or substantially the whole, of the moneys paid for the purchase, or used in the acquisition, of property were moneys of all or any of the following kinds, namely:
- (i) proceeds referred to in paragraph (2)(d) or (e);
 - (ii) damages or compensation referred to in paragraph (2)(g); or
 - (iii) amounts referred to in paragraph (2)(k), (m) or (ma),
- that property is, by virtue of this subsection, property to which paragraph (2)(n) applies.
- (4) Where—
- (a) property (not being property to which paragraph (2)(n) applies) is realized by the trustee; and
 - (b) the moneys paid for the purchase, or used in the acquisition, of the property were in part moneys of all or any of the following kinds, namely:

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- (i) proceeds referred to in paragraph (2)(d) or (e);
 - (ii) damages or compensation referred to in paragraph (2)(g); or
 - (iii) amounts referred to in paragraph (2)(k), (m) or (ma),
- and in part moneys of another kind or other kinds,

the trustee shall pay to the bankrupt an amount equal to the amount that bears to the proceeds of the realization of the property the same proportion as the amount of those first-mentioned moneys bears to the total amount paid for the purchase, or used in the acquisition, of the property.

117 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 is or was so insured has been incurred (whether before or after he became a 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 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.

118 Execution by creditor against property of debtor who becomes a bankrupt, &c.

- (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 on his 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 on his 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 on his behalf, against property of a debtor, or as a result of the attachment by him, or on his 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 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 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 on his behalf,

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- against property of the bankrupt or of the attachment by him, or on his 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, as 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 notice of the presentation of the petition, being a notice in accordance with the prescribed form, to the person liable to pay that 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, as 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 notice of the presentation of the petition, being a notice in accordance with the prescribed form, to the person liable to pay that 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 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).
- (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 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 the bankrupt.
- (12) In this section—

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charge means a charge created by a law of the Commonwealth or of a State or Territory of the Commonwealth upon registration of a judgment in any registry;

charging order means a charging order made by a court in respect of a judgment.

119 Duties of sheriff after receiving notice of presentation of petition, &c.

- (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, the process of execution was issued, or to any person on his 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 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 reference 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, the process of execution was issued, or to any person on his 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 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 notice of 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 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 sheriff a notice in accordance with the prescribed form, being a notice in the form of a statutory declaration, specifying such particulars of the maintenance agreement or maintenance order as are required by the form, 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.

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- (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 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 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 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

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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 notice in accordance with the prescribed form, being a notice in the form of a statutory declaration, specifying such particulars of the maintenance agreement or maintenance order as are required by the form, 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), refrains from taking action to sell property of a debtor (being real property), 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.

119A Duties of sheriff after receiving notice of bankruptcy, &c.

- (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 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 or other moneys in his 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 sale of property of the bankrupt, whether before or after

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- the bankrupt became a bankrupt, in pursuance of any such process; and
- (iii) any moneys in his possession as a result of the 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 or 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 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 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 moneys to 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 debt as an unsecured

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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 of 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

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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.

120 Avoidance of voluntary and marriage settlements

- (1) A settlement of property, whether made before or after the commencement of this Act, not being—
 - (a) a settlement made before and in consideration of marriage, or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration; or
 - (b) a settlement made on or for the spouse or children of the settlor of property that has accrued to the settlor after marriage in right of the spouse of the settlor,is, if the settlor becomes a bankrupt and the settlement came into operation after, or within 2 years before, the commencement of the bankruptcy, void as against the trustee in the bankruptcy.
- (2) A settlement of property, whether made before or after the commencement of this Act, not being a settlement referred to in paragraph (1)(a) or (b) or a settlement that is void as against the trustee by reason of the operation of that subsection, is, if the settlor becomes a bankrupt and the settlement came into operation after, or within 5 years before, the commencement of the bankruptcy, void as against the trustee in the bankruptcy, unless the parties claiming under the settlement prove—
 - (a) that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement; and
 - (b) that the settlor's interest in the property passed to the trustee of the settlement or to the donee under the settlement on its execution.
- (3) A covenant or contract made, whether before or after the commencement of this Act, in consideration of marriage either—
 - (a) for the future payment of money to the settlor's spouse or children; or
 - (b) for the future settlement of property on or for the settlor's spouse or children,

being money or property in which the settlor did not, at the date of the marriage, have any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of, or in right of, the settlor's spouse, is, if the settlor becomes a bankrupt and the covenant or contract was executed after the commencement of the bankruptcy, void as against the trustee in the bankruptcy.

- (4) The persons entitled under the covenant or contract may claim for dividend in the settlor's bankruptcy under the covenant or contract, but such a claim shall be postponed until all claims of the other creditors (including claims under section 111, claims in respect of excess interest under section 112 and claims for interest on interest-bearing debts in respect of a period after the date of the bankruptcy) have been satisfied.
- (5) A payment of money or transfer of property made by the settlor in pursuance of such a covenant or contract, whether before or after the commencement of this Act, is void as against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove—
 - (a) that the payment or transfer was made more than 2 years before the commencement of the bankruptcy;
 - (b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or
 - (c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from, or on the death of, a particular person named in the covenant or contract and was made within 3 months after the money or property came into the possession or under the control of the settlor.
- (6) Where any such payment of money or transfer of property is void as against the trustee in the settlor's bankruptcy by virtue of subsection (5), the persons to whom the payment was made or the property was transferred are entitled to claim for dividend under

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the covenant or contract as if it had not been executed at the commencement of the bankruptcy.

- (7) Nothing in this section shall be taken to affect or prejudice the title or interest of a person who has, in good faith and for valuable consideration, purchased or acquired from the persons entitled to the benefit of the settlement, covenant or contract or from the trustee of the settlement the money or property the subject of the settlement, covenant or contract or an interest in that money or property.
- (8) In this section, *settlement of property* includes any disposition of property.

121 Fraudulent dispositions

- (1) Subject to this section, a disposition of property, whether made before or after the commencement of this Act, with intent to defraud creditors, not being a disposition for valuable consideration in favour of a person who acted in good faith, is, if the person making the disposition subsequently becomes a bankrupt, void as against the trustee in the bankruptcy.
- (2) Nothing in this section shall be taken to affect or prejudice the title or interest of a person who has, in good faith and for valuable consideration, purchased or acquired the property the subject of the disposition or any interest in that property.
- (3) In this section, *disposition of property* includes a mortgage of property or a charge on or in respect of property.

122 Avoidance of preferences

- (1) A conveyance or transfer of property, a charge on property, or a payment made, or an obligation incurred, by a person who is unable to pay his debts as they become due from his own money (in this section referred to as *the debtor*), in favour of a creditor, having the effect of giving that creditor a preference, priority or

advantage over other creditors, being a conveyance, transfer, charge, payment or obligation executed, made or incurred—

- (a) within 6 months before the presentation of a petition on which, or by virtue of the presentation of which, the debtor becomes a bankrupt; or
- (b) on or after the day on which the petition on which, or by virtue of presentation of which, the debtor becomes a bankrupt is presented and before the day on which the debtor becomes a bankrupt,

is void as against the trustee in the bankruptcy.

(1A) Subsection (1) applies in relation to a conveyance or transfer of property, a charge on property or a payment made, or an obligation incurred, by the debtor in favour of a creditor—

- (a) whether or not the liability of the debtor to the creditor is his separate liability or is a liability with another person or other persons jointly; and
- (b) whether or not—
 - (i) the property conveyed, transferred or charged is his own property or is the property of the debtor and of another person or other persons;
 - (ii) the payment is made out of his own moneys or out of moneys of the debtor and another person or other persons; or
 - (iii) the obligation is incurred by the debtor on his own account only or on account of himself and another person or other persons,

as the case requires.

(2) Nothing in this section affects—

- (a) the rights of a purchaser, payee or encumbrancer in good faith and for valuable consideration and in the ordinary course of business;
- (b) the rights of a person making title in good faith and for valuable consideration through or under a creditor of the debtor; or

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- (c) a conveyance, transfer, charge, payment or obligation of the debtor executed, made or incurred under or in pursuance of a maintenance agreement or maintenance order.
- (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 conveyance, transfer, charge, payment or obligation shall be deemed to have been executed, made or incurred in favour of a creditor if it is executed, made or incurred in favour of a person in trust for that creditor;
 - (b) a payment of tax or municipal or other local rates under a law of the Commonwealth or of a State or Territory of the Commonwealth shall be deemed to be a payment made for valuable consideration 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 conveyance, transfer, charge, payment or obligation was executed, made or incurred 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 debts as they became due from his own money; and
 - (ii) that the effect of the conveyance, transfer, charge, payment or obligation would be to give him 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) Where—

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- (a) a conveyance, transfer or charge is set aside, or a payment is recovered, by the trustee in a bankruptcy in consequence of the operation of this section; or
 - (b) an obligation is void as against the trustee in a bankruptcy by force of this section,
- the creditor in whose favour the conveyance, transfer, charge, payment or obligation was executed, made or incurred may prove in the bankruptcy as if the conveyance, transfer, charge, payment or obligation had not been executed, made or incurred.
- (6) This section extends to conveyances, transfers, charges, payments and obligations executed, made or incurred before the commencement of this Act.
 - (7) In this section, **tax** includes any amount payable as provisional tax and contribution, or as provisional tax, in accordance with Division 3 of Part VI of the *Income Tax Assessment Act 1936*.

123 Protection of certain transactions against relation back, &c.

- (1) Subject to sections 118 to 122 (inclusive), nothing in this Act invalidates, in any case where a debtor becomes a bankrupt—
 - (a) a payment by the debtor to any of his creditors;
 - (b) a conveyance, transfer or assignment by the debtor for valuable consideration;
 - (c) a contract, dealing or other transaction by or with the debtor for valuable consideration; or
 - (d) any transaction to the extent of a present advance made by 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.

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- (2) The burden of proving the matters referred to in paragraphs (1)(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 became a bankrupt, of, or in respect of, a penalty or fine imposed on him by a court in respect of an offence against a law, whether a law of the Commonwealth or not.
- (5) Nothing in this Act invalidates, in any case where a debtor, being—
 - (a) a person required by Division 2 of Part VI of the *Income Tax Assessment Act 1936* to make a deduction from the salary or wages of an employee; or
 - (b) a person required by Division 4 of Part VI of the *Income Tax Assessment Act 1936* to make a deduction from a dividend or from interest,becomes a bankrupt, a payment to the Commissioner of Taxation (including a payment by means of the purchase of tax stamps) by the debtor, on or before the date on which he became a bankrupt, of an amount that he was required so to pay in respect of deductions so made.
- (6) 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.

124 Protection of certain payments to bankrupt, &c.

- (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 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; or
 - (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 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, or in accordance with whose order or direction, it was made was unable to pay his debts as they became due from his 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.

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125 Certain 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.
- (3) In this section—

building society means a society registered or incorporated as a building society or as a co-operative housing society under the law in force in a State or Territory relating to building societies or co-operative housing societies, and includes a society registered under Part I of the Building and Co-operative Societies Act, 1901, of New South Wales;

co-operative society means a 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 the law in force in a State or Territory relating to co-operative societies;

credit union means a society or other body of persons that is registered or incorporated as a credit union or credit society under the law in force in a State or Territory relating to credit unions or credit societies;

prescribed organization means a bank, a building society, a co-operative society or a credit union and any other financial organization of a kind prescribed for the purposes of this definition.

126 Dealings with undischarged bankrupt in respect of after-acquired property

- (1) A transaction by a bankrupt with a person dealing with him in good faith and for valuable consideration in respect of property acquired by the bankrupt on or after the day on which he 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 is necessary for giving effect to the transaction.
- (2) For the purposes of subsection (1), the receipt of any money, security or negotiable instrument from, or in accordance with the order or direction of, a bankrupt by his 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 banker, shall be deemed to be a transaction by the bankrupt with that banker dealing with him 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 land.

127 Limitation of time for making claims by trustee, &c.

- (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 the 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, as the case may be.

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- (2) An action under subsection 118(9) with respect to a charge or 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 settlement, covenant, contract, payment or 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 disposition 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 conveyance, transfer, charge, payment or obligation 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.

128 Notice to trustee where identity of vendor, &c., 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 of a State or Territory of the Commonwealth relating to title to land, or 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 intention to sell, 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, file 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 is not entitled at a future time to assert his title to that property or to make any claim in respect of that property as against the vendor, mortgagor, 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 4—Realization of Property

129 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, books 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 the trade dealings or affairs of the bankrupt or to claim any lien on any such papers or documents.
 - (4) If a person has in his possession or power any moneys or security that he is not by law entitled to retain as against the bankrupt or the trustee, he shall pay or deliver the moneys 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 the person as the legal personal representative of a person who was at the time of his 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 the prescribed 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 moneys or security that he is required by subsection (4) or (4A) so 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.

130 Seizure of property of bankrupt

A person acting under warrant of the Court may search for and seize property of a bankrupt in the custody or possession of the bankrupt or of any other person, and, for that purpose, may break open any house, building, room or receptacle of the bankrupt or any other person where the bankrupt or any of his property is or is supposed to be.

131 Income of bankrupt

- (1) Subject to this section, a bankrupt who is in receipt of income is entitled to retain it for his own benefit.
- (2) The Court may, upon the application of the trustee, order that all, or such part as the Court thinks fit, of the income of the bankrupt shall be paid to the trustee for the benefit of the bankrupt's creditors.
- (3) For the purposes of subsection (2), **income** includes income of a married woman that is subject to a restraint on anticipation, but does not include pension or payments in the nature of pension that, by a law of the Commonwealth or of a State or Territory of the Commonwealth, is exempted from attachment or made incapable of being assigned or charged.

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- (4) In exercising its powers under this section in respect of income of a married woman that is subject to a restraint on anticipation, the Court shall have regard, amongst other things, to the means of subsistence available for the woman and her children
- (5) Without limiting the power of the Court to vary an order made under subsection (2), the Court may, upon such terms and conditions as it thinks fit, vary such an order so as to relieve a person from liability to pay to the trustee amounts that have become payable under the order.
- (6) An order under subsection (2) ceases to have effect upon the discharge of the bankrupt in relation to whom the order was made unless at that time the bankrupt is undischarged from a later bankruptcy.
- (7) Where the Court orders, under subsection (2), a person other than the bankrupt to pay income of the bankrupt to the trustee for the benefit of the bankrupt's creditors, a payment made by that person in pursuance of the order is, to the extent of the amount paid, a valid discharge to him as against the bankrupt.

132 Vesting 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 from trustee to trustee and vests in the trustee for the time being during his 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 of the Commonwealth 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, that property, notwithstanding that it vests in equity 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.

133 Disclaimer of onerous property

- (1) Subject to this section, 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,the trustee may, notwithstanding that he 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 has not become the registered owner of that property, by writing signed by him, at any time disclaim the property.
- (1A) Subject to this section, the trustee may at any time, by writing signed by him, 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), when filed with the Registrar, operates to determine forthwith the rights, interests and liabilities of the bankrupt and his 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, but does not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.
- (3) Where a disclaimer in respect of any property is filed with the Registrar, being property the transmission of which is required by a law of the Commonwealth or of a State or Territory of the Commonwealth to be registered, the Registrar shall, as soon as

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practicable, give notice of the disclaimer to the registrar or other officer who has the function under that law of registering the transmission of that property.

- (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 sublet the whole or any part of the leased property or has mortgaged the lease, to each sub-lessee or mortgagee, 28 days' notice of his intention to disclaim the lease; and
 - (b) no person to whom the trustee has given such a notice has, within 28 days after it was given to the person, by notice given to the trustee, required the trustee to apply to the Court for leave to disclaim the lease.
- (4A) A notice under paragraph (4)(a) or (b) shall be in accordance with the prescribed form.
- (4B) A notice under paragraph (4)(a) or (b) sent by post as certified mail (postage being prepaid) shall be deemed to have been given to the person to whom the notice is addressed and shall be deemed to have been given to that person at the time at which it would have been delivered in the ordinary course of post unless it is shown that the person did not receive it at that time.
- (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; and
 - (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; and

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- (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 by a person interested in property requiring him to decide whether he 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 shall be deemed to have adopted it.
- (6A) An application under subsection (6) shall be in accordance with the prescribed form.
- (6B) An application under subsection (6) sent to the trustee by post as certified mail (postage being prepaid) shall be deemed to have been made to the trustee and shall be deemed to have been received by the trustee 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.
- (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 persons as 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

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property to, a person entitled to it or 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 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 extent of any loss he has suffered by reason of the disclaimer 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.

134 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;
 - (b) carry on a business of the bankrupt so far as may be necessary for its beneficial disposal or winding-up;
 - (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 having a value not exceeding \$20,000, or such greater amount as is prescribed for the purposes of this section, for the purpose of raising money for the payment of the debts provable in the bankruptcy;
- (e) compromise any debt not exceeding \$20,000 or such greater amount as is prescribed for the purposes of this section claimed to be due to the bankrupt or any claim not exceeding \$20,000 or such greater amount as is prescribed for the purposes of this section 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 and not claimed to exceed \$20,000 or such greater amount as is prescribed for the purposes of this section;
- (g) make a compromise in respect of any claim not exceeding \$20,000 or such greater amount as is prescribed for the purposes of this section 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 were not a bankrupt;
- (i) obtain such advice or assistance as he considers desirable relating to the administration of the estate or to the conduct or affairs of the bankrupt;
- (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) until the first meeting of creditors or the expiration of the period of 2 months commencing on the date of the bankruptcy, whichever first occurs, employ the bankrupt himself—
 - (i) to superintend the management of his property or of part of his property;

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- (ii) to carry on his trade or business for the benefit of his creditors; or
 - (iii) to aid in any other respect in administering his property, and make such allowance out of the estate to the bankrupt in consideration of his services as the trustee considers reasonable.
- (1A) An allowance made to the bankrupt in pursuance of paragraph (1)(m) may be reduced by the Court upon the application of an interested person.
- (2) Paragraph (1)(a) does not authorize the trustee to sell by private contract any property having a value exceeding \$20,000 or such greater amount as is prescribed for the purposes of this section..
- (3) Subject to this Act, the trustee may use his own discretion in the administration of the estate.
- (4) The trustee may at any time apply to the Court for directions in respect of a matter arising in connexion with the administration of the estate.

135 Powers exercisable by trustee with permission

- (1) The trustee may, with the permission of the creditors granted by resolution passed at a general meeting or of the committee of inspection or with the leave of the Court, do all or any of the following things:—
 - (a) sell, by private contract, any property of the bankrupt having a value exceeding \$20,000 or such greater amount as is prescribed for the purposes of section 134;
 - (b) accept, without terms or conditions, or subject to terms and conditions, a sum of money payable at a future time as the consideration or part of the consideration for the sale of any property of the bankrupt;
 - (c) lease any property of the bankrupt;
 - (d) mortgage or charge all or any part of the property of the bankrupt having a value exceeding \$20,000, or such greater

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amount as is prescribed for the purposes of section 134, for the purpose of raising money for the payment of the debts provable in the bankruptcy;

- (e) refer any dispute to arbitration;
- (f) make a compromise in respect of any debt exceeding \$20,000 or such greater amount as is prescribed for the purposes of section 134 claimed to be due to the bankrupt, or any claim exceeding \$20,000 or such greater amount as is prescribed for the purposes of section 134 by the bankrupt;
- (g) 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 and claimed to exceed \$20,000 or such greater amount as is prescribed for the purposes of section 134;
- (h) make a compromise in respect of any claim exceeding \$20,000 or such greater amount as is prescribed for the purposes of section 134 arising out of the administration of the estate of the bankrupt, whether the claim is made by or against the trustee;
- (i) divide amongst 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 readily or advantageously be sold;
- (j) make such allowance out of the estate as he thinks just to the bankrupt, the spouse of the bankrupt or the family of the bankrupt; and
- (k) after the first meeting of creditors or the expiration of the period of 2 months commencing on the date of the bankruptcy, whichever first occurs, employ the bankrupt himself—
 - (i) to superintend the management of his property or of part of his property;
 - (ii) to carry on his trade or business for the benefit of his creditors; or
 - (iii) to aid in any other respect in administering his property,

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and make such allowance out of the estate to the bankrupt in consideration of his services as the trustee thinks reasonable.

- (2) An allowance made to the bankrupt in pursuance of paragraph (1)(k) may be reduced by the Court upon the application of an interested person.
- (3) Permission or leave given for the purposes of subsection (1) shall not be general permission or leave to do all or any of the things referred to in that subsection, but shall be permission or leave to do only the particular things for which permission or leave is sought in a specified case.
- (4) The failure by a trustee to obtain the permission or leave required by subsection (1) in relation to a transaction by the trustee does not affect the validity of the transaction if—
 - (a) the transaction was for valuable consideration; and
 - (b) the person with whom it took place acted in good faith and without notice of the failure to obtain the permission or leave.

136 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 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 moneys 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.

137 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 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 security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he 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 with whom the agreement to purchase the goods was made had received a notice under this section.

138 Limitation of trustee's power in respect of copyright, patents, &c.

- (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 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 permissions 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—

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- (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.

139 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 the 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 is not personally liable for any payment in respect of long service leave or extended leave

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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 in his capacity as trustee of the estate of the bankrupt, or the legal personal representative of such 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.

Division 5—Distribution of Property

140 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 this Act, the trustee shall distribute as dividend all moneys in hand.
- (3) The trustee shall, before declaring the first dividend—
 - (a) cause notice of his intention to do so to be published in the prescribed manner; and
 - (b) send notice of his intention to do so to each person who, to his knowledge, claims to be, 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 intention to do so to each person who, to his 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 (5), specify a reasonable period within which creditors may lodge their 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 shall send to each creditor who has proved his debt a cheque for the amount due to him and a statement in accordance with the prescribed form in relation to the realization and distribution of the estate.
- (9) The trustee shall not pay to a creditor a dividend that is less than 50 cents.
- (10) Where a creditor has furnished to the trustee an authority in writing to pay a dividend due to the creditor to another person, the 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.

141 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.

142 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 separate estates, having regard to the work done for, and the benefit received by, each estate.

143 Provision to be made for creditors residing at a distance, &c.

In the calculation and distribution of a dividend, the trustee shall make provision for—

- (a) debts provable in bankruptcy appearing from the bankrupt's statement of affairs or otherwise to be due to persons resident in places so distant from the place where the trustee is acting

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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.

144 Right of creditor who has not proved debt before declaration of dividend

A creditor who has not proved his 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, dividends that he has failed to receive before that money is applied to the payment of a future dividend, but he is not entitled to disturb the distribution of a dividend declared before he proved his debt.

145 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 opinion, be realized without needlessly protracting the trusteeship, he 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 final dividend without regard to any debt that had not been proved at the time when he declared the final dividend.
- (3) The trustee shall, before declaring the final dividend, give notice, in the prescribed manner, to each person who to his knowledge, claims to be, or might claim to be, a creditor but has not proved his debt that, if the person does not prove his debt within the period specified in the notice, the trustee will proceed to declare a final dividend without regard to his 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 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 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 debt, until after the expiration of 21 days after the expiration of that extended period.

146 Distribution of dividends where bankrupt fails to file statement of affairs

Where a bankrupt has failed to file a statement of his 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 affairs and those creditors had been stated to be creditors in it.

147 No 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 time 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 not entitled to be reimbursed by the estate in respect of, the payment of that interest or those costs.

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148 Right of bankrupt to surplus

- (1) Subject to subsection (2), a bankrupt is entitled to any surplus remaining after payment in full of—
 - (a) the costs, charges and expenses of the administration of the bankruptcy;
 - (b) all debts that have been proved in the bankruptcy; and
 - (c) interest on interest-bearing debts that have been proved in the bankruptcy.
- (2) The Court may make an order directing the Official Trustee not to pay the surplus, or a specified part of the surplus, to the bankrupt if:
 - (a) the Director of Public Prosecutions, or a person who is entitled to apply for an interstate confiscation order under a corresponding law, applies to the Court for an order under this subsection; and
 - (b) the Court is satisfied that:
 - (i) proceedings are pending under the *Proceeds of Crime Act 1987* or a corresponding law; and
 - (ii) property of the bankrupt may:
 - (A) become subject to a forfeiture order or 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.
- (3) The Court may, on application, vary or revoke an order made under subsection (2).

Part VII—Discharge of Bankrupts

149 Discharge of bankrupt by operation of law

- (1) Subject to this section, a person who becomes a bankrupt after the commencement of this section is, by force of this section, unless sooner discharged in accordance with section 150, discharged from bankruptcy upon the expiration of 3 years from the date of the bankruptcy.
- (2) Subject to this section, a person who was an undischarged bankrupt immediately before the commencement of this section is, by force of this section, discharged from bankruptcy—
 - (a) in a case where the bankrupt became a bankrupt more than 3 years before the commencement of this section—upon the commencement of this section; or
 - (b) in any other case, unless sooner discharged in accordance with section 150—upon the expiration of 3 years from the date of the bankruptcy.
- (3) A bankrupt is not discharged from bankruptcy by virtue of this section if—
 - (a) at the time when he would have been so discharged but for this subsection, he is still undischarged from an earlier bankruptcy;
 - (b) he has, since the date of the bankruptcy, again become a bankrupt;
 - (c) the Registrar, the Inspector-General or the trustee has entered, or a creditor has, with the leave of the Court, entered, an objection, in accordance with the prescribed form and in the prescribed manner, to the discharge of the bankrupt by force of this section and the objection has not been withdrawn or lapsed before the time when the bankrupt would have been so discharged but for this subsection; or
 - (d) an order of the Court under subsection (12) is in force in relation to the bankrupt.

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- (4) An objection shall not be entered under paragraph (3)(c) otherwise than on one or more of the following grounds:
 - (a) that the bankrupt is able, or is likely within 5 years from the date of the bankruptcy to be able, to make a significant contribution to his estate;
 - (b) that the discharge of the bankrupt by force of this section would prejudice the administration of his estate;
 - (c) that the bankrupt has failed to co-operate in the administration of his estate;
 - (d) that the conduct of the bankrupt, either in respect of the period before or the period after the date of the bankruptcy, has been unsatisfactory.
- (5) Subject to subsection (6), an objection entered under paragraph (3)(c) may be withdrawn in the prescribed manner.
- (6) An objection entered by a creditor under paragraph (3)(c) may be withdrawn only with the leave of the Court.
- (7) Subject to subsection (11), an objection entered under paragraph (3)(c) lapses at the expiration of—
 - (a) subject to paragraph (b), the period of 5 years from the date of the bankruptcy; or
 - (b) if the Court makes an order under subsection (8) or (9) in relation to the bankrupt—the period fixed by the order.
- (8) The Court may, at any time before the expiration of 5 years from the date of the bankruptcy, on the application of the Registrar, the Inspector-General, the trustee or a creditor, order that the period at the expiration of which an objection entered under paragraph (3)(c) will lapse be such period, being a period exceeding 5 years, commencing on the date of the bankruptcy as is specified in the order.
- (9) The Court may, at any time before the expiration of 5 years from the date of the bankruptcy, on the application of the bankrupt, order that the period at the expiration of which an objection entered under paragraph (3)(c) will lapse be such period, being a period

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exceeding 3 years but not exceeding 5 years, commencing on the date of the bankruptcy as is specified in the order.

- (10) In deciding whether to make an order under subsection (8) or (9), the Court shall take into account such matters (if any) as are prescribed for the purposes of this subsection.
- (11) An objection to the discharge of a bankrupt, unless sooner withdrawn, lapses upon the discharge of the bankrupt under section 150.
- (12) The Court may, at any time before the discharge of a bankrupt, on the application of the Registrar, the Inspector-General, the trustee or a creditor, direct that the bankrupt shall not be discharged from bankruptcy by virtue of this section.
- (13) In deciding whether to make an order under subsection (12), the Court shall take into account such matters (if any) as are prescribed for the purposes of this subsection.
- (14) Where—
 - (a) an objection entered under paragraph (3)(c) is withdrawn after the time when the bankrupt would have been discharged but for subsection (3) or lapses otherwise than by virtue of subsection (11);
 - (b) there is no other objection entered under paragraph (3)(c) that has not been withdrawn or has not lapsed; and
 - (c) the bankrupt's discharge is not prevented by paragraph (3)(a), (b) or (d),the bankrupt is, by force of this section, discharged from bankruptcy upon the withdrawal or lapsing of the objection.

150 Discharge by the Court

- (1) A person who becomes, or has before the commencement of this subsection become, a bankrupt may apply to the Court for an order of discharge at any time after—
 - (a) his public examination has been concluded;

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- (b) the trustee has notified him in writing, that the trustee does not intend to make an application for his examination under section 69; or
 - (c) the expiration of the period of 12 months commencing on the date of the bankruptcy.
- (2) A person who was an undischarged bankrupt under the repealed Act immediately before the commencement of this Act may apply to the Court for an order of discharge under this Act—
 - (a) where his examination under section 68 of the repealed Act was concluded before the commencement of this Act or his examination under that section was dispensed with before the commencement of this Act—at any time after the commencement of this Act; or
 - (b) in any other case—at any time after his examination under section 68 of the repealed Act or under section 69 of this Act, as the case may be, has been concluded or dispensed with.
- (3) On the hearing of an application under this section, the Court shall take into consideration a report in writing by the trustee concerning the bankrupt, his conduct, trade dealings, property and affairs both in respect of the period before and the period after the applicant became a bankrupt.
- (4) The Court may, in addition—
 - (a) hear, and put such questions as it thinks fit to—
 - (i) an Official Receiver;
 - (ii) a creditor whose debt has been proved;
 - (iii) the bankrupt; or
 - (iv) the trustee; and
 - (b) receive such other evidence as it thinks fit.
- (5) The Court shall, if any of the matters specified in subsection (6) is established—
 - (a) refuse to make an order of discharge; or

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- (b) make an order of discharge but suspend the operation of the order as the Court thinks proper, either unconditionally or subject to conditions.
- (6) The matters upon the establishment of which the Court may exercise the powers specified in subsection (5) are as follows:—
 - (a) that the bankrupt has omitted to keep and preserve such books, accounts or records as sufficiently disclose his business transactions and financial position within the period of 5 years immediately preceding the date on which he became a bankrupt;
 - (b) that the bankrupt has, after knowing himself to be insolvent, continued to trade or obtained credit to the amount of \$100 or upwards;
 - (c) that the bankrupt has contracted a debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof of which lies on him) of being able to pay it after taking into consideration his other liabilities at the time;
 - (d) that the bankrupt has failed to account satisfactorily to the trustee for any loss of, or depreciation of, assets or for a deficiency of assets;
 - (e) that the bankrupt has brought on, or contributed to, his bankruptcy by—
 - (i) rash or hazardous speculations;
 - (ii) unjustifiable extravagance in living;
 - (iii) gambling or wagering; or
 - (iv) culpable neglect of his business affairs;
 - (f) that the bankrupt has, within the period of 6 months immediately preceding the presentation of the petition on which, or by virtue of the presentation of which, he became a bankrupt—
 - (i) put any of his creditors to unnecessary expense by a frivolous or vexatious defence to an action brought against him; or

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- (ii) incurred expense by bringing a frivolous or vexatious action;
 - (g) that the bankrupt has, within the period of 6 months immediately preceding the presentation of the petition on which, or by virtue of the presentation of which, he became a bankrupt, when unable to pay his debts as they became due, given an undue preference to any of his creditors;
 - (h) that the bankrupt has been guilty of fraud or fraudulent breach of trust; or
 - (i) that the bankrupt has been convicted of an offence against this Act or the repealed Act or of any other offence related to his bankruptcy.
- (7) The Court shall not, under subsection (5), suspend the operation of an order of discharge subject to conditions that require, or have the effect of requiring, the bankrupt to make payments from his income at any time after the expiration of the period of 5 years commencing on the date of the bankruptcy.
- (8) Notwithstanding that the operation of an order of discharge is, by virtue of an order of the Court in force immediately before the commencement of this subsection (including such an order as varied after the commencement of this subsection), suspended subject to conditions that require, or have the effect of requiring, a bankrupt to make payments from his income, the bankrupt is not required to make payments in pursuance of the conditions at any time after—
- (a) the expiration of the period of 5 years commencing on the date of the bankruptcy; or
 - (b) in a case where the period referred to in paragraph (a) expired before the commencement of this subsection—the commencement of this subsection.
- (9) Where none of the matters specified in subsection (6) is established, the Court may—
- (a) refuse to make an order of discharge;
 - (b) make an order of discharge; or

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- (c) make an order of discharge but suspend the operation of the order as the Court thinks proper, either unconditionally or subject to conditions.
- (10) The Court shall not, under subsection (9), suspend the operation of an order of discharge beyond the period of 3 years commencing on the date of the bankruptcy.
- (11) The Court may, at any time while the operation of an order of discharge (including such an order made before the commencement of this subsection) is suspended, rescind or vary the order.
- (12) A report referred to in subsection (3) is, for the purposes of this section, *prima facie* evidence of the statements contained in it.

151 Effect of fraudulent settlements on discharge

- (1) Where a bankrupt has, whether before or after the commencement of this Act, but before he became a bankrupt—
 - (a) made a settlement before and in consideration of marriage and, at the time of making the settlement, was unable to pay all his debts without the aid of the property comprised in the settlement; or
 - (b) made a covenant or contract in consideration of marriage for the future settlement on or for the settlor's spouse or children of property in which the settlor did not have, at the date of the marriage, any estate or interest, not being property of or in right of the spouse,the Court may, on an application by the bankrupt for an order of discharge—
 - (c) refuse to make an order of discharge; or
 - (d) make an order of discharge but suspend the operation of the order as the Court thinks proper, either unconditionally or subject to conditions.
- (2) The Court shall not, under subsection (1), suspend the operation of an order of discharge subject to conditions that require, or have the

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effect of requiring, the bankrupt to make payments from his income at any time after the expiration of the period of 5 years commencing on the date of the bankruptcy.

- (3) Notwithstanding that the operation of an order of discharge is, by virtue of an order of the Court in force immediately before the commencement of this subsection (including such an order as varied after the commencement of this subsection), suspended subject to conditions that require, or have the effect of requiring, a bankrupt to make payments from his income, the bankrupt is not required to make payments in pursuance of the conditions at any time after—
 - (a) the expiration of the period of 5 years commencing on the date of the bankruptcy; or
 - (b) in a case where the period referred to in paragraph (a) expired before the commencement of this subsection—the commencement of this subsection.
- (4) The Court may, at any time while the operation of an order of discharge (including such an order made before the commencement of this subsection) is suspended, rescind or vary the order.

152 Discharged bankrupt to give assistance

- (1) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee reasonably requires in the realization and distribution of such of his property as is vested in the trustee.
- (2) A discharged bankrupt who fails to comply with subsection (1) is guilty of contempt of court.
- (3) Where a discharged bankrupt fails to comply with subsection (1), the Court may, if it thinks fit, on the application of the Registrar or the trustee in the bankruptcy—
 - (a) where the bankrupt was discharged by an order of a court—rescind the order; or
 - (b) where the bankrupt was discharged by force of section 149—set aside the discharge.

- (4) The rescission of an order of discharge or the setting aside of a discharge under this section does not affect the validity of any sale or disposition of property or payment duly made or act done after the discharge of the bankrupt and before the rescission of the order of discharge or the setting aside of the discharge.

153 Effect of order of discharge

- (1) Subject to this section, where a bankrupt is discharged from a bankruptcy, the discharge operates to release him from all debts (including secured debts) provable in the bankruptcy, whether or not, in the case of a secured debt, the secured creditor has surrendered his security for the benefit of creditors generally.
- (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;
 - (b) release the bankrupt from a debt incurred by means of fraud or a fraudulent breach of trust to which he was a party or a debt of which he has obtained forbearance by fraud;
 - (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; or
 - (d) release the bankrupt from any liability under a pecuniary penalty order or interstate pecuniary penalty order.
- (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 arrears due under a maintenance agreement or maintenance order.

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- (3) The discharge of a bankrupt from a bankruptcy does not affect the right of a secured creditor, or any person claiming through or under him, to realize or otherwise deal with his security—
- (a) if the secured creditor has not proved in the bankruptcy 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 in the bankruptcy for part of the secured debt—for the purpose of obtaining payment of the part of the secured debt for which he has not proved in the bankruptcy,
- and, for the purposes of enabling the secured creditor or a person claiming through or under him so to realize or deal with his 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, whether by order of discharge or by force of section 149, all proceedings taken in or in respect of the bankruptcy shall be deemed to have been validly taken.

154 Power to annul bankruptcy

- (1) Where the Court is satisfied—
- (a) 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 Registrar; or
 - (b) that the unsecured debts of the bankrupt, being debts that have been proved in the bankruptcy, have been paid in full or the bankrupt has obtained a legal acquittance of them,

the Court may make an order annulling the bankruptcy.

- (2) 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 (3), 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 estate or interest in it, on such terms and subject to such conditions, if any. as the Court orders.
- (3) Where a law of the Commonwealth or of a State or Territory of the Commonwealth 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 equity in such person as the Court appoints or in the bankrupt, as the case may be, does not vest in that person or the bankrupt at law until the requirements of that law have been complied with.
- (4) For the purposes of this section, where 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 Registrar and, if so paid, shall, for the purposes of this section, be deemed to have been paid in full to the creditor.
- (5) Where money is paid to the Registrar under subsection (4), the Registrar shall pay that money into the Consolidated Revenue Fund and the provisions of subsections 254(3) and (4) apply in relation to that money as if it had been paid into the Consolidated Revenue Fund by a trustee in pursuance of subsection 254(2).

Part VIII—Trustees

Division 1—Appointment and Official Name

155 Registration of natural persons as trustees

- (1) Each Registrar shall keep, as prescribed, a register in which shall be entered the names and such other particulars as are prescribed of persons whom the Court directs to be registered under this section as qualified to act as trustees and who have given security as provided by subsection (3A).
- (2) A natural person may make an application to the Court for registration as a trustee.
- (3) An application under subsection (2) shall be made in writing as prescribed and shall contain such information as is prescribed.
- (3A) Subject to this section, where an application is made to the Court under subsection (2) and—
 - (a) the applicant—
 - (i) is a member of a prescribed body;
 - (ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Court to represent a course of study in accountancy of not less than 3 years' duration and in commercial law (including company law) of not less than 2 years' duration; or
 - (iii) has other qualifications that, in the opinion of the Court, are equivalent to the qualifications mentioned in subparagraph (i) or (ii);
 - (b) the applicant is not an insolvent under administration;
 - (c) the applicant resides in Australia; and

- (d) the Court is satisfied that the applicant is capable of performing the duties of a trustee and is otherwise a fit and proper person to be registered as a trustee,
the Court may, by order, direct that the applicant be registered as a trustee upon the applicant's entering into a bond in the amount prescribed for the purposes of this subsection and in the prescribed manner with such surety or sureties as is or are approved by the Registrar.
- (3B) Where a person—
- (a) has been convicted of an offence involving fraud or dishonesty; and
 - (b) within a period of 5 years after the conviction or, if the person was sentenced to imprisonment, after the person's release from prison, makes an application under subsection (2),
- the Court shall refuse the application.
- (4) Nothing in this section authorizes the registration as a trustee of a company, partnership, corporation or association.
- (5) A person who is registered under this section is entitled, upon request and upon payment of the prescribed fee, to be issued with a certificate of registration.
- (5A) Where an amount prescribed for the purposes of subsection (3A) (in this subsection referred to as the **relevant amount**) exceeds the amount of the bond that was previously entered into (whether before or after the commencement of this subsection) by a trustee under a provision of this section, being a bond that is in force on the day on which the provision prescribing the relevant amount comes into operation, the trustee shall, within 3 months after that day, enter into a bond in the relevant amount and in the prescribed manner with such surety or sureties as is or are approved by the Registrar.
- (5B) Except where subsection (5C) applies, the Court may, at any time, upon the application of the Registrar or any other person, or of its

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own motion, suspend for a specified period or cancel the registration of a person as a trustee under this section.

- (5C) The Court may, if it is satisfied, upon the application of the Registrar, that a person registered under this section has failed to comply with subsection (5A) of this section or section 161A, by order, suspend for a specified period or cancel the registration of that person as a trustee.
- (6) A person, not being the Official Trustee or a natural person registered under this section, who acts as a trustee of the estate or affairs of an insolvent person or a bankrupt is liable, on conviction by the Court or by a court of summary jurisdiction, to a fine not exceeding \$20 for each day on which he has so acted, not being a day on which his acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the insolvent person or bankrupt.
- (7) It is a defence to proceedings brought against a person under subsection (6) in respect of his having acted as a trustee of the estate or affairs of an insolvent person if he proves that his acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the insolvent person pending the taking of proceedings under this Act.
- (8) In this section, ***insolvent under administration*** means a person—
- (a) who is, under this Act or the law of an external Territory, a bankrupt in respect of a bankruptcy from which the person has not been discharged;
 - (b) who has, under the law of a country other than Australia or the law of an external Territory, the status of an undischarged bankrupt; or
 - (c) whose property is subject to control under Division 2 of Part X by reason of an authority given by the person under section 188,
- and includes—
- (d) a person who has executed a deed of arrangement under Part X or the corresponding provisions of the law of an

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external Territory or of the law of a country other than Australia where the terms of the deed have not been fully complied with; and

- (e) a person whose creditors have accepted a composition under Part X or the corresponding provisions of the law of an external Territory or of the law of a country other than Australia where a final payment has not been made under that composition.

156 Gazettal of registration, &c.

Where a person is registered under section 155 as qualified to act as a trustee (otherwise than in pursuance of section 281) or where the registration of a person under the section 155 is cancelled or suspended or his name is removed from the register, the Registrar shall cause notice of the fact to be published in the *Gazette* as soon as practicable.

156A Consent to act as trustee

- (1) A registered trustee may, by instrument signed by him and filed with the Registrar, 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; or
- (b) as the trustee of the joint and separate estates of such of the 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 those 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 prescribed 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

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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.
- (4) A creditor may file with the Registrar for the appropriate District an application for the removal by the Court of a trustee of the estate of a bankrupt, being a trustee who is the trustee of that estate by virtue of subsection (3), on the ground—
 - (a) that the trustee is not fit to act as trustee; or
 - (b) that the connection of the trustee with, or the relation of the trustee to, the bankrupt is likely to make it difficult for him to act with impartiality in the interests of the creditors generally.
- (5) Where an application under subsection (4) is filed, the Court may, if a ground specified in that subsection is established, remove the trustee from office and may appoint another registered trustee to be trustee in his place.
- (6) Where the Court appoints a person as trustee under subsection (5), the Registrar shall issue to the person a certificate of appointment.
- (7) The appointment of a trustee under subsection (5) takes effect from and including the date on which the Court makes the appointment or such later date as the Court directs.

157 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 the first or a subsequent 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 has been so appointed.
- (3) If the registered trustee appointed under subsection (1) informs the relevant trustee in writing, within 10 days after he is notified by the relevant trustee of his appointment, that he accepts the office, the Registrar shall issue to him 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 Registrar.
- (5) If the registered trustee appointed under subsection (1) does not so inform the relevant trustee within 10 days after he is notified by the relevant trustee of his appointment, he 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.
- (6) A creditor may file with the Registrar for the appropriate District an objection to an appointment of a person under this section on the ground—
 - (a) that the appointment was not made in good faith by a majority in value of the creditors voting;
 - (b) that the person appointed is not fit to act as trustee; or
 - (c) that his connexion with, or relation to, the bankrupt or his estate or a particular creditor is likely to make it difficult for him to act with impartiality in the interests of the creditors generally.

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- (7) Where such an objection is filed, the Court may, if any of the grounds specified in subsection (6) is established, cancel the appointment and may appoint another registered trustee to be trustee in his place.
- (8) Where the Court appoints a person as trustee under subsection (7), the Registrar shall issue to the person a certificate of appointment.
- (9) The appointment of a trustee under subsection (7) takes effect from and including the date on which the Court makes the appointment or such later date as the Court directs.

158 Appointment of more than one trustee, &c.

- (1) The creditors may, if they think fit, appoint 2 or more registered trustees jointly, or jointly and severally, to the office of trustee, and 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 any 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.

159 Vacancy in office of trustee

- (1) The creditors may, at a general meeting, 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 a 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

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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.

160 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.

161 Trustee may act in official name

- (1) The trustee of the estate of a bankrupt 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 successors in office and do all other acts and things necessary or expedient to be done in the execution of his office.
- (2) For the purposes of subsection (1), the prescribed official name is “The Trustee (*or* Trustees) of the Property of (*name of bankrupt*), a Bankrupt”.

161A Triennial statements by registered trustees

A person who is a registered trustee shall, within one month after the expiration of the period of 3 years commencing—

- (a) if the person is, on the day of commencement of this section, a registered trustee—on that day; or
- (b) if the person becomes a registered trustee after that day—the day on which the person enters into the bond referred to in subsection 155(3A),

and of each subsequent period of 3 years, lodge a statement in respect of that period of 3 years, setting out such information as is

Part VIII Trustees

Division 1 Appointment and Official Name

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prescribed, with the Registrar for the District, or the Registrar for each District, as the case requires, in which the trustee has carried on business as trustee during that period.

Division 2—Remuneration and Costs

162 Remuneration of trustee

- (1) The remuneration of the trustee of the estate of a bankrupt may be fixed, from time to time, by resolution of the creditors or, if the creditors so resolve, by the committee of inspection.
- (2) Where the remuneration of the trustee is to be, in whole or in part, a commission upon moneys received by the trustee, the trustee is entitled to commission upon all moneys received by the trustee (other than moneys received in the carrying on of a business of the bankrupt by him or under his supervision) at a rate not exceeding the rate prescribed for the purposes of this subsection.
- (3) Where the trustee carries on a business of the bankrupt, or a business is carried on by the bankrupt under the supervision of the trustee, the trustee may be paid additional remuneration in the form either of a periodical payment based on, or a commission at the rate prescribed for the purposes of this subsection on, the amount by which the estate is increased by reason of the carrying on of that business by him or under his supervision.
- (4) Where the remuneration of the trustee is not fixed by the creditors or the committee of inspection, the Registrar may fix the remuneration.
- (5) The Registrar may, on the application of a creditor or the trustee or of his own motion, review the amount of the trustee's remuneration and may confirm, reduce or increase the remuneration.
- (6) Where a trustee receives remuneration for his services, a payment in respect of the performance by another person of the ordinary duties that are required by this Act to be performed by the trustee shall not be allowed in his accounts unless the payment was authorized by resolution of the creditors or by the committee of inspection.
- (7) This section does not apply in relation to the Official Trustee.

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163 Remuneration of the Official Trustee

- (1) Where the Official Trustee is the trustee of the estate of a bankrupt, the Official Trustee shall be remunerated as prescribed.
- (2) An amount equal to each amount of remuneration received by the Official Trustee shall be paid into the Consolidated Revenue Fund.

164 Two or more trustees acting in succession

- (1) Where 2 or more registered trustees act in succession, their remuneration shall, if necessary, be apportioned as the Registrar directs.
- (2) Where 2 or more trustees, one of whom is the Official Trustee, act in succession, the remuneration to be paid to each of them shall be determined by the Registrar.

165 Trustee not to accept extra benefit, &c.

- (1) A trustee of the estate of a bankrupt shall not—
 - (a) make an arrangement for receiving, or accept, from the bankrupt or any other person, in connexion with the bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit beyond the remuneration fixed in accordance with this Act;
 - (b) make an arrangement for giving up, or give up, a part of his remuneration to the bankrupt or any other person;
 - (c) except as provided by this Act, directly or indirectly derive any profit or advantage from a transaction, sale or purchase for or on account of the estate or any gift, profit or advantage from a creditor; or
 - (d) except with the leave of the Court, directly or indirectly become the purchaser of any part of the estate.
- (2) A trustee who contravenes subsection (1) is guilty of contempt of court.

167 Taxation of costs

- (1) Subject to subsection (2), all bills of costs of a solicitor and bills of charges of an accountant, auctioneer, manager or other person (not being a trustee or a person exclusively employed by a trustee) rendered in respect of the estate of a bankrupt shall be taxed by a taxing officer and no payments in respect of such costs or charges shall be allowed in the trustee's accounts unless they have been so taxed.
- (2) Subsection (1) does not require a bill of costs or a bill of charges to be taxed if—
 - (a) the bill is for an amount less than \$300 or such greater amount as is prescribed for the purposes of this paragraph;
 - (b) the bill is for services in respect of which a maximum charge is prescribed by the rules and is for an amount that does not exceed the charge so prescribed;
 - (c) the bill has been taxed by an officer of any court; or
 - (d) the creditors have, by special resolution, authorized payment of the bill.
- (3) A person whose bill of costs or bill of charges is required by this section to be taxed may at his option deliver for taxation a bill containing detailed items or a bill for a gross sum.
- (4) Where a bill of costs or a bill of charges for a gross sum is delivered for taxation, the person by whom the bill is delivered shall furnish the taxing officer with such details of the costs or charges covered by the bill as the taxing officer requires.
- (5) The taxing officer shall satisfy himself before passing a bill that the employment of the person in respect of the particular matters out of which the costs or charges arise was duly authorized and was reasonable and necessary.
- (6) Where the trustee proposes to distribute a final dividend, the trustee shall, not later than 28 days before the date on which the trustee proposes to do so, request each person whose bill of costs

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or bill of charges is required (whether by this section or by an order of the Court) to be taxed to deliver his bill to a taxing officer.

- (7) If a person so requested to deliver his bill fails to do so within 28 days after receipt of the request, the trustee shall declare and distribute the dividend without regard to any claim of that person in respect of the matters as to which the bill was requested and in that case neither the trustee nor the estate of the bankrupt is under any further liability in respect of the claim.
- (8) A person interested may appeal to the Court from a decision of the taxing officer in allowing or disallowing a bill of costs or bill of charges or an item in such a bill.
- (9) In this section, ***taxing officer*** means a Registrar or Deputy Registrar or a person authorized in writing by a Registrar, with the approval of the Court or the Inspector-General, to exercise the powers and perform the functions of a taxing officer.

Division 3—Accounts and Audits

168 Trustee not to pay moneys into private account

A trustee of the estate of a bankrupt shall not pay into a private banking account any moneys received by him as trustee.

Penalty: \$500.

169 Trustee to pay moneys into bank account

- (1) A trustee of the estate of a bankrupt shall pay all moneys received by him on account of the estate to the credit of an account opened and kept in the name of the estate at such bank as the trustee selects.
- (2) If a trustee of the estate of a bankrupt keeps in his hands any money exceeding \$50 received on behalf of the estate for a period exceeding 5 days (excluding any day on which the branch of the bank at which the estate bank account is kept is not open for business), then, unless he satisfies the Court that his reason for retaining the money was sufficient—
 - (a) he is liable to pay interest at the rate of 20% per annum on the amount by which the amount so retained exceeds \$50; and
 - (b) the Court may remove him from his office of trustee.
- (3) Where a trustee is so removed from office, the Court may make such order with respect to his remuneration for his services as a trustee as the Court thinks proper and may further order that he pay expenses incurred by the creditors in consequence of his removal.
- (4) This section does not apply in relation to the Official Trustee.

170 Trustee to give Official Receiver and bankrupt information, &c.

- (1) The trustee of the estate of a bankrupt (not being the Official Trustee) shall give the Official Receiver such information, access

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to and facilities for inspecting the bankrupt's books and generally such assistance as is necessary for enabling the Official Receiver to perform his duties.

- (2) The trustee shall, at the request of the bankrupt, furnish to the bankrupt information reasonably required by the bankrupt concerning his property or affairs.

171 Trustee to keep record of payments, &c.

- (1) The trustee of the estate of a bankrupt—
- (a) shall make out a receipt in respect of each payment into the estate; and
 - (b) shall keep a record of each payment made out of the estate and, wherever practicable, obtain evidence of each such payment.
- (2) The trustee shall keep a duplicate of each receipt referred to in paragraph (1)(a).

172 Investment of surplus funds

- (1) Where the balance standing to the credit of an estate account is in excess of the amount that in the opinion of the trustee is required for the time being to meet demands in respect of the estate, the trustee may—
- (a) place the excess or part of it on deposit in such bank and for such term as the trustee thinks fit;
 - (b) deposit the excess or part of it in an account in a savings bank; or
 - (c) invest the excess or part of it in public securities as defined by subsection 20D(8).
- (2) Interest received in respect of moneys so deposited or invested forms part of the estate.
- (3) Subsections (1) and (2) do not apply in relation to the estate of a bankrupt during any period during which the Official Trustee is the trustee of the estate.
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- (4) Where moneys standing to the credit of the estate of a bankrupt, or investments held on behalf of the estate of a bankrupt, vest in the Official Trustee in consequence of a change in the trustee of the estate, amounts received by the Official Trustee by way of interest on those moneys in respect of any period prior to the payment of those moneys into the Common Fund, or by way of interest on those investments prior to, or upon, the realization of those investments, form part of the estate.

173 Books to be kept by trustee

The trustee of the estate of a bankrupt shall keep such accounts and records as are necessary to exhibit a full and correct account of the administration of the estate and shall permit a creditor of the bankrupt to inspect, at all reasonable times, either personally or by an agent, the accounts and records relating to that estate.

174 Trustee's books when trading

Where the trustee carries on a business previously carried on by the bankrupt, he shall keep such accounts and records as are usual and proper in relation to the carrying on of a business of that kind and shall permit a creditor of the bankrupt to inspect, at all reasonable times, either personally or by an agent, those accounts and records.

175 Trustee's accounts and audit

- (1) The trustee of the estate of a bankrupt shall furnish to the Registrar, at the prescribed times and forthwith after the final dividend has been distributed in respect of the estate—
- (a) an account in accordance with the prescribed form, signed by the trustee, of his receipts and payments in respect of the estate; and
 - (c) if any asset has not been realized, an explanation as to the non-realization.
- (2) The Registrar may cause an account so furnished to be audited by an appropriate person.

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- (3) The Registrar may submit the account (whether or not it has been audited under subsection (2)) to the Auditor-General for audit by the Auditor-General.
- (4) Where at any time a creditor or the bankrupt satisfies the Registrar that an audit of a trustee's accounts and records is necessary or the Registrar, without any application by a creditor or the bankrupt, is of opinion that such an audit is necessary, the Registrar shall cause an audit of the trustee's accounts and records to be carried out by an appropriate person.
- (5) For the purposes of an audit under this section, the trustee shall produce to the person carrying out the audit as and when required such books and information as that person requires.
- (6) The cost of an audit under this section, not being an audit carried out by the Auditor-General, shall be borne by the estate.
- (7) This section does not apply in relation to the Official Trustee.

176 Court may order trustee to make good loss sustained by negligence, &c.

- (1) Where the Registrar is of the opinion, whether as a result of an account furnished to him in pursuance of section 175 or of an audit under that section or for any other reason, that the trustee may have been guilty of malfeasance, misfeasance, negligence, wilful default or breach of trust in relation to the estate or affairs of the bankrupt, the Registrar may apply to the Court for an order under subsection (2).
- (2) The Court may order that the trustee make good any loss that the estate has sustained by reason of the malfeasance, misfeasance, negligence or wilful default of, or a breach of trust by, the trustee or may make such other order as the Court considers just and equitable in the circumstances.

Division 4—Control over Trustees

177 Control of creditors over trustees

- (1) Subject to this Act, in the administration of the estate of a bankrupt, the trustee shall have regard to any lawful directions given by resolution of the creditors at a general meeting or by the committee of inspection.
- (2) The trustee shall convene general meetings of the creditors at such times as the creditors, by resolution, direct and whenever requested in writing to call such a meeting by not less than one-fourth in value of the creditors.
- (3) The trustee may convene a general meeting of the creditors at any time.

178 Appeal to Court against trustee's decision, &c.

If the bankrupt, a creditor or any other person is affected by an act, omission or decision of the trustee, he may apply to the Court, and the Court may make such order in the matter as it thinks just and equitable.

179 Control of trustees by the Court

- (1) The Court may, on the application of the Registrar, the Inspector-General, a creditor or the bankrupt, inquire into the conduct of a trustee in relation to a bankruptcy and may do one or both of the following:—
 - (a) remove the trustee from office; and
 - (b) make such order as it thinks proper.
- (2) The Registrar, the Inspector-General or a creditor may at any time require a trustee to answer an inquiry in relation to the bankrupt's estate or affairs.

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Division 4 Control over Trustees

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- (3) The Registrar, the Inspector-General or a creditor may apply to the Court to examine a trustee or any other person in relation to the bankruptcy.
- (4) Without limiting the generality of subsection (3), where the Official Trustee is, or has been, the trustee of the estate of a bankrupt, application may be made to the Court under that subsection to examine the Official Receiver.

Division 5—Vacation of Office

180 Registration of trustee

The Court may, subject to such terms and conditions as it thinks just, accept the resignation of a registered trustee from the office of trustee of an estate.

181 Removal of trustee

The creditors may, by special resolution, at a meeting of which not less than 7 days' notice has been given, remove a registered trustee appointed by them, or a registered trustee who is, by virtue of subsection 156A(3), the trustee of the estate of the bankrupt concerned, and may at the same or a subsequent meeting appoint another registered trustee to be trustee in his place.

182 Bankruptcy of trustee, &c.

- (1) Where a person registered as a trustee under this Act becomes a bankrupt or executes a deed of assignment or a deed of arrangement, or makes a composition with creditors, under Part X, the Registrar may apply to the Court for an order cancelling the registration of that person as qualified to act as a trustee, and the Court may make the order accordingly.
- (2) The cancellation of the registration of a trustee under this section operates to remove him from any office of trustee held by him under this Act or the repealed Act.
- (3) A person registered as a trustee who becomes a bankrupt or executes a deed of assignment or a deed of arrangement, or makes a composition with creditors, under Part X shall forthwith notify, in writing, the Registrar for the District in which he is ordinarily resident of that fact.

Penalty: \$100 or imprisonment for 6 months.

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- (4) Where a person registered as a trustee dies, the person administering the estate of the deceased person shall forthwith notify, in writing, the Registrar for the District in which the trustee was ordinarily resident of that fact.

Penalty: \$100.

183 Release of registered trustee by the Court

- (1) A trustee may apply to the Court for an order of release from the 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 of it 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) Where an application is made by a trustee under this section, the Registrar shall cause a report on his accounts and records to be prepared and the Court shall, on the hearing of the application, take into consideration the report and any objection by the Registrar, a creditor or other interested person to the order sought.
- (4) An order of release under this section—
- (a) discharges the trustee from all liability in respect of any act done or default made by him 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 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.

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- (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 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.

184 Release of registered trustee by operation of law after 7 years

- (1) Where the trustee of the estate of a bankrupt (being a registered trustee)—
 - (a) has furnished to the Registrar the final account required by this Act to be furnished in respect of the estate;
 - (b) has furnished or transmitted to the Registrar all other accounts required by this Act or, in relation to a period before the commencement of this Act, by the repealed Act to be so furnished or transmitted in respect of the estate; and
 - (c) has not been released from the trusteeship of the estate by an order under section 183,he is, by force of this section, released from the trusteeship upon the expiration of 7 years from the date on which he furnished the final account in respect of the estate.
- (3) The release of a trustee from the trusteeship of an estate by force of this section has the same effect as an order of release under section 183.

184A 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, default made or liability incurred by a prior trustee.

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- (2) The Official Trustee may apply to the Court for an order of release in respect of the administration of the estate of a bankrupt by the Official Trustee or the Official Receiver prior to a date (in subsection (5) referred to as the *relevant date*) specified in the application.
- (3) Where, on an application made by the Official Trustee under subsection (2), the Court is satisfied—
 - (a) that all the property of the bankrupt, or so much of it as can reasonably be realized, has been realized;
 - (b) that a final dividend has been distributed in respect of the estate of the bankrupt; or
 - (c) that the order should otherwise be made,the Court may make the order sought.
- (4) Where an application is made by the Official Trustee under subsection (2), the Registrar shall cause a report on the accounts and records of the Official Trustee in respect of its administration, or the accounts and records of the Official Receiver in respect of his administration, as the case requires, of the estate of the bankrupt to be prepared and the Court shall, on the hearing of the application, take into consideration the report and any objection by the Registrar, a creditor or other interested person to the order sought.
- (5) An order of release under subsection (2) discharges the Official Trustee, the Official Receiver or the Official Trustee and the Official Receiver, as the case requires, from all liability in respect of any act done or default made by the Official Trustee or the Official Receiver, as the case requires, in the administration of the estate of the bankrupt prior to the relevant date.
- (6) An order of release under subsection (2) may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment of a material fact.
- (7) The references in subsections (2) and (4) to the administration of the estate of a bankrupt by the Official Trustee shall be read as including any administration of the estate by the Official Receiver.

Part X—Arrangements with Creditors without Sequestration

Division 1—Interpretation

187 Interpretation

- (1) In this Part, unless the contrary intention appears—

composition means an arrangement (not being an arrangement entered into for the purposes of a proclaimed law) by which the creditors of a debtor—

- (a) agree to accept payment of the debts due to them by instalments; or
- (b) agree to accept, in full satisfaction of the debts due to them, less than the full amount of those debts, whether in the form of money or other property and whether by instalments or otherwise;

debtor means a person who is unable to pay his debts as they become due out of his own moneys;

deed of arrangement means a deed (not being a deed of assignment, a deed in respect of a composition or a deed executed for the purposes of a proclaimed law) providing for the arrangement of the affairs of a debtor with a view to the payment, in whole or in part, of his debts;

deed of assignment means a deed by which a debtor assigns all his divisible property for the benefit of his creditors;

divisible property, in relation to a deed of assignment 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 executed the deed, that would be divisible amongst his creditors under Part VI if he had become a bankrupt on that day;

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the controlling trustee, in relation to a debtor whose property is subject to control under Division 2, means—

- (a) the registered trustee named in the authority signed by the debtor under section 188;
- (b) if another registered trustee has, by virtue of section 192, become the controlling trustee in relation to the debtor, that other registered trustee; or
- (c) if the Official Trustee is acting as the controlling trustee by virtue of subsection 192(3), the Official Trustee;

the Registrar, in relation to a debtor who has signed an authority under section 188, means the Registrar for the District in which the meeting of creditors called in pursuance of that authority is held and includes a Deputy Registrar for that District.

- (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 unable to pay his debts as they become due out of his own moneys, whether or not the person may ultimately be able so to pay his debts.
- (2) In this Part, a reference, in relation to a deed or a composition, 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 executed the deed or on which the special resolution accepting the composition was passed, as the case may be.

187A Application of Part to joint debtors

- (1) The provisions of this Part apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, in relation to joint debtors, whether partners or not.
- (2) In subsection (1), **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.

Division 2—Meeting of Creditors and Control of Debtor's Property

188 Debtor may authorize trustee or solicitor to call meeting of creditors, &c.

- (1) A debtor who desires that his affairs be dealt with under this Part without his 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 prescribed form—
 - (e) authorizing a registered trustee to call a meeting of his creditors and to take over the control of his property; or
 - (f) authorizing a solicitor to call a meeting of his creditors.
- (2) An authority signed by a debtor under this section is not effective for the purposes of this Part unless—
 - (a) the trustee named in it has consented, in writing, to exercise the powers conferred by the authority or the solicitor named in it has consented, in writing, to call the meeting of creditors, as the case may be; and
 - (b) the signature of the debtor to the authority and the signature of the trustee or solicitor to the consent are each attested by a witness.
- (3) An authority under this section that is effective for the purposes of this Part is not revocable by the debtor.
- (4) Where a trustee consents to exercise the powers conferred on him by an authority under this section or a solicitor consents to call a meeting of creditors in pursuance of an authority under this

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section, the trustee or solicitor, as the case may be, shall, within 7 days after he so consents, file a copy of the consent, and a copy of the authority, in the office of the Registrar.

189 Effect of authority to registered trustee under section 188

- (1) Where a debtor has given an effective authority to a registered trustee under section 188, the property of the debtor becomes subject to control under this Division and continues to be so subject until—
 - (a) the creditors resolve at a meeting called under this Part that the debtor's property be no longer subject to control under this Division;
 - (b) a deed of assignment or a deed of arrangement is executed by the debtor and the trustee of the deed in pursuance of a special resolution of his creditors under this Division;
 - (c) the creditors accept a composition under this Division;
 - (d) the Court, under section 208, releases the debtor's property from control under this Division;
 - (e) the debtor becomes a bankrupt; or
 - (f) the debtor dies,whichever first happens.
- (2) A debtor whose property is subject to control under this Division—
 - (a) shall not remove, dispose of or deal with any of his property except with the consent of the controlling trustee;
 - (b) shall furnish to the controlling trustee such information with respect to his property and affairs as the controlling trustee requires; and
 - (c) shall comply with any direction given to him by the controlling trustee with respect to his 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 that contravention.

190 Trustee's and solicitor's duties and powers

- (1) Where a registered trustee consents to exercise the powers conferred by an authority under section 188 or a solicitor consents to call a meeting of creditors in pursuance of such an authority, the trustee or solicitor, as the case may be, shall proceed to call a meeting of the debtor's creditors in accordance with this Division.
- (2) Where a registered trustee consents to exercise the powers conferred by such an authority, he is, by force of this section, 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 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; and
 - (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.
- (3) The power of the trustee to deal with the debtor's property conferred by subsection (2) does not authorize the trustee to sell the property or any part of it (not being perishable property) except in the ordinary course of business or with the leave of the Court.
- (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 powers under this section, the trustee may act in the name of the debtor as if he had been duly appointed by the debtor to be his lawful attorney to exercise those powers.
- (5) In this section, ***debtor's property***, in relation to a debtor who has given a registered trustee an authority under section 188, means the property of the debtor that would be divisible amongst his creditors

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under Part VI if a sequestration order had been made against him on the day on which he 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 deed of assignment or deed of arrangement is executed by him in pursuance of a resolution of a meeting of creditors called in pursuance of the authority or a composition is accepted by such a meeting of creditors, does not include property that is acquired by, or devolves on, him on or after the day on which he executes the deed or the composition is accepted, as the case may be.

191 Payments to protect property, &c.

Without prejudice to the powers conferred on a trustee by section 190, the trustee may, at any time while the property of the debtor is subject to his control, pay out of the debtor's moneys any debts of the debtor that, in the opinion of the trustee, it is necessary to pay for the purpose of safe-guarding the value of his property or any of it or of avoiding forfeiture or determination of any interest or rights of the debtor in or to property.

192 Death of trustee to whom authority is given, &c.

- (1) Where a registered trustee who has consented to exercise the powers conferred by an authority under section 188—
 - (a) dies;
 - (b) ceases to be a registered trustee;
 - (c) becomes incapable of exercising his powers under this Part;or
 - (d) desires to be relieved of his duties under this Part,the debtor may sign a new authority under section 188 in favour of another registered trustee and, upon that other trustee consenting to exercise the powers conferred by that authority, that other trustee becomes the controlling trustee in place of the first-mentioned trustee.
- (2) Where, in pursuance of this Part, a meeting of creditors or the Court nominates a registered trustee other than the trustee who is

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acting under an authority under section 188 to be the trustee of a deed of assignment or deed of arrangement to be executed by the debtor, the trustee so nominated shall, upon signing, in the prescribed manner, a consent to act as trustee, become the controlling trustee in place of the trustee authorized by the debtor.

- (3) Where a registered trustee who has consented to exercise the powers conferred by an authority under section 188—
 - (i) dies;
 - (ii) ceases to be a registered trustee; or
 - (iii) becomes incapable of exercising his powers under this Part,the Official Trustee shall act as the controlling trustee until a registered trustee becomes the controlling trustee under this section.
- (4) Where a registered trustee becomes the controlling trustee under this section, or the Official Trustee acts as the controlling trustee, the registered trustee or the Official Trustee, as the case may be, has the same powers as the trustee originally authorized by the debtor under section 188.
- (5) All acts and things duly done by a registered trustee in pursuance of an authority signed by a debtor under section 188 shall, if another trustee becomes the controlling trustee or the Official Trustee acts as the controlling trustee, be deemed, for the purposes of this Division, to have been done by that other trustee or the Official Trustee, as the case may be.
- (6) All acts and things duly done, or deemed to have been done, by the Official Trustee while acting as the controlling trustee shall, if a registered trustee becomes the controlling trustee, be deemed, for the purposes of this Division, to have been done by that registered trustee.

193 Remuneration of controlling trustee

- (1) The provisions of sections 162 to 167 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, in relation to the controlling trustee as if the debtor who gave

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the authority under section 188 were a bankrupt and the controlling trustee were the trustee in his bankruptcy.

- (2) In subsection (1), **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.

194 Calling of meeting

- (1) The meeting of creditors to be called in pursuance of an authority under section 188 shall be held—
- (a) not later than 28 days after the authority is signed by the debtor or, in the case of an authority signed by a debtor in the month of December, not later than 35 days after the authority is so signed; and
 - (b) not earlier than 14 days after the notices to creditors are delivered or sent by post under subsection (2).
- (2) The controlling trustee or solicitor calling the meeting shall give to each person who is stated by the debtor to be a creditor and whose business or residential address is known to the trustee or solicitor notice of the meeting by delivering or sending by post to that person a notice in accordance with the prescribed form.
- (3) The controlling trustee or solicitor shall also cause notice of the calling of the meeting to be published, not less than 7 days before the meeting is held, in a newspaper circulating in the locality in which the meeting is to be held and in such other manner (if any) as is prescribed.
- (4) Where there has been a failure to comply with subsection (2) or (3), the meeting shall not be deemed incompetent to act for the purposes of this Part by reason only of that failure unless the Court, on the application of a creditor, or of the controlling trustee or solicitor by whom the meeting was called, otherwise declares.

195 Debtor to attend meeting

- (1) The debtor shall, unless prevented by illness or other sufficient cause, attend the meeting and shall submit to the creditors at the

meeting a statement in writing, verified by statutory declaration, of his affairs.

- (2) The statement of the debtor's affairs shall specify his assets and liabilities and shall include—
 - (a) in respect of each asset—particulars of the asset, including its estimated value;
 - (b) in respect of each liability—particulars of the liability, including whether it is secured or not; and
 - (c) in respect of any liability that is secured—particulars of the security.
- (3) The debtor shall, at the meeting, answer, to the best of his knowledge and ability, all questions put to him by the controlling trustee or by a creditor with respect to his conduct, trade dealings, property and affairs.
- (3A) Where the Official Trustee is acting as the controlling trustee, subsection (3) applies as if the reference in that subsection to the controlling trustee were a reference to an Official Receiver or a person authorized in writing by an Official Receiver to act on behalf of the Official Trustee at the meeting.
- (4) The failure of the debtor to attend the meeting does not affect the validity of any resolution passed at the meeting.

196 Election of chairman, &c.

- (1) The majority in number of the creditors present at the meeting in person, by attorney or by proxy shall elect a chairman to preside at the meeting.
- (2) If the creditors so present determine, by resolution, that the time or place for which the meeting was called was not convenient to the majority in number of the creditors, the meeting shall be adjourned to a time and place determined, by resolution, by the creditors so present.

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197 Adjournments

- (1) A meeting may, by resolution, be adjourned from time to time.
- (2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

198 Entitlement to vote at meeting

- (1) Subject to this section, every creditor is entitled to vote at a meeting under this Division.
- (2) A creditor is not entitled to vote in respect of an unliquidated or contingent debt or a debt the value of which is not ascertained.
- (3) For the purpose of enabling a creditor to vote, a debt that is certain but is payable in the future shall be deemed to be payable at the time of the meeting.
- (4) A creditor is not entitled to vote (otherwise than in respect of the election of a chairman of the meeting), unless he has made known to the chairman particulars of his debt.
- (5) Except as provided by subsection (6), a secured creditor is not entitled to vote in respect of a secured debt unless he surrenders his security.
- (6) A secured creditor may, if he has furnished to the chairman, in writing, particulars of the security and of the value at which he estimates it, vote in respect of the balance (if any) of the secured debt after deducting the value at which he has estimated the security.
- (7) The spouse of the debtor is not entitled to vote at a meeting under this Division.

199 Restriction on voting by proxy

A person acting as a proxy or attorney at a meeting under this Division is not eligible, unless he is expressly authorized to do so by the instrument by which he was appointed, to vote for the appointment of himself, his partner or his employer as trustee of a deed of assignment, a deed of arrangement or a composition.

200 Manner of voting

- (1) A creditor may vote either in person or by his attorney or by a proxy appointed in writing by the creditor or his attorney.
- (2) A proxy may be appointed to vote on all matters arising at the meeting or on particular matters specified in the instrument of appointment.
- (3) A person claiming to be the proxy of a creditor is not entitled to vote as proxy (otherwise than in respect of the election of a chairman of the meeting) unless the instrument by which he is appointed has been lodged with the chairman.
- (4) A person claiming to be the attorney of a creditor is not entitled to vote as attorney (otherwise than in respect of the election of a chairman of the meeting) unless—
 - (a) the instrument by which he is appointed has been produced to the chairman; or
 - (b) the chairman is otherwise satisfied that he is the duly authorized attorney of the creditor.

201 Admission and rejection of claim to vote

Any question as to the right of a person to vote at a meeting under this Division, or as to the amount of the debt in respect of which a person is entitled to vote at such a meeting, shall be determined by the chairman, who may, if he thinks it necessary to do so, adjourn the meeting for a period, not exceeding 14 days, to enable him to investigate the matter.

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202 Quorum

- (1) At a meeting under this Division, 2 creditors, being creditors entitled to vote at the meeting, present personally, by attorney or by proxy, constitute a quorum.
- (2) If a quorum is not present within 30 minutes after the time appointed for the meeting, any creditor or attorney or proxy of a creditor entitled to vote at the meeting who is present may adjourn the meeting to such date and place as he appoints.
- (3) The date so appointed shall not be earlier than 7 days, or later than 14 days, from the date on which the adjournment takes place.
- (4) Notice of the adjournment shall forthwith be given to all the creditors by the debtor or by the controlling trustee or the solicitor authorized by the debtor to call the meeting in the manner specified in subsection 194(2).
- (5) A meeting of creditors on the date and at the place to which the meeting under this Division was adjourned shall not be deemed incompetent to act for the purposes of this Part by reason only of a failure to comply with subsection (4) unless the Court, on the application of a creditor or of the controlling trustee or solicitor by whom the meeting was called, otherwise declares.

203 Minutes of meeting

- (1) The chairman shall cause minutes of the proceedings at a meeting under this Division to be prepared and shall sign the minutes not later than 14 days after the date of the meeting.
 - (2) If the chairman dies without having signed the minutes or becomes incapable, whether through illness or other cause, of signing the minutes as required by subsection (1), the controlling trustee or the solicitor who called the meeting, if he attended the meeting, or a creditor who attended the meeting may sign the minutes in place of the chairman.
- (2A) Where—

- (a) the Official Trustee is acting as the controlling trustee; and
 - (b) an Official Receiver, or a person authorized by an Official Receiver to act on behalf of the Official Trustee for the purpose, attended a meeting under this Division, the Official Receiver or that person, as the case may be, may sign the minutes of the meeting in place of the chairman if the chairman dies without having signed the minutes or becomes incapable, whether through illness or other cause, of signing the minutes as required by subsection (1).
- (3) Where a meeting is adjourned in pursuance of section 202, the person by whom it is adjourned shall cause a minute to that effect to be prepared and shall sign the minute not later than 14 days after the date on which the meeting was adjourned.
- (4) Where minutes of the proceedings at a meeting under this Division are prepared and signed in pursuance of this section, or a minute referred to in subsection (3) is prepared and signed in pursuance of that subsection, the controlling trustee, or the solicitor who called the meeting, shall, within 21 days after the day on which the meeting was held, cause a copy of the minutes or minute, as the case may be, to be filed in the office of the Registrar.

204 Resolution for deed of assignment, &c.

- (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 deed of assignment or a deed of arrangement under this Part;
 - (c) accept a composition; or
 - (d) require the debtor to present a debtor's petition within 7 days from the day on which the resolution was passed.

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- (2) A special resolution requiring the debtor to execute a deed of arrangement under this Part may, subject to this Act, specify provisions to be included in the deed.
- (3) A special resolution accepting a composition shall specify the terms of the composition.
- (4) Where a special resolution requiring the debtor to execute a deed of assignment or a deed of arrangement under this Part or accepting a composition has been passed, the creditors shall, by resolution, nominate a registered trustee or registered trustees to be trustee or trustees of the deed or composition.
- (5) The creditors may, in nominating a registered trustee or registered trustees for the purposes of subsection (4)—
 - (a) nominate 2 or more registered trustees to hold the office of trustee jointly, or jointly and severally; and
 - (b) nominate registered trustees to be trustees of the deed or composition 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 deed or composition, whether nominated to hold the office jointly, or jointly and severally, vests in those trustees as joint tenants.
- (7) Where the creditors pass a special resolution or a resolution under this section, the chairman of the meeting shall—
 - (a) forthwith sign a certificate to that effect in accordance with the prescribed form; and
 - (b) forthwith cause the certificate to be filed in the office of the Registrar.
- (8) If the chairman dies without having performed his duties under subsection (7), or fails to perform those duties, the trustee or the solicitor by whom the meeting was called, or the controlling trustee (if any) may sign and file, or file, as the case requires, the certificate referred to in that subsection

**205 Duties of sheriff after receiving notice of signing of authority
under section 188, &c.**

- (1) Subject to this section, where notice in writing of the signing by 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 of the passing of a special resolution under section 204 requiring a debtor to execute a deed of assignment or a deed of arrangement or present a debtor's petition or accepting a composition 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, the process of execution was issued, or to any person on his 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 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 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 notice in accordance with the prescribed form, being a

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notice in the form of a statutory declaration, specifying such particulars of the maintenance agreement or maintenance order as are required by the form, 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 by 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 of the passing of a special resolution under section 204 requiring a debtor to execute a deed of assignment or a deed of arrangement or present a debtor's petition or accepting a composition 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 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 notice in accordance with the prescribed form, being a notice in the form of a statutory declaration, specifying such particulars of the maintenance agreement or maintenance order as are required by the form, 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, 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 behalf, and subsection (3) does not prevent moneys in court from being paid out of court to a creditor or a person on his 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 deed of assignment or a deed of arrangement or present a debtor's petition or accepting a composition;
 - (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 was adjourned, receive notice of the passing of a special resolution referred to in paragraph (a) or of the further adjournment of the meeting; or
 - (d) having received notice of the passing of a special resolution referred to in paragraph (a) (not being a special resolution accepting a composition), the sheriff, registrar or other officer does not, within 21 days from the date on which the resolution was passed, receive notice that the deed required to be executed has been duly 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 of subsection 119(1) or (2), refrains from taking action to sell property of a debtor (being real property), the debtor executes a deed of assignment or a deed of arrangement under this Part, or a special resolution is passed under section 204

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- accepting a composition in relation to the debtor, and the property vests in the trustee of the deed or is subject to the terms of the composition, as the case may be; or
- (b) a sheriff, in pursuance of subsection (1), refrains from taking action to sell property of a debtor (being real property), 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.

205A Duties of sheriff after receiving notice of execution of deed, &c.

- (1) Subject to this section, where a deed of assignment has been duly executed (whether before or after the commencement of this section) by a debtor under this Part, the trustee of the deed 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 debtor in his possession under a process of execution issued by or on behalf of a creditor;
- (ii) any proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the debtor executed the deed, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the debtor executed the deed, in pursuance of any such process; and

- (iii) any moneys in his possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the debtor; 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 debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the debtor executed the deed, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; and
 - (ii) any moneys in court that have been paid into court, whether before or after the debtor executed the deed, in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor,as the case requires.
- (2) Subject to this section, where—
 - (a) the sheriff is satisfied—
 - (i) that a deed of arrangement has, after the commencement of this section, been duly executed by a debtor under this Part; and
 - (ii) that—
 - (A) property of the debtor in his possession under a process of execution issued by or on behalf of a creditor;
 - (B) proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the debtor executed the deed, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the debtor executed the deed, in pursuance of any such process; or

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- (C) moneys in his possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the debtor,
 - is not, or are not, subject to the provisions of the deed, 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; or
- (b) the registrar or other appropriate officer of a court is satisfied—
 - (i) that a deed of arrangement has, after the commencement of this section, been duly executed by the debtor under this Part; and
 - (ii) that—
 - (A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the debtor executed the deed, 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 debtor executed the deed, 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 provisions of the deed, 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 purpose.
- (3) Subject to this section, where—
 - (a) the sheriff is satisfied—
 - (i) that a deed of arrangement has, after the commencement of this section, been duly executed by the debtor under this Part; and
 - (ii) that—

- (A) property of the debtor in his possession under a process of execution issued by or on behalf of a creditor;
 - (B) proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the debtor executed the deed, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the debtor executed the deed, in pursuance of any such process; or
 - (C) moneys in his 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 provisions of the deed, the sheriff shall deliver that property or pay those proceeds or other moneys, as the case requires, to the trustee of the deed; or
- (b) the registrar or other appropriate officer of a court is satisfied—
 - (i) that a deed of arrangement has, after the commencement of this section, been duly executed by a debtor under this Part; and
 - (ii) that—
 - (A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the debtor executed the deed, 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 debtor executed the deed, in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor,

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are subject to the provisions of the deed,
the registrar or other officer shall pay those proceeds or other
moneys, as the case requires, to the trustee of the deed.

(4) Subject to this section, where—

(a) the sheriff is satisfied—

(i) that a special resolution accepting a composition has
been passed under section 204 in relation to a debtor
after the commencement of this section; and

(ii) that—

(A) property of the debtor in his possession under a
process of execution issued by or on behalf of a
creditor;

(B) proceeds of the sale of property of the debtor or
other moneys in his possession, being proceeds
of the sale of property sold, whether before or
after the passing of the special resolution, in
pursuance of any such process or moneys
seized, or paid to avoid seizure or sale of
property of the debtor, whether before or after
the passing of the special resolution, in
pursuance of any such process; or

(C) moneys in his possession as a result of the
attachment, by or on behalf of a creditor, of a
debt due to the debtor,

is not, or are not, subject to the terms of the
composition,

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; or

(b) the registrar or other appropriate officer of a court is
satisfied—

(i) that a special resolution accepting a composition has
been passed under section 204 in relation to a debtor
after the commencement of this section; and

(ii) that—

- (A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the passing of the special resolution, 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 passing of the special resolution, 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 terms of the composition, 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 purpose.
- (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 moneys in court,
- to the debtor or to a person authorized by the debtor unless—
- (c) 21 days have elapsed since the day on which the special resolution accepting the composition was passed; 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 the composition 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 special resolution accepting a composition has been passed under section 204 in relation to a debtor after the commencement of this section; and

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- (ii) that—
 - (A) property of the debtor in his possession under a process of execution issued by or on behalf of a creditor;
 - (B) proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the passing of the special resolution, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the passing of the special resolution, in pursuance of any such process; or
 - (C) moneys in his 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 terms of the composition, the sheriff shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the trustee of the composition; or
- (b) the registrar or other appropriate officer of a court is satisfied—
 - (i) that a special resolution accepting a composition has been passed under section 204 in relation to a debtor after the commencement of this section; and
 - (ii) that—
 - (A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the passing of the special resolution, 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 passing of the special resolution, in pursuance of proceedings

instituted, by or on behalf of a creditor, to
attach a debt due to the debtor,
are subject to the terms of the composition,
the registrar or other officer shall pay those proceeds or other
moneys, as the case requires, to the trustee of the
composition.

- (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 moneys in
court,
- to the trustee of the composition unless—
- (c) 21 days have elapsed since the day on which the special
resolution accepting the composition was passed; 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 the composition 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 (1), (2), (3), (4) or (6) to be
delivered or paid to the trustee of a deed or a composition 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 thinks necessary for the purpose.
- (10) Where a sheriff, registrar or other officer of a court has, in
pursuance of subsection (1), (2), (3), (4) or (6), delivered property

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or paid moneys to the trustee of a deed or a composition or to the debtor or a person authorized by a debtor, 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 under the deed or composition as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.

(11) Where—

- (a) a sheriff, registrar or other officer of a court has, in pursuance of subsection (1), delivered to the trustee of a deed of assignment property that was seized, or paid to the trustee of such a deed 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 debtor or the attachment of a debt due to a debtor; and
- (b) that property or debt would not have been property divisible amongst the creditors of the debtor if the debtor had executed the deed immediately before the execution was issued or the debt was 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 debtor or to a person authorized by the debtor in writing for the purpose.

(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 the trustee of a deed of assignment in pursuance of subsection (1);
 - (ii) to a debtor or a person authorized by the debtor in pursuance of subsection (2) or (4);
 - (iii) to the trustee of a deed of arrangement in pursuance of subsection (3); or
 - (iv) to the trustee of a composition in pursuance of 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 the 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.

206 Court may adjourn hearing of petition where creditors have passed resolution for deed

- (1) Where—
 - (a) a meeting of creditors has, in accordance with this Part, passed a special resolution requiring a debtor to execute a deed of assignment or a deed of arrangement under this Part; and
 - (b) a creditor's petition was presented against the debtor before the passing of the resolution or is presented against him after the passing of the resolution but before the deed has been duly executed,

the Court may, upon application by the debtor, a creditor or a person nominated as trustee of the proposed deed, 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 deed, adjourn the hearing of the petition for such period as it considers necessary to allow the deed to be executed and, if the deed is duly executed within that period, shall dismiss the petition.

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- (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 deed of assignment or a deed of arrangement under this Part, the Registrar shall, as soon as practicable, give notice in writing of that fact to the person who has been nominated as trustee of the deed.

207 Surrender of security, &c., where secured creditor has voted

- (1) Where a secured creditor has estimated the value of his security under section 198 for the purposes of voting at a meeting of creditors at which a special resolution requiring the debtor to execute a deed of assignment or a deed of arrangement or accepting a composition was passed—
- (a) he is not entitled to estimate the value of the security for the purposes of proving part of his debt under the deed or composition at any other amount except with the approval of the Court; and
 - (b) he shall, upon request in writing by the trustee of a deed executed in pursuance of the special resolution or of the composition, as the case may be, surrender the security upon payment of the amount at which he has estimated the value of his security for the purposes of voting or, if the Court has approved his estimating the value of his security at another amount under paragraph (a), upon payment of that other amount.
- (2) The Court shall not grant its approval under paragraph (1)(a) 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 debt

without having surrendered his security as required by section 198—

- (a) he shall be deemed to have estimated his security as having no value; and
 - (b) he shall, upon request in writing by the trustee of a deed executed in pursuance of the special resolution or the trustee of the composition, as the case may be, surrender the security.
- (4) The Court may, upon application by a secured creditor to whom subsection (3) applies, if it is satisfied that his failure to estimate the value of his security was due to inadvertence, upon such terms as the Court considers just and equitable—
- (a) relieve him from the obligation to surrender the security; and
 - (b) permit him to estimate its value for the purposes of proving part of his debt under the deed or composition.
- (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, as applied in relation to deeds of assignment, deeds of arrangement and compositions under this Part, to realize his security and prove for the balance due to him is not exercisable where the trustee of such a deed or composition has requested the surrender of the security under this section.

208 Determination of control of debtor's property by the Court

The Court may, by order, on the application of an interested person, release a debtor's property from control under this Division if—

- (a) a meeting of creditors called in pursuance of an authority under section 188 has not, within 4 months from the date for

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- which the meeting was first called, passed one of the special resolutions referred to in subsection 204(1); or
- (b) the Court is satisfied that there are special circumstances that justify its so doing.

209 Acts of controlling trustee to bind trustee of subsequent deed, composition or bankruptcy

Where—

- (a) a debtor signs an authority to a registered trustee under section 188; and
- (b) subsequently a deed of assignment or a deed of arrangement is entered into by the debtor under this Part, a composition is accepted under this Part or the debtor becomes a bankrupt, all payments made, acts and things done, transactions entered into and liabilities incurred by the controlling trustee in good faith in exercise of his powers under this Part are binding on the trustee of the deed or composition or in the bankruptcy, as the case may be.

210 Controlling trustee's bank accounts, &c.

- (1) The controlling trustee in relation to a debtor may, if he thinks it desirable to do so, open, in such bank as he thinks fit, a bank account for the purposes of the administration of the debtor's affairs and property.
- (2) The controlling trustee in relation to a debtor shall keep such accounts and records as are necessary to exhibit a full and correct account of his administration of the debtor's affairs and property.
- (3) Where the controlling trustee carries on a business previously carried on by the debtor, he shall keep such books, accounts and records as are usual and proper in relation to the carrying on of a business of that kind.
- (4) Subsection (1) does not apply in relation to the Official Trustee.

211 Controlling trustee's accounts

- (1) A registered trustee shall, at such time or times as is or are prescribed, in relation to each debtor in respect of whom he is or has been the controlling trustee, furnish to the Registrar an account in accordance with the prescribed form, signed by the trustee, of his receipts and payments as controlling trustee in relation to that debtor.
- (2) The Registrar may cause an account so furnished to be audited by an appropriate person.
- (3) The Registrar may submit the account (whether or not it has been audited under subsection (2)) to the Auditor-General for audit by the Auditor-General.
- (4) Where at any time a creditor or the debtor satisfies the Registrar that an audit of a controlling trustee's accounts and records is necessary or the Registrar, without any application by a creditor or the debtor, is of opinion that such an audit is necessary, the Registrar shall cause an audit of the trustee's accounts and records to be carried out by an appropriate person.
- (5) For the purposes of an audit under this section, the trustee shall produce to the person carrying out the audit as and when required such books and information as that person requires.
- (5A) The cost of an audit under this section, not being an audit carried out by the Auditor-General, shall be borne by the estate of the debtor.
- (6) This section does not apply in relation to the Official Trustee.

212 Court may order controlling trustee to make good loss sustained by negligence, &c.

- (1) Where the Registrar is of the opinion, whether as a result of an account furnished to him in pursuance of section 211 or of an audit under that section or for any other reason, that a trustee who is or has been a controlling trustee may have been guilty of

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malfeasance, misfeasance, negligence, wilful default or breach of trust in relation to the property or affairs of the debtor, the Registrar may apply to the Court for an order under subsection (2).

- (2) The Court may order that the trustee make good any loss that has been sustained by reason of the malfeasance, misfeasance, negligence or wilful default of, or a breach of trust by, the trustee or may make such other order as the Court thinks just and equitable in the circumstances.

212A Appeal to the Court against controlling trustee's decision, &c.

If the debtor, a creditor or any other person is affected by an act, omission or decision, of the controlling trustee, being an act, omission or decision done, omitted to be done or made, as the case may be, after the commencement of this section, he may apply to the Court, and the Court may make such order in the matter as it thinks just and equitable.

212B Control of controlling trustees by the Court

- (1) The Court may, on the application of the Registrar, a creditor or the debtor, inquire into the conduct of a trustee in relation to an authority under section 188 and may do either or both of the following:
 - (a) remove the trustee from office;
 - (b) make such order as it thinks proper.
- (2) The Registrar or a creditor may at any time require a trustee to answer an inquiry in relation to the property or affairs of a debtor who has executed an authority under section 188.
- (3) The Registrar or a creditor may apply to the Court to examine a trustee or any other person in relation to an authority under section 188.
- (4) Without limiting the generality of subsection (3), where the Official Trustee is acting, or has acted, as the controlling trustee, application may be made to the Court under that subsection to

examine the Official Receiver for the District in which the debtor executed the authority under section 188.

Division 3—General Provisions

213 Arrangements by debtor with creditors otherwise than in accordance with this Part, &c., to be void

- (1) Subject to this Part, a deed of assignment or a deed of arrangement executed by a debtor after the commencement of this Act is void unless—
 - (a) it is entered into in accordance with this Part; and
 - (b) it complies with the requirements of this Part.
- (2) An instrument not under seal executed by a debtor after the commencement of this Act which, if it had been under seal, would have been a deed of assignment or a deed of arrangement is void.
- (3) Subject to this Part, a composition made by a debtor after the commencement of this Act, not being a composition accepted by a special resolution of a meeting of creditors under section 204, is void.
- (4) Nothing in this section affects the validity of a composition or scheme of arrangement under Division 6 of Part IV.

214 Form of deeds, &c.

- (1) A deed of assignment or a deed of arrangement—
 - (a) shall be expressed to be entered into in pursuance of this Part; and
 - (b) shall make provision for a person or persons to be trustee or trustees of the deed.
- (2) A deed of assignment—
 - (a) shall provide for the assignment of all the divisible property of the debtor for the benefit of his creditors; and
 - (b) shall be substantially in accordance with the prescribed form.

215 Trustee of deed or composition to be registered trustee

A person is not eligible to be a trustee of a deed or a composition under this Part unless he is a registered trustee.

216 Execution of deeds

- (1) A deed of assignment or a deed of arrangement shall 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 deed was passed.
- (2) The execution of the deed by the debtor and by the trustee shall be attested by a witness.

217 Failure of trustee to execute deed

- (1) Where a deed of assignment or deed of arrangement 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, of the deed, a meeting of creditors called for the purpose, in accordance with the rules, by any creditor or the debtor may, by resolution, nominate any other registered trustee in the place of that registered trustee.
- (2) If the deed 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 Registrar, 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 deed as required by section 216.
- (3) A registered trustee so nominated by the Court shall execute the deed within 7 days from the date on which the trustee was so nominated or within such further period as the Court, on

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application made before the expiration of that period of 7 days, allows.

218 Notice of execution of deed, acceptance of composition, &c.

- (1) The trustee of a deed of assignment or a deed of arrangement entered into in pursuance of this Part shall—
 - (a) forthwith after the execution of the deed by the debtor and the trustee—
 - (i) give notice of that fact, in accordance with the rules, to each creditor of the debtor; and
 - (ii) cause notice of that fact, and of the nature of the deed, to be published in the *Gazette* and in such other manner, if any, as is prescribed; and
 - (b) within 21 days after the execution of the deed by the debtor and the trustee—file a copy of the deed and a copy of the statement of the debtor's affairs referred to in section 195 in the office of the Registrar.
- (2) Where a special resolution accepting a composition is passed under section 204, the trustee of the composition shall—
 - (a) forthwith—
 - (i) give notice of that fact, in accordance with the rules, to each creditor of the debtor; and
 - (ii) cause notice of that fact to be published in the *Gazette* and in such other manner (if any) as is prescribed; and
 - (b) within 21 days after the passing of the special resolution—file a copy of the statement of the debtor's affairs referred to in section 195 in the office of the Registrar.

219 Trustee may sue, be sued, &c., by official name

- (1) The trustee of a deed of assignment or a deed of arrangement entered into in pursuance of 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 successors in office and

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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*), a Debtor”.

220 Filling of vacancy in office of trustee after execution of deed, &c.

- (1) Where a vacancy occurs in the office of trustee of a deed of assignment or a deed of arrangement entered into in pursuance of this Part or of a composition accepted under this Part, a meeting of creditors called for the purpose may, by resolution, appoint a registered trustee to the vacant office.
- (2) Where, at any time, a vacancy exists in an office of trustee of such a deed of assignment or deed of arrangement or of such a composition, the Court may, on the report of the Registrar or 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 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—

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- (a) all property to which the deed or composition 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, as 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 if 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 of the Commonwealth 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 deed or composition relates, that property, notwithstanding that it vests in equity 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.

221 Power to make sequestration order where debtor fails to attend meeting, execute deed, &c.

- (1) Where—
 - (a) a debtor has failed, without sufficient cause—
 - (i) to attend a meeting of creditors called in pursuance of an authority signed by him under section 188; or
 - (ii) to submit to the creditors at such a meeting the statement referred to in section 195 ;
 - (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 deed of assignment or a deed of arrangement or to present a debtor's petition, has failed, without sufficient cause, to execute the deed within the time prescribed by this

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Act or to present the debtor's petition within the time required by the special resolution; 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 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.

222 Power of the Court to declare deed or composition void

- (1) Where there is a doubt, on a specific ground, whether a deed of assignment or a deed of arrangement was entered into in accordance with this Part or complies with the requirements of this Part, or whether a composition has been accepted by a special resolution of a meeting of creditors under section 204, the Registrar, the trustee, a creditor or the debtor may apply to the Court for an order under subsection (2).
- (2) Upon the hearing of an application made under subsection (1), the Court may, subject to this section, make an order—

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- (a) declaring that the deed or composition is void, or that it is not void, on the ground specified in the application; or
 - (b) declaring that a provision of the deed is void, or is not void, on the ground specified in the application.
- (3) The Court shall not make an order declaring a deed to be void on the ground that it does not comply with the requirements of this Part if the deed complies substantially with those requirements.
- (4) Where the Court, on the application of the trustee or a creditor, is satisfied that the debtor—
 - (a) has given false or misleading information in answer to a question put to him with respect to his conduct, trade dealings, property or affairs at the meeting of creditors at which the resolution requiring him to execute the deed or accepting the composition was passed; or
 - (b) has omitted a material particular from the statement of his affairs under section 195 or included an incorrect and material particular in that statement,the Court may make an order declaring the deed or composition to be void or declaring any provision of the deed or composition to be void.
- (5) The Court shall not make an order declaring a deed or composition, or a provision of a deed or composition, to be void on a ground specified in subsection (4) unless it is satisfied that it would be in the interests of the creditors to do so.
- (6) The Court shall not make an order under subsection (2) or (4) unless the application for the order is made—
 - (a) in relation to a deed of assignment—before the final dividend has been paid under the deed;
 - (b) in relation to a deed of arrangement—before the terms of the deed have been carried out; or
 - (c) in relation to a composition—before the final payment has been made under the composition.

- (7) The trustee or a creditor may include in an application under subsection (1) or (4) an application for a sequestration order against the estate of the debtor and if the Court, on the first-mentioned application, makes an order under subsection (2) or (4) declaring the deed or composition to which it relates to be void, it may, if it thinks fit, forthwith make the sequestration order sought.
- (8) 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.
- (9) The making of an application by the trustee or a creditor for a sequestration order under this section shall, for the purposes of this Act, be deemed 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.
- (10) Where in the course of proceedings before the Court (other than proceedings by way of an application under subsection (1)), the Court becomes of the opinion that there is a doubt, on a particular ground, whether a deed of assignment or deed of arrangement was entered into in accordance with this Part or complies with the requirements of this Part, or whether a composition has been accepted by a special resolution of a meeting of creditors under section 204, and that it is desirable that the doubt be resolved, the Court may direct the Registrar to apply to the Court under subsection (1) for an order under subsection (2) in relation to the matter..

223 Calling of meetings other than the first meeting

- (1) The controlling trustee or the trustee of a deed of assignment, a deed of arrangement or a composition—
 - (a) may call such general meetings of the creditors as he considers necessary or desirable for the purposes of this Part; and

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- (b) shall call general meetings of the creditors at such times as the creditors, by resolution, direct and whenever requested in writing to call such a meeting by not less than one-fourth in value of the creditors.
- (2) Notice of such a meeting shall be given to each person believed by the trustee to be a creditor of the debtor and whose business or residential address is known to the trustee by delivering or posting to that person, at least 5 days before the meeting is to be held, a notice in accordance with the prescribed form.
- (3) If, at any time, there is no trustee of a deed of assignment, a deed of arrangement or a composition, any creditor or the debtor may call a meeting of creditors (other than the meeting referred to in section 194) for the purposes of this Part, and for that purpose notice of the meeting shall be given, in the manner specified by subsection (2) and at least 5 days before the meeting is to be held, to each person believed by the person calling the meeting to be a creditor of the debtor and whose business or residential address is known to the person calling the meeting.

223A Application of provisions of this Part relating to first meeting to other meetings under this Part

- (1) The provisions of sections 196 to 203 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, in relation to a meeting of creditors (other than the meeting referred to in section 194) called for the purposes of this Part as if the meeting were a meeting referred to in section 194.
- (2) In this section, *modification* includes the addition or omission of a provision or the substitution of a provision for another provision.

224 Validity of acts where deed or composition declared void or terminated, &c.

Where—

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- (a) a deed of assignment, a deed of arrangement or a composition is declared by the Court to be void under section 222;
- (b) a deed of arrangement is terminated by an occurrence specified in paragraph 235(b) or (d);
- (c) a deed of arrangement or a composition is terminated by the Court under section 236 or 242; or
- (d) a composition is terminated by the creditors under section 241,

all payments made, acts and things done and transactions entered into in good faith under, or for the purposes of, the deed or composition by the trustee or any other person before he had notice of the order of the Court or of the termination of the deed or composition, as the case may be, are valid and effectual and are not liable to be set aside by the trustee of a subsequent deed of assignment or deed of arrangement or in a subsequent bankruptcy.

224A Notice that deed or composition declared void or terminated

- (1) Where a deed of arrangement or a composition is terminated by a special resolution passed after the commencement of this section at a meeting of creditors called for the purpose, the trustee of the deed or composition shall forthwith file a copy of the special resolution in the office of the Registrar.
- (2) Where a deed of arrangement is terminated after the commencement of this section 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 deed shall forthwith give notice in writing of that fact to the Registrar.
- (3) Where the Registrar becomes aware after the commencement of this section, whether by reason of his having received information under this section or otherwise—
 - (a) that the Court has declared a deed of assignment, a deed of arrangement or a composition to be void;
 - (b) that the Court has terminated a deed of arrangement or a composition;

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- (c) that a deed of arrangement or a composition has been terminated by a special resolution passed at a meeting of creditors called for the purpose;
 - (d) that a deed of arrangement has been terminated by the occurrence of any circumstance or event on the occurrence of which the deed provided that it was to terminate; or
 - (e) that the Court has set aside a composition,
- the Registrar shall forthwith cause notice of that fact to be published in the *Gazette* and in such other manner (if any) as is prescribed.

225 Evidence of deed, resolution, &c.

- (1) A deed of assignment or a deed of arrangement 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 that 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 signed in accordance with section 203 are *prima facie* evidence of the proceedings at the meeting.

226 Creditor may inspect deed, &c.

- (1) A person who states in writing that he is a creditor of a debtor who has executed a deed of assignment or a deed of arrangement under this Part may, at all reasonable times, inspect without fee,

personally or by an agent, the deed, the statement of affairs referred to in section 195 of the debtor and the proofs of debt of creditors and may make copies of, or take extracts from, the deed, the statement and the proofs.

- (2) A person who states in writing that he is a creditor of a debtor who has made a composition under this Part may, at all reasonable times, inspect without fee, personally or by an agent, the statement of affairs referred to in section 195 of the debtor and the proofs of debt of creditors, and may make copies of, or take extracts from, the statement and the proofs.
- (3) A person who states in writing that he is a creditor of a debtor who has executed a deed of assignment or a deed of arrangement, or made a composition, under this Part may without fee, and any other person may on payment of the prescribed fee, inspect, personally or by an agent, any document filed under this Part in the office of the Registrar 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 prescribed fee, to obtain an office copy of any document filed under this Part in the office of the Registrar.

227 Stamp duty not payable on deeds, &c., entered into under this Part

Stamp duty is not payable under a law of a State or Territory on—

- (a) an authority under section 188; or
- (b) a deed of assignment or a deed of arrangement entered into under this Part or any deed in respect of a composition that has been accepted by a special resolution under this Part.

Division 4—Special Provisions applicable to Deeds of Assignment

228 Deed of assignment to bind all creditors

- (1) A deed of assignment that is entered into in accordance with this Part and 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) Subject to subsections (3) and (4), where a deed of assignment has become binding on the creditors of the debtor, it is not competent for a creditor, so long as the deed remains valid—
 - (a) to present a creditor's petition against the debtor, or to proceed with such a petition presented before the deed became so binding, in respect of a provable debt;
 - (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) Nothing in this section—
 - (a) affects the right of a secured creditor to realize or otherwise deal with his security; or
 - (b) prevents a creditor, after the final dividend has been paid under a deed of assignment, 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 deed.
- (4) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a debtor who has executed a deed of assignment, or against any property of such a debtor that is not vested in the trustee of the deed, 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 subsection).

229 Vesting of property in trustee

- (1) Subject to this section, the due execution by a debtor of a deed of assignment that is entered into in accordance with this Part and complies with the requirements of this Part operates to vest in the trustee forthwith, upon the trusts and for the purposes of the deed, all the divisible property of the debtor.
- (2) The vesting of the property under subsection (1) is subject to the due execution of the deed by the trustee.
- (3) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered and enables the trustee of a deed of assignment to be registered as the owner of any such property that is part of the divisible property of the debtor, that property, notwithstanding that it vests in equity in the trustee by virtue of this section, does not vest at law in the trustee until the requirements of that law have been complied with.

230 Release of provable debts

- (1) Subject to this section, a deed of assignment that has become binding on the creditors of the debtor operates, unless declared void under this Part, to release the debtor from all provable debts, other than those (if any) that would not be released by his discharge from bankruptcy if he had become a bankrupt on the day on which he executed the deed.
- (2) Subsection (1) does not affect the right of a secured creditor, or any person claiming through or under him, to realize or otherwise deal with his security—
 - (a) if the secured creditor has not proved under the deed 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 deed for part of the secured debt—for the purpose of obtaining payment of the part of the secured debt for which he has not proved under the deed,

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and, for the purposes of enabling the secured creditor or a person claiming through or under him so to realize or deal with his 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.

- (3) A deed of assignment does not release from any liability a person who, at the date on which the debtor executed the deed, was a partner or a co-trustee with the debtor or was jointly bound or had made a joint contract with him, or a person who was surety or in the nature of a surety for the debtor.

231 Application of general provisions of Act to deeds of assignment

- (1) The provisions of section 81 apply in relation to a debtor who has executed a deed of assignment that has become binding on his creditors and in relation to his trade dealings, property and affairs as if he were a bankrupt and the trustee of the deed were the trustee in his bankruptcy.
- (2) Subject to this section, the provisions of subsection 58(4), sections 60 to 62 (inclusive), sections 70 to 72 (inclusive), sections 82 to 118 (inclusive), sections 120 to 125 (inclusive), sections 127 to 130 (inclusive) and sections 133 to 148 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to such a deed of assignment as if—
- (a) a creditor's petition had been presented against the debtor by whom the deed was executed on the day on which the special resolution requiring the execution of the deed was passed;
 - (b) a sequestration order had been made against him on that petition on the day on which he executed the deed; and
 - (c) the trustee of the deed were the trustee in his bankruptcy.
- (3) In the application of the provisions of this Act specified in subsection (2) to and in relation to a deed of assignment—
- (a) a reference to the property of the bankrupt shall be read as a reference to the divisible property of the debtor; and

- (b) a reference to a provable debt shall be read as a reference to a provable debt within the meaning of this Part.
- (4) The provisions of subsections 157(6) and (7), sections 162 to 169 (inclusive), subsection 170(2), sections 171 to 174 (inclusive), section 175 and sections 176 to 184 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to a trustee of a deed of assignment as if the debtor by whom the deed was executed were a bankrupt and the trustee of the deed were the trustee in his bankruptcy.
- (5) If, after taking into account the modifications and adaptations made by the rules and the provisions of subsection (3), a provision specified in subsection (2) or (4) is incapable of application to or in relation to a deed of assignment, or the trustee of such a deed, as the case requires, or is inconsistent with this Part, that provision does not so have application.
- (6) In this section, **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.

232 Certificate relating to release

- (1) Where the trustee of a deed of assignment is satisfied that the divisible property of the debtor has, so far as is practicable, been realized and a final dividend has been paid to the creditors, he shall, upon request in writing by the debtor, furnish to the debtor a certificate signed by him to that effect.
- (2) A certificate signed by a trustee under this section is *prima facie* evidence of the facts stated in it.

Division 5—Special Provisions applicable to Deeds of Arrangement

233 Deed of arrangement to bind all creditors

- (1) A deed of arrangement that is entered into in accordance with this Part and 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) Subject to subsections (3) and (4), where a deed of arrangement has become binding on the debtor's creditors, it is not competent for a creditor, so long as the deed remains in force—
 - (a) to present a creditor's petition against the debtor, or to proceed with such a petition presented before the deed became so binding, in respect of a provable debt; or
 - (b) except with the leave of the Court and on such terms as the Court imposes—
 - (i) to enforce any remedy against the property or person of the debtor in respect of a provable debt; or
 - (ii) to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.
- (3) Nothing in this section affects the right of a secured creditor to realize or otherwise deal with his security.
- (4) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a debtor who has executed a deed of arrangement, or against any property of such a debtor that is not vested in the trustee of the deed, 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 subsection).

234 Deed of arrangement not to release debts unless otherwise provided

- (1) Except in so far as the deed provides for the release of the debtor from his debts, a deed of arrangement does not operate to release the debtor from any of his debts.
- (2) Where a deed of arrangement provides that the debtor is to be released from one or more of his debts, the release is binding on the creditor or creditors to whom that debt or those debts was or were owing.

235 Termination of deed of arrangement

A deed of arrangement is terminated by—

- (b) the passing of a special resolution to that effect by a meeting of creditors called for the purpose;
- (c) an order of the Court to that effect under section 236; or
- (d) the occurrence of any circumstances or event on the occurrence of which the deed provides that it is to terminate.

236 Court may terminate deed

- (1) The Court may, upon application by the trustee, a creditor or the debtor, or, if the debtor has died, the person administering the estate of the debtor, if it is satisfied—
 - (a) that the debtor, or, 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 provision of the deed of arrangement;
 - (b) that the deed of arrangement cannot be proceeded with without injustice or undue delay to the creditors, the debtor or, if the debtor has died, the estate of the debtor; or
 - (c) that for any other reason the deed of arrangement ought to be terminated,make an order terminating the deed.

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- (2) The Court shall not make an order terminating a deed on the ground specified in paragraph (1)(a) or (c) unless it is satisfied that it would be in the interests of the creditors to do so.
- (3) 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 and, if the Court makes an order on the first-mentioned application terminating the deed of arrangement, it may, if it thinks fit, forthwith make the sequestration order sought.
- (4) 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.
- (5) The making of an application by the trustee or a creditor for a sequestration order under this section shall, for the purposes of this Act, be deemed 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.

237 Application of general provisions of Act to deeds of arrangement

- (1) The provisions of section 81 apply in relation to a debtor who has executed a deed of arrangement that has become binding on his creditors and in relation to his trade dealings, property and affairs as if he were a bankrupt and the trustee of the deed were the trustee in his bankruptcy.
- (2) Subject to this section, the provisions of subsection 58(4), sections 61 and 62, sections 70 to 72 (inclusive), sections 82 to 114 (inclusive) and sections 133 to 148 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to such a deed of arrangement as if—
 - (a) a sequestration order had been made against the debtor on the day on which he executed the deed; and
 - (b) the trustee of the deed were the trustee in his bankruptcy.

- (3) In the application of the provisions of this Act specified in subsection (2) to and in relation to a deed of arrangement, a reference to a provable debt shall be read as a reference to a provable debt within the meaning of this Part.
- (4) The provisions of subsections 157(6) and (7), sections 162 to 169 (inclusive), subsection 170(2), sections 171 to 174 (inclusive), section 175 and sections 176 to 184 (inclusive) apply, subject to such modifications (if any) as are prescribed by the rules, to and in relation to a trustee of a deed of arrangement as if the debtor by whom the deed was executed were a bankrupt and the trustee of the deed were the trustee in his bankruptcy.
- (5) If, after taking into account the modifications and adaptations made by the rules and the provisions of subsection (3), a provision specified in subsection (2) or (4) is incapable of application to or in relation to a deed of arrangement, or the trustee of such a deed, as the case requires, or is inconsistent with this Part, that provision does not so have application.
- (6) In this section, **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.

237A Certificate by trustee that provisions of deed have been carried out

- (1) Where the trustee of a deed of arrangement is satisfied that the provisions of the deed have been carried out, the trustee shall, upon request in writing by the debtor, furnish to the debtor a certificate signed by him to that effect.
- (2) A certificate signed by a trustee under this section is *prima facie* evidence of the facts stated in it.

Division 6—Special Provisions applicable to Compositions

238 Composition to bind all creditors

- (1) A composition that has been accepted by a special resolution of a meeting of a debtor's creditors called in pursuance of an authority under section 188 (in this Division referred to as a composition under this Part) is binding on all the creditors of the debtor.
- (2) Subject to subsections (3) and (4), it is not competent for a creditor, so long as a composition under this Part remains valid—
 - (a) to present a creditor's petition against the debtor, or to proceed with such a petition presented before the composition was accepted, in respect of a provable debt;
 - (b) to enforce any remedy against the property or person 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) Nothing in this section—
 - (a) affects the right of a secured creditor to realize or otherwise deal with his security; or
 - (b) prevents a creditor, after the final payment has been made under a composition, 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 composition.
- (4) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a debtor who has made a composition under this Part, or against any property of such a debtor that it is not vested in the trustee of the composition, 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 subsection).

239 Court may set aside composition

- (1) A creditor may, within 21 days from the date on which the special resolution accepting a composition under this Part was passed, apply to the Court for an order setting aside the composition and may also apply for the making of a sequestration order against the estate of the debtor.
- (2) If the Court, on such an application, considers that the terms of the composition are unreasonable or are not calculated to benefit the creditors generally or that for any other reason the composition ought to be set aside, it may make an order setting it aside and, if it thinks fit, may forthwith make the sequestration order sought.
- (3) 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.
- (4) The making of an application for a sequestration order against the estate of a debtor under this section shall, for the purposes of this Act, be deemed 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.

240 Release of provable debts

- (1) Subject to this section, a composition under this Part operates, unless set aside, declared void or terminated under this Part, to release the debtor from all provable debts, other than those (if any) that would not be released by his discharge from bankruptcy if he had become a bankrupt on the day on which the composition was accepted.
- (2) Subsection (1) does not affect the right of a secured creditor, or any person claiming through or under him, to realize or otherwise deal with his security—

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- (a) if the secured creditor has not proved in the composition for any part of the secured debt—for the purposes of obtaining payment of the secured debt; or
 - (b) if the secured creditor has proved in the composition for part of the secured debt—for the purposes of obtaining payment of the part of the secured debt for which he has not proved in the composition,
- and, for the purposes of enabling the secured creditor or a person claiming through or under him so to realize or deal with his 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.
- (3) A composition does not release from any liability a person who, at the date on which the composition was accepted, was a partner or a co-trustee with the debtor or was jointly bound or had made a joint contract with him, or a person who was surety or in the nature of a surety for the debtor.

241 Termination of composition by creditors

Where a debtor has failed to carry out or comply with a term of a composition under this Part, the creditors may, by special resolution at a meeting called for the purpose, terminate the composition.

242 Court may terminate composition

- (1) The Court may, upon application by the trustee, a creditor or the debtor, or, if the debtor has died, the person administering the estate of the debtor, if it is satisfied—
- (a) that the debtor, or, 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 composition;
 - (b) that the composition cannot be proceeded with without injustice or undue delay to the creditors, the debtor or, if the debtor has died, the estate of the debtor; or

- (c) that for any other reason the composition ought to be terminated,
make an order terminating the composition.
- (2) The Court shall not make an order terminating a composition on the ground specified in paragraph (1)(a) or (c) unless it is satisfied that it would be in the interests of the creditors to do so.
- (3) 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 and if the Court makes an order on the first-mentioned application terminating the composition, it may, if it thinks fit, forthwith make the sequestration order sought.
- (4) 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.
- (5) The making of an application by the trustee or a creditor for a sequestration order under this section shall, for the purposes of this Act, be deemed 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.

243 Application of general provisions of Act to compositions

- (1) Subject to this section, the provisions of sections 82 to 107 (inclusive) and sections 140 to 148 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to a composition under this Part as if—
- (a) a sequestration order had been made against the debtor on the day on which the special resolution accepting the composition was passed; and
- (b) the trustee of the composition were the trustee in his bankruptcy.
- (2) In the application of the provisions of this Act specified in subsection (1) to and in relation to a composition, a reference to a

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provable debt shall be read as a reference to a provable debt within the meaning of this Part.

- (3) The provisions of subsections 157(6) and (7), sections 162 to 169 (inclusive), subsection 170(2), sections 171 to 174 (inclusive), section 175 and sections 176 to 184 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to a trustee of a composition under this Part as if the debtor by whom the composition was made were a bankrupt and the trustee of the composition were the trustee in his bankruptcy.
- (4) If, after taking into account the modifications and adaptations made by the rules and the provisions of subsection (2), a provision specified in subsection (1) or (3) is incapable of application to or in relation to a composition, or the trustee of a composition, as the case requires, or is inconsistent with this Part, that provision does not so have application.
- (5) In this section, **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.

243A Certificate by trustee that terms of composition have been carried out

- (1) Where the trustee of a composition is satisfied that the terms of the composition have been carried out, the trustee shall, upon request in writing by the debtor, furnish to the debtor a certificate signed by him 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

244 Administration of estates under this Part upon petition by creditor

- (1) Subject to this section, where—
- (a) a debt of not less than \$1,500 was owing by a deceased person at the time of his 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 \$1,500 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 \$1,500, 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 had not died becomes or become owing after his death,
- the creditor or creditors to whom the debt or debts is or are owing 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 exceeds the value of his security.
- (3) A secured creditor may present, or join in presenting, a petition under this section as if he were an unsecured creditor if he includes in the petition a statement that he is willing to surrender his security for the benefit of creditors generally in the event of an

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order for the administration of the estate under this Part being made.

- (4) Where a petitioning creditor is a secured creditor, he shall set out in the petition particulars of his 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; and
 - (b) at the time of his 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 partners, or of an agent or manager.
- (7) Where a secured creditor has presented, or joined in presenting, a petition under this section as if he were an unsecured creditor, he shall, upon request in writing by the trustee within the prescribed time after the making of an order for the administration of the estate under this Part, surrender his 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 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 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 State 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.

245 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 or under the repealed Act dies after he 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 estate under this Part.

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- (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 those of which the Court would have required proof before making a sequestration order on the petition if the deceased person had not died.

246 Filing of statement of deceased debtor's affairs by legal personal representative, &c.

- (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 is notified of the making of the order,—
 - (a) make out and file in the office of the Registrar for the District in which the order was made a statement, in accordance with the prescribed form, verified by affidavit, of the deceased person's affairs and of his administration of the deceased person's estate; and
 - (b) furnish a copy of the statement to the Official Receiver for the District in which the order was made.
- (2) Where an order is made under section 244 or 245 for the administration of the estate of a deceased person under this Part, it is the duty of the Official Receiver to notify, as prescribed, the making of the order.
- (3) A legal personal representative who fails to file the statement required by this section to be filed by him is guilty of contempt of court.
- (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 is a creditor of the estate may, without fee, and any other person may, on payment of the prescribed fee, 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.

247 Petition for administration under this Part by person administering estate of deceased person

- (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 accordance with the prescribed form and in duplicate, of the deceased person's affairs and of his 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 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.

247A 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 244 or 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 death unable to pay his debts as they became due from his own moneys and had committed any act or acts of bankruptcy within the period of 6 months immediately preceding the day on which he 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 death unable to pay his debts as they became due from his own moneys, but had not committed any act of bankruptcy within the period of

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- 6 months immediately preceding the day on which he died—the time of his death; or
- (c) if the deceased person was on the day of his death able to pay his debts as they became due from his own moneys—the time of the presentation of the petition on 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 245 on 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.

248 Application of general provisions of Act in relation to administration under Part

- (1) Subject to this section, the provisions of subsection 47(2), sections 49 to 51 (inclusive), subsections 52(4) and (5), section 62, sections 64 to 68 (inclusive), sections 70 to 76 (inclusive), section 79, sections 81 to 114 (inclusive), sections 117 to 130 (inclusive), sections 132 to 147 (inclusive) and sections 157 to 184 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to proceedings under this Part and the administration of estates under this Part.
- (3) Subject to the rules, in the application of the provisions specified in subsection (1) to and 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;

- (c) a reference to the property of the bankrupt shall be read as a reference to the divisible property of the estate as defined by 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 modifications and adaptations made by the rules and the provisions of subsection (3), a provision specified in subsection (1) is incapable of application to or 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.
- (5) In this section, **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.

248A 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.

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- (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), 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—
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- (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 order 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 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.

249 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; 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 and of his estate in accordance with this Act.
- (2) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be

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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, that 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 for 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 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 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 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 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 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 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 immediately before his death, would not have been divisible amongst his creditors under Part VI; or
 - (ii) the proceeds of a policy of life insurance or endowment assurance, a policy for pure endowment or a policy for an annuity, being a policy that would not have been divisible among the creditors of the deceased person under Part VI if he had not died and a sequestration order had been made against him immediately before his death;
- (b) property that was or is acquired by, or devolved or devolves 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 immediately before his death, would not have been divisible amongst his 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 as 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);
- (e) if, immediately before the death of the deceased person, any 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

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person after, or not earlier than 2 years before, the commencement of administration of his estate under this Part;

- (f) property (other than property that formed part of the estate of the deceased person upon his death) that belonged to, or was vested in, the deceased person at the commencement of administration of his estate under this Part or was acquired by, or devolved on, the deceased person after the commencement of administration of his estate under this Part and before his death, not being property that, if he had not died and a sequestration order had been made against him at the commencement of administration of his estate under this Part, would not have been divisible amongst his 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 as might have been exercised by the deceased person for his own benefit at the commencement of administration of his estate under this Part, or at any time after commencement of administration of his estate under this Part and before his 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 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 immediately before his death, would not have been divisible amongst his creditors under Part VI; or
 - (ii) the proceeds of a policy of life insurance or endowment assurance, a policy for pure endowment or a policy for an annuity, being a policy that would not have been divisible among the creditors of the deceased person under Part VI if he had not died and a sequestration

order had been made against him immediately before his death;

- (b) property that was or is acquired by, or devolved or devolves 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 immediately before his death, would not have been divisible amongst his 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 as 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, any 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 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 at that

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- time, would not have been divisible amongst his creditors under Part VI; or
- (ii) the proceeds of a policy of life insurance or endowment assurance, a policy for pure endowment or a policy for an annuity, being a policy that would not have been divisible amongst the creditors of the deceased person under Part VI if he had not died and a sequestration order had been made against him 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 at the commencement of administration of his estate under this Part, would not have been divisible amongst his 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 as 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 (7)(e), 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.

249A 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 those other persons and no other person, on the day on which the order for the administration of the estate under this Part is 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—

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- (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 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.

250 Effect of order under Part in case of deceased person who 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 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 and 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 expenses in the bankruptcy, the liabilities incurred by him 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 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 expenses in the bankruptcy that have accrued after the proof of debt was lodged;
 - (B) liabilities incurred by him 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;

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- (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 or 122, 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 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 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 is holding after-acquired property of the deceased bankrupt, or the proceeds of any such property, in pursuance of subsection 59(2) or (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 of the Commonwealth 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 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 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 died or that was acquired by, or devolved on, the estate of the bankrupt after his death, being property divisible among the creditors of the deceased bankrupt, as has not been distributed amongst the creditors in the bankruptcy.

251 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 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 it, for valuable consideration, to a person acting in good faith, the

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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 for which it is mortgaged or charged, as the case requires.

252 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 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 has knowledge of the presentation of a petition against that 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 himself 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.

252A Power to annul order of administration under Part

- (1) Where the Court is satisfied—
 - (a) that an order for the administration of the estate of a deceased person under this Part, whether made before or after the commencement of this section, ought not to have been made; or

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- (b) that the unsecured debts of the estate of a deceased person in respect of which an order has been made, whether before or after the commencement of this section, for administration under this Part, being debts that have been proved in the administration, have been paid in full or a legal acquittance has been obtained of them,
- the Court may make an order annulling the administration of the estate under this Part.
- (2) Where the administration of the estate of a deceased person under this Part is annulled under subsection (1), 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 or the Court before the annulment shall be deemed to have been validly made or done, but, subject to subsection (3), the property still vested in the trustee in connection with his administration of the estate vests in such person as the Court appoints or, in default of such appointment, reverts to the estate of the deceased person for all its estate or interest in it, on such terms and subject to such conditions (if any) as the Court orders.
- (3) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, any such property vested in the trustee of the estate under this Part at the time of the annulment of the administration under this Part, notwithstanding that it vests in equity in such person as the Court appoints or in the estate, as the case may be, does not vest in that person or the estate at law until the requirements of that law have been complied with.
- (4) For the purposes of subsection (1), where 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 Registrar, and if so paid, shall, for the purposes of subsection (1), be deemed to have been paid in full to the creditor.
- (5) Where money is paid to the Registrar under subsection (4), the Registrar shall pay that money into the Consolidated Revenue
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Fund and the provisions of subsection 254(3) and (4) apply in relation to that money as if it had been paid into the Consolidated Revenue Fund by a trustee in pursuance of subsection 254(2).

253 Application of surplus

Where a surplus remains after payment in full of—

- (a) the costs, charges and expenses of the administration of the estate of a deceased person under this Part;
- (b) all debts that have been proved in the administration; and
- (c) interest on interest-bearing debts that have been proved in the administration,

the surplus shall be paid to the legal personal representative of the deceased person or to such other person as the Court directs and the Court shall make an order releasing the estate from administration under this Part.

Part XIA—Farmers' Debts Assistance

253A Definition

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.

253B 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*;
- (b) 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 Reconstruction) Act 1971* or that agreement as subsequently amended;
- (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

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States and Northern Territory Grants (Rural Adjustment) Act 1985 or that agreement as subsequently amended,
the Governor-General may, by Proclamation, specify the law as a law in relation to which this Part applies.

253C Notice to Registrar concerning stay under proclaimed law

- (1) If the relevant authority gives to the Registrar for a District notice in writing that a stay under a proclaimed law applies in relation to a person specified in the notice, the Registrar shall forthwith send a copy of the notice to the Registrar of each other District.
- (2) If the authority subsequently gives to the Registrar notice in writing that the person is no longer a person in relation to whom a stay under a proclaimed law applies, the Registrar shall forthwith send a copy of the notice to the Registrar of each other District.
- (3) The Registrar of each District shall keep a register of notices that are given, or of which copies are sent, to him under this section.

253D Registrar to notify relevant authority of pending proceedings

- (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;
 - (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 it appears to the Registrar, whether from information disclosed by the register kept under section 253C or from other information, that a stay under a proclaimed law applies in relation to that person, the Registrar shall forthwith—
 - (c) notify the relevant authority of the presentation of the creditor's petition and of the date fixed for the hearing of the petition; or
 - (d) fix a date for the consideration by the Court, under subsection 56(7), of the debtor's petition and notify the

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relevant authority of the presentation of the petition and of the date so fixed,
as the case requires.

(2) If—

- (a) an application is filed for the leave of the Court to be granted under subsection 55(6A) for the presentation of a petition against a debtor in relation to whom a stay under a proclaimed law applies; or
- (b) an application is filed for the leave of the Court to be granted under subsection 56(11) for a person in relation to whom a stay under a proclaimed law applies to join in presenting a petition against a partnership of which he is a member; or
- (c) an application is filed for the leave of the Court to be granted under subsection 57(8) for a person in relation to whom a stay under a proclaimed law applies to join in presenting a petition under section 57,

the Registrar shall forthwith notify the relevant authority of the filing of the application and of the date fixed for the hearing of the application.

- (3) 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 it appears to the Registrar, whether from information disclosed by the register kept under section 253C or from other information, that a stay under a proclaimed law applies in relation to the estate, the Registrar shall forthwith notify the relevant authority of the presentation of the petition and of the date fixed for the hearing of the petition.

253E 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

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- (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 the debtor's petition is accepted by the Registrar, 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 fit, 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 is to be of indefinite duration or for such period as the Court thinks fit.

253F Relevant authority entitled to be heard on application for leave under subsection 55(6A), 56(11) and 57(8)

If—

- (a) an application is made under subsection 55(6A) for leave to present a petition against a debtor in relation to whom a stay under a proclaimed law applies;
- (b) an application is made under subsection 56(11) by a person in relation to whom a stay under a proclaimed law applies for leave to join in presenting a petition against a partnership; or
- (c) an application is made under subsection 57(8) by a person in relation to whom a stay under a proclaimed law applies for leave to join in presenting a petition under section 57,

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the relevant authority is entitled to appear and be heard, either personally or by a barrister or solicitor, at the hearing of the application.

Part XII—Unclaimed Dividends or Moneys

254 Payment of unclaimed moneys into Consolidated Revenue Fund

- (1) In this section, *trustee* means—
- (a) a trustee of the estate of a bankrupt;
 - (b) a trustee of a deed of assignment or a deed of arrangement, whether the deed was executed under this Act or the repealed Act;
 - (c) a trustee of a composition or a scheme of arrangement, whether the composition or scheme was accepted or approved under this Act or the repealed Act; or
 - (d) a trustee of the estate of a deceased person in respect of which an order has been made under Part X of the repealed Act or Part XI of this Act,
- and includes the Official Trustee.
- (2) Where a trustee has under his control—
- (a) any dividends or other moneys that have remained unclaimed for a period exceeding 6 months; or
 - (b) any moneys that it is proposed not to distribute or pay to any person,
- he shall forthwith pay those moneys into the Consolidated Revenue Fund.
- (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

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- (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 into the Consolidated Revenue Fund.
- (3) A person who claims to be entitled to any moneys that have been paid into the Consolidated Revenue Fund by a trustee in pursuance of subsection (2) or (2A) may apply to the Court for an order under this subsection declaring him to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or a part of those moneys, it may make an order accordingly.
- (4) Upon receipt by the Minister of an office copy of an order under subsection (3), the Minister shall pay to the person in whose favour the order was made the amount specified in the order out of moneys lawfully available for the purpose.

Part XIII—Evidence

255 Transcript of evidence, &c.

- (1) In this section—

approved person means a person, or a person included in a class of persons, approved in writing by the Registrar for the purposes of this section;

approved shorthand writer means a shorthand writer, or a shorthand writer included in a class of shorthand writers, approved in writing by the Registrar for the purposes of this section;

approved steno-type machine operator means a steno-type machine operator, or a steno-type machine operator included in a class of steno-type machine operators, approved in writing by the Registrar for the purposes of this section.

- (2) Any evidence, argument, ruling or direction in proceedings under this Act before the Court, shall, unless the Court otherwise directs, be recorded in accordance with this section.
- (3) Any evidence to be given before the Registrar or a magistrate shall, unless the Registrar or magistrate otherwise directs, be recorded in accordance with this section.
- (4) Where any evidence, argument, ruling or direction is required by subsection (2) or (3) to be recorded in accordance with this section, the evidence, argument, ruling or direction, as the case may be, shall be—
- (a) taken down by an approved shorthand writer;
 - (b) taken down by an approved steno-type machine operator by means of a steno-type machine;
 - (c) recorded by an approved person by means of sound recording apparatus; or

- (d) taken down or recorded in such other manner as is prescribed.
- (5) The Registrar shall give such directions as he considers necessary for ensuring that, in any case where a transcript of any evidence, argument, ruling or direction taken down or recorded in accordance with this section is required, or may be required, a transcript is prepared.
- (6) Where a transcript of any evidence, argument, ruling or direction is prepared in pursuance of directions of the Registrar under subsection (5), the transcript shall be certified, or certified, signed and sealed, as prescribed.
- (7) Where a transcript of any evidence, argument, ruling or direction in proceedings before the Court is prepared in pursuance of directions of the Registrar under subsection (5), the cost of preparing the transcript, including any cost of the copy of the transcript for the use of the Court, shall be costs in the proceedings.
- (8) Where a transcript of any evidence given before the Registrar or a magistrate is prepared in pursuance of directions of the Registrar under subsection (5), the cost of preparing the transcript, including any cost of the copy of the transcript for the use of the Registrar or the magistrate, shall, subject to any order of the Court—
 - (a) in the case of evidence given in relation to a bankruptcy—be deemed to be costs awarded by the Court out of the estate of the bankrupt; or
 - (b) in the case of evidence given in relation to a deed of assignment or a deed of arrangement—be deemed to be costs awarded by the Court against the trustee of the deed in his capacity as trustee and to be payable by the trustee as a cost of the administration of the deed.
- (9) Where evidence given by a person before the Court, the Registrar or a magistrate is admissible in proceedings under this Act, the evidence may be proved by the production of a transcript of the evidence, being a transcript certified, or certified, signed and sealed, as prescribed.

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- (10) For the purposes of subsection (9), a document purporting to be a transcript of evidence given by a person before the Court, the Registrar or a magistrate and to be certified, or certified, signed and sealed, as prescribed shall, unless the contrary is proved, be deemed to be such a transcript and to have been duly prepared and duly certified, or certified, signed and sealed.

256 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.

257 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 as, or appearing to have been, chairman of the meeting is *prima facie* evidence of those proceedings.

258 Presumption as to due convening of meetings, &c.

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 as, or appearing to have been, chairman 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.

259 Evidence of bankruptcy documents

- (1) Any—
 - (a) petition;
 - (b) order made by the Court;

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- (c) instrument, affidavit, document, deed, certificate or extract from a deed or register made or used in the course of proceedings under this Act; or
 - (d) copy of a document referred to in paragraph (a), (b) or (c), that appears to be sealed with a seal of the Court or to be marked with a stamp referred to in section 14A or that purports to be signed by a Judge of the Court is receivable in evidence in all legal proceedings.
- (2) A copy of a document referred to in paragraph (1)(a), (b) or (c) that is certified to be a true copy by the Registrar is receivable in evidence in all legal proceedings.

260 Evidence as to bankruptcy and appointment of trustee, &c.

- (1) The Registrar may give a certificate, under his hand, certifying—
- (a) that a person named in the certificate—
 - (i) became bankrupt on a date specified in the certificate;
 - (ii) was, on a date specified in the certificate, an undischarged bankrupt; or
 - (iii) was, on a date specified in the certificate, discharged from bankruptcy;
 - (b) that the bankruptcy of a person named in the certificate was annulled on a date specified in the certificate;
 - (c) that a person named in the certificate was, on a date specified in the certificate, a registered trustee and was, on that date—
 - (i) the trustee of the estate of a bankrupt, or of a deceased debtor, named in the certificate;
 - (ii) the controlling trustee in relation to a debtor named in the certificate whose property was, on that date, subject to control under Division 2 of Part X;
 - (iii) the trustee of a deed of assignment or deed of arrangement executed by a debtor named in the certificate; or

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- (iv) the trustee of a composition or scheme of arrangement accepted in relation to a debtor named in the certificate; or
 - (d) that the Official Trustee was, on a date specified in the certificate—
 - (i) the trustee of the estate of a bankrupt, or of a deceased debtor, named in the certificate;
 - (ii) the controlling trustee in relation to a debtor named in the certificate whose property was, on that date, subject to control under Division 2 of Part X;
 - (iii) the trustee of a deed of assignment or deed of arrangement executed by a debtor named in the certificate; or
 - (iv) the trustee of a composition or scheme of arrangement accepted in relation to a debtor named in the certificate.
- (2) A certificate under subsection (1) is, in all legal proceedings, *prima facie* evidence of the matters stated in the certificate.

262 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 of the Commonwealth, a Judge of a Court having jurisdiction under this Act, a Registrar, 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;

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- (b) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, exercising his function in that place;
- (c) a notary public exercising his function in that place; or
- (d) a person qualified to administer an oath in that place, being a person certified by a person mentioned in paragraph (aa), (a), (b) or (c), or by the superior court of that place, to be so qualified.

Part XIV—Offences

263 Concealment, &c., of property, &c.

- (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 deed of assignment or a deed of arrangement,conceal property of the bankrupt, of the deceased person or his estate or of the debtor;
 - (b) receive property—
 - (i) from a bankrupt or a debtor who has executed a deed of assignment or 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 a 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 creditors of the bankrupt, of the deceased person or his 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 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

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- (iii) in connexion with the administration of a debtor's affairs under 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 3 years.

- (2) A person shall not—
 - (a) dispose of, receive, remove, retain or conceal property that has been seized—
 - (i) as part of the property of a bankrupt;
 - (ii) as part of the estate of a deceased person; or
 - (iii) under a deed of assignment,
 knowing it to have been so seized; or
 - (b) with intent to defeat the seizure of property—
 - (i) forming part of the property of a bankrupt;
 - (ii) forming part of the estate of a deceased person; or
 - (iii) under a deed of assignment,
 obstruct or endeavour to obstruct a person in the discharge of his duty.

Penalty: Imprisonment for 1 year.

- (3) In this section—

composition includes a composition under Division 5 of Part IV of the repealed Act or under Part XI of the repealed Act but 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 XI of this Act or Part X of the repealed Act;

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deed of arrangement includes a deed of arrangement under Part XII of the repealed Act but does not include a deed of arrangement executed for the purposes of a proclaimed law;

deed of assignment includes a deed of assignment under Part XI of the repealed Act;

scheme of arrangement includes a scheme of arrangement under Division 5 of Part IV of the repealed Act or under Part XI of the repealed Act but does not include a scheme of arrangement made or entered into for the purposes of a proclaimed law.

263A False affidavits

A person who wilfully makes a false statement in an affidavit to be used for the purposes of this Act is guilty of an offence and is punishable—

- (a) upon summary conviction—by a fine not exceeding \$200, or imprisonment for a period not exceeding 6 months, or both; or
- (b) upon conviction on indictment—by imprisonment for a period not exceeding 4 years.

263B False proof of debts

A person shall not—

- (a) make a false or misleading statement in a proof of debt lodged with a trustee under this Act; or
- (b) lodge with a trustee under this Act a proof of debt which is false or misleading in any material particular.

Penalty: \$1,000 or imprisonment for 6 months, or both.

264 Forgery of process, &c.

A person shall not—

- (a) deliver or cause to be delivered to a person a paper or writing falsely purporting to be, or to be a copy of, a summons,

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order, warrant or process of a Court having jurisdiction in bankruptcy or of a Judge of such a Court or of a Registrar or Deputy Registrar, knowing the paper or writing to be false; or

- (b) act or endeavour to act under colour or pretence of any such paper or writing.

Penalty: Imprisonment for 3 years.

264A Failure of person to attend before the Court, &c.

- (1) A person who—

- (a) is served, whether before or after the commencement of this section, with a summons under this Act to attend for examination under section 50 or 81, or to appear as a witness before the Court, and is tendered a reasonable sum for expenses; or
- (b) is served, whether before or after the commencement of this section, with a summons under this Act to attend for examination under section 69,

shall not, after the commencement of this section, without reasonable excuse—

- (c) fail to attend as required by the summons; or
- (d) fail to appear and report himself 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: \$1,000 or imprisonment for 6 months, 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 act or omission.

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264B Arrest of person failing to attend before the Court, &c.

- (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 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 who has failed to attend for examination under section 50 or 81, 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 being brought before the Court, the Registrar or the magistrate, as the case may be, and his detention in custody until he 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 relieve him from any liability incurred by him by reason of his failure to

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attend before the Court, the Registrar or the magistrate, as the case may be.

264C Refusal to be sworn or give evidence, &c.

- (1) A person appearing before the Court, the Registrar or a magistrate for the purpose of being examined under section 50, 69 or 81, or appearing as a witness before the Court, shall not, without reasonable excuse—
 - (a) refuse or fail to be sworn or to make an affirmation;
 - (b) refuse or fail to answer a question which he 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 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: \$1,000 or imprisonment for 6 months, 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 act or omission.

264D Prevarication or evasion in the course of examination under section 50, 69 or 81

- (1) Where a person who is being examined before the Court, the Registrar or a magistrate under section 50, 69 or 81 is guilty of prevarication or evasion, the person commits an offence punishable upon conviction by a fine not exceeding \$1,000 or imprisonment for 6 months, 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.

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264E Offences in relation to Registrar or magistrate conducting examination under section 50, 69 or 81

A person shall not—

- (a) insult or disturb a Registrar or magistrate before whom an examination under section 50, 69 or 81 is being held;
- (b) interrupt an examination under section 50, 69 or 81 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 section 50, 69 or 81 is being held before a Registrar or magistrate;
- (d) use insulting or threatening language towards a Registrar or magistrate before whom an examination under section 50, 69 or 81 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 section 50, 69 or 81 is being held; or
 - (ii) to bring a Registrar or magistrate before whom an examination under section 50, 69 or 81 is being held into disrepute.

Penalty: \$1,000 or imprisonment for 6 months, or both.

265 Failure of bankrupt or debtor to disclose property, &c.

- (1) A bankrupt—
 - (a) shall, to the best of his knowledge and belief, fully and truly disclose to the trustee all his property, and its value;
 - (b) shall, to the best of his knowledge and belief, fully and truly disclose to the trustee particulars of any disposition of property made by him within the period of 2 years immediately preceding the date on which he became a bankrupt;
 - (c) shall not refuse or fail to comply with a direction of the trustee to deliver up to the trustee his property or a part of his

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property, being property or a part of his property that is in his custody or under his control;

- (d) shall not refuse or fail to disclose to the trustee the whereabouts of any books, documents, papers or writings relating to his trade dealings, property or affairs;
- (e) shall not refuse or fail to comply with a direction of the trustee to deliver up to the trustee any books, documents, papers or writings in his custody or under his control relating to his trade dealings, property or affairs;
- (f) shall not omit any material particular from a statement relating to his trade dealings, property or affairs;
- (g) shall, if he 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 any loss or depreciation of any of his assets or part of any of his assets that occurred within the period of 2 years immediately preceding the date on which he became a bankrupt.

Penalty: Imprisonment for 1 year.

- (2) A bankrupt shall be deemed to have complied with paragraph (1)(b) in respect of any property if he shows that that property has been disposed of in the ordinary way of his business or in meeting the ordinary expenses of his family.
- (3) A bankrupt shall not, for the purpose of obtaining the consent of his creditors or any of them to any matter relating to his trade dealings, property or affairs, make a false representation or commit any fraud.

Penalty: Imprisonment for 3 years

- (4) A person who, after the presentation of a petition on which, or by virtue of the presentation of which, he becomes a bankrupt—
 - (a) conceals or removes any part of his property to the value of \$20 or more;
 - (b) conceals a debt due to or by him;

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- (c) conceals, parts with, destroys, mutilates, falsifies, alters or makes a false entry in, or omits a material particular from, a book or documents affecting or relating to his trade dealings, property or affairs;
 - (d) attempts to account for any part of his property by falsely stating that he has incurred a loss or expense;
 - (e) otherwise than in the ordinary way of his business, disposes of, or gives security over, property that he has obtained on credit and for which he has not paid; or
 - (f) prevents the production of any book, document, paper or writing affecting or relating to his trade dealings, property or affairs,
- is guilty of 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, or by virtue of the presentation of which, he becomes a bankrupt—
- (a) obtains property by fraud; or
 - (b) in incurring any debt or liability, obtains credit by fraud,
- is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding 3 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 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 became a bankrupt, has done any of the things specified in any of paragraphs (4)(a) to (f) or paragraph (5)(a) or (b), whether before or after the commencement of this Act, is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding the maximum period of imprisonment applicable to the

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doing of that thing under subsection (4) or subsection (5), as the case may be.

- (8) A person who has become a bankrupt and, within 2 years before he became a bankrupt and after the commencement of this Act, has contracted a debt provable in the bankruptcy of an amount of \$500 or upwards without having at the time of contracting it any reasonable or probable ground of expectation, after taking into consideration his other liabilities (if any), of being able to pay the debt, is guilty of 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 creditors.

266 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, or by virtue of the presentation of which, he becomes a bankrupt disposes of, or creates a charge on, any property with intent to defraud his creditors is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding 3 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 or after his 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 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 creditors is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding 3 years.

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**267 Omitting material particular from statement of affairs
accompanying petition**

A person who presents a debtor's petition shall not omit a material particular from the statement of his affairs accompanying the petition.

Penalty: Imprisonment for 1 year.

268 Offences in relation to deeds and compositions

- (1) A debtor shall not knowingly give a false or misleading answer to a question put to him at a meeting called under Part X.

Penalty: Imprisonment for 1 year.

- (2) A debtor who has executed a deed of assignment or a deed of arrangement under Part X—
- (a) shall, to the best of his knowledge and belief, fully and truly disclose to the trustee of the deed all the property assigned by the deed and its value;
 - (b) shall not refuse or fail to comply with a direction of the trustee of the deed to deliver up to the trustee property assigned by the deed that is in the custody or under the control of the debtor;
 - (c) shall not refuse or fail to comply with—
 - (i) a direction of the trustee of the deed to disclose the whereabouts of any books, documents, papers or writings relating to his trade dealings, property or affairs; or
 - (ii) a direction of the trustee of the deed to deliver up to the trustee any books, documents, papers or writings relating to his trade dealings, property or affairs that are in his custody or under his control;
 - (d) shall not omit any material particular from a statement relating to his trade dealings, property or affairs;

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- (e) shall, if he knows that a person has lodged a proof of debt under the deed 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 assigned by the deed 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
- (g) shall aid to the utmost of his power in the administration of his property and affairs under the deed.

Penalty: Imprisonment for 1 year.

- (3) A debtor who has executed a deed of assignment or a deed of arrangement under Part X shall not make a false representation or commit any fraud for the purpose of obtaining the consent of his creditors or any of them to any matter relating to his trade dealings, property or affairs.

Penalty: Imprisonment for 3 years.

- (4) Subsections (2) and (3) do not apply to an act or omission that is done or made—
 - (a) in the case of a deed of assignment—after the final dividend has been paid under the deed or after the deed has been declared to be void; or
 - (b) in the case of a deed of arrangement—after the terms of the deed have been carried out or after the deed has been declared to be void or has been terminated.
- (5) A debtor who has executed a deed of assignment under Part X shall, to the best of his knowledge and belief, fully and truly disclose to the trustee of the deed particulars of any disposition of property made by him within the period of 2 years immediately preceding the date on which he signed the authority under section 188 authorizing the calling of the meeting of his creditors at which the resolution requiring the execution of the deed was passed.

Penalty: Imprisonment for 1 year.

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- (6) A debtor shall be deemed to have complied with subsection (5) in respect of any property if he shows that that property has been disposed of in the ordinary way of his business or in meeting the ordinary expenses of his family.
- (7) A debtor who has signed an authority under section 188, and has, within 12 months before the date on which he signed that authority and after the commencement of this Act—
 - (a) done any of the things specified in any of paragraphs 265(4)(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 creditors,is guilty of 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, by imprisonment for a period not exceeding 3 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 or a charge relating to the doing of a thing specified in paragraph 265(5)(a) or (b) or paragraph (7)(b) 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 creditors.

269 Bankrupt obtaining credit without disclosing his bankruptcy, &c.

A bankrupt shall not—

- (a) either alone or jointly with another person, obtain credit to the extent of \$500 or more from a person without informing that person that he is an undischarged bankrupt;
- (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 either alone or jointly

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with another person, being a bill, cheque or note under which the sum payable is \$500 or more; or

- (ii) by giving 2 or more such instruments under which the sums payable amount in the aggregate to \$500 or more, without informing that person that he is an undischarged bankrupt;
- (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 \$500 or more, without informing that person that he is an undischarged bankrupt;
- (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, \$500 or more without informing that person that he is an undischarged bankrupt;
- (ad) either alone or jointly with another person, obtain an amount of, or amounts aggregating, \$500 or more from a person by promising to supply goods to, or render services for, that person or another person without informing that person that he is an undischarged bankrupt; or
- (b) carry on business under an assumed name, in the name of another person or, either alone or in partnership, under a firm name without disclosing to every person with whom he or, if he is carrying on business in partnership under a firm name, the partnership deals, his true name and the fact that he is an undischarged bankrupt.

Penalty: Imprisonment for 3 years.

270 Failure to keep proper books of account

- (1) A person who has become a bankrupt after the commencement of this Act and—

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- (a) has not kept such books, accounts and records as are usual and proper in any business carried on by him and as sufficiently disclose his 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 became a bankrupt; or
 - (b) having kept such books, accounts or records, has not preserved them,
- is guilty of an offence and is punishable, upon conviction—
- (c) in the case of a person who has previously been either a bankrupt whose bankruptcy has not been annulled or a person whose affairs have been administered under 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 failure to keep or preserve the books, accounts or records was honest and excusable.

271 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 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 insolvency; or
- (b) during any period between the presentation of that petition and the date on which he became a bankrupt, lost any of his property,

by gambling or by speculations that, having regard to his financial position at the time and any other material circumstance, were rash

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and hazardous, being gambling or speculations not connected with a trade or business carried on by him, is guilty of an offence and is punishable, on conviction, by imprisonment for a period not exceeding 1 year.

272 Leaving Australia with intent to defeat creditors, &c.

A person who—

- (a) within 6 months before the presentation of the petition on or by virtue of which he became a bankrupt, left Australia, or did an act preparatory to leaving Australia, with intent to defeat or delay his creditors;
- (b) after the presentation of the petition on or by virtue of which he became a bankrupt and before he became bankrupt, left Australia, or did an act preparatory to leaving Australia, with intent to defeat or delay his creditors; or
- (c) after he has become a bankrupt and before he is discharged from the bankruptcy, without the consent in writing of the trustee of his estate, leaves Australia, or does an act preparatory to leaving Australia,

is guilty of an offence and is punishable, on conviction, by imprisonment for a period not exceeding 3 years.

273 Trial of offences

- (1) Subject to this section, an offence against this Act, other than an offence that is punishable by a fine only, is punishable either on indictment or on summary conviction.
- (2) Where proceedings for an offence that is punishable as provided by subsection (1) are brought in a court of summary jurisdiction, the court may either determine the proceedings or commit the defendant for trial, but shall not, if it determines the proceedings, impose a period of imprisonment exceeding 1 year in respect of the offence.

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- (3) Subject to subsection (4), an offence against this Act that is punishable by a fine only is punishable by a court of summary jurisdiction.
- (4) The Court has jurisdiction to try summarily any offence against this Act.
- (5) Where proceedings for an offence other than an offence that is punishable by a fine only are brought in the Court, the Court may either determine the proceedings or commit the defendant for trial before a court of competent jurisdiction, but shall not, if it determines the proceedings, impose a period of imprisonment exceeding 1 year in respect of the offence.
- (6) The Court has, in relation to proceedings for an offence against this Act brought in the Court, power to admit the defendant to bail and to bind over witnesses to appear and such other powers as are prescribed.
- (7) The procedure of the Court in relation to proceedings for an offence against this Act, including the procedure by which those proceedings are to be instituted, shall be as prescribed.

275 Criminal liability not affected by discharge, &c.

A person may be prosecuted for an offence against this Act although—

- (a) he has been discharged from bankruptcy or his 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 deed of assignment or a deed of arrangement has become binding on his creditors, or his creditors have accepted a composition, under Part X.

276 Trustee acting under void deed

- (1) A person who acts as trustee under a deed of assignment or a deed of arrangement under Part X that has, to his knowledge, been

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declared to be void or 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 has so acted, not being a day on which his 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 the person alleged to have acted as trustee proves that his acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the debtor.

277 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 were guilty of a contempt of that court, but a person is not liable to be punished by more than one court in respect of the one contempt.

Part XV—Transitional Provisions

278 Bankrupts under repealed Act to continue to be bankrupts under this Act

- (1) A person who was a bankrupt at the commencement of this Act, whether he became a bankrupt under the repealed Act or a law of a State or Territory, continues to be a bankrupt until he is discharged, or his bankruptcy is annulled, under this Act and, subject to this Part, the provisions of this Act apply, so far as they are capable of application and subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to such a bankrupt as if he had become a bankrupt under this Act.
- (3) In this section, *modification* includes the addition or omission of a provision or the substitution of a provision for another provision.

279 Orders, &c., under repealed Act to continue to have force and effect

- (1) An order made by a court or a Registrar or Deputy Registrar in Bankruptcy under the repealed Act in relation to a person who continues to be a bankrupt by virtue of section 278 of this Act (including an order made under section 101 of the repealed Act in relation to such a person), being an order in force immediately before the commencement of this Act, continues to have force and effect after the commencement of this Act.
- (2) An order made by a court or a Registrar or Deputy registrar in Bankruptcy under the repealed Act (whether or not continued in force by subsection (1) of this section), or made by virtue of subsection 285(4) of this Act, may be rescinded, varied or suspended under this Act.
- (2A) An order made under the repealed Act that is continued in force by subsection (1) of this section, or made by virtue of

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subsection 285(4) of this Act, may be enforced under this Act in the same manner as a corresponding order made under this Act.

- (3) A direction given to a bankrupt under the repealed Act by an official receiver or trustee continues to have force and effect as if given by the Official Receiver or trustee under this Act.

280 Continuance of Registrars, &c.

All persons who held office immediately before the commencement of this Act as Registrar in Bankruptcy, Deputy Registrar in Bankruptcy or official receiver under the *Bankruptcy Act 1924* shall continue to hold office as such under this Act as if appointed under this Act.

281 Registration of existing trustees

- (1) A person who was, immediately before the commencement of this Act, registered under the repealed Act as qualified to act as a trustee shall be registered under section 155 by the Registrar without application as if the Court had directed under that section that he be so registered.
- (2) A bond entered into by such a person under section 126 of the repealed Act and any security given in relation to that bond shall be deemed to have been entered into and given under section 155 of this Act.
- (3) A reference in such a bond or security to the repealed Act shall be read as including a reference to this Act and a reference in such a security to a bond entered into under subsection 126(2) of the repealed Act shall be read as including a reference to a bond entered into under subsection 155(2) of this Act.

282 Continuance of trustees

- (1) A person who held office immediately before the commencement of this Act as the trustee, or a trustee, of the estate of a bankrupt or of the estate of a deceased debtor under the repealed Act continues

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to be the trustee, or a trustee, as the case may be, of the estate of that bankrupt or of the estate of the deceased debtor, as the case may be.

- (2) A person who held office immediately before the commencement of this Act as the trustee, or a trustee, of—
 - (a) a composition or scheme of arrangement under Division 5 of Part IV of the repealed Act;
 - (b) a deed of assignment or a composition or scheme of arrangement under Part XI of the repealed Act; or
 - (c) a deed of arrangement under Part XII of the repealed Act,continues to be the trustee, or a trustee, of the composition, scheme of arrangement or deed as continuing in force after the commencement of this Act.
- (3) Nothing in subsection (1) or (2) prevents the removal of a trustee to whom either of those subsections applies, or the resignation or vacation of office by such a trustee, after the commencement of this Act.

284 Continuance of committees of inspection

A committee of inspection appointed under the repealed Act and in existence immediately before the commencement of this Act shall continue in existence as if appointed under this Act.

285 Uncompleted proceedings under the repealed Act

- (1) Where—
 - (a) a bankruptcy notice under the repealed Act has been served on a debtor before the commencement of this Act; and
 - (b) the debtor has failed, whether before or after the commencement of this Act, to comply with the notice,a bankruptcy petition may be presented against the debtor under the repealed Act, and proceedings in relation to the petition may, subject to subsection (3), be taken and had under that Act, as if this Act had not been passed.

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- (2) Where a bankruptcy petition has been presented against a debtor under the repealed Act before the commencement of this Act, but a sequestration order has not been made on the petition, and the petition has not been withdrawn or dismissed, before the commencement of this Act, proceedings in relation to the petition may, subject to subsection (3), be continued, or taken and had, after the commencement of this Act under the repealed Act, as if this Act had not been passed.
- (3) Where a person becomes a bankrupt on a petition to which subsection (1) or (2) applies, all subsequent proceedings in relation to the bankrupt or his estate shall be taken and had, and this Act shall apply, as if he had become a bankrupt on a creditor's petition presented under this Act.
- (4) Any proceedings (including the hearing of an appeal) in a court or before a Registrar or Deputy Registrar in Bankruptcy under the repealed Act that had not been completed before the commencement of this Act may be continued and completed, and any right of appeal in relation to those proceedings may be exercised and the appeal heard and determined, as if this Act had not been passed.
- (5) Any right of appeal to the High Court from an order of a court having jurisdiction under the repealed Act, being an order made before the commencement of this Act, may be exercised, and the appeal heard and determined, after the commencement of this Act, as if this Act had not been passed.
- (6) Any right of appeal to a court having jurisdiction in bankruptcy under the repealed Act from an act or decision of a trustee, a Registrar or any other officer under the repealed Act done or made before the commencement of this Act and any right to apply to such a court to review such an act or decision, may be exercised, and the appeal or application heard and determined, by a court having jurisdiction under this Act.

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287 Administration of property of existing bankrupts

- (1) Where a sequestration order has been made against the estate of a person, or a person otherwise became a bankrupt, before the commencement of this Act, the property of the bankrupt shall, subject to this section, be administered and distributed—
 - (a) in the case of a person who became a bankrupt—
 - (i) on a creditor's petition; or
 - (ii) by virtue of a sequestration order under Part XI of the repealed Act,
as if a sequestration order had been made against his estate under this Act; or
 - (b) in the case of a person who became a bankrupt on, or by virtue of the presentation of, his own petition—as if he had become a bankrupt by virtue of the presentation of his own petition under this Act.
- (2) All orders and applications made, notices and consents given, matters advertised, meetings held, resolutions passed, debts proved and acts and things done before the commencement of this Act in relation to a bankrupt or the property of a bankrupt shall, in relation to the administration and distribution of the property of the bankrupt under this Act, be deemed to have been made, given, advertised, held, passed, proved or done under this Act.
- (3) Subsections (1) and (2) of this section do not apply in relation to the administration or distribution of the property of a bankrupt where any payment has been made under paragraph 84(1)(e), (f), (g), (h), (i) or (j) of the repealed Act, or any dividend has been declared, in respect of the bankrupt's estate before the commencement of this Act and, in such a case, the administration and distribution of the property of the bankrupt shall be completed, and the provisions of the *Bankruptcy Act 1924* shall apply in relation to the administration and distribution of the property, as if this Act had not been passed.

288 Continuance of certain provisions of repealed Act in respect of existing bankruptcies

- (1) For the purposes of the administration after the commencement of this Act of the property of a person who became a bankrupt before the commencement of this Act, including the recovery after the commencement of this Act by the trustee in the bankruptcy of property or money for the benefit of the creditors, the bankruptcy of that person shall continue to be deemed to have relation back to, and to have commenced at, the time at which the bankruptcy was, by virtue of section 90 of the repealed Act, to be deemed to have commenced.
- (2) Notwithstanding the repeal effected by section 4 of this Act—
 - (a) a settlement of property;
 - (b) a covenant or contract made in consideration of marriage or a payment of money or transfer of property made in pursuance of such a covenant or contract; or
 - (c) a conveyance or transfer of property, a charge on property or a payment made, obligation incurred or judicial proceeding taken or suffered,that was, immediately before the commencement of this Act, void as against the trustee of the estate of a bankrupt continues to be void as against that trustee after the commencement of this Act and the provisions of Division 4 of Part VI of the *Bankruptcy Act 1924* continue to apply in relation to the settlement, covenant, contract, conveyance, transfer, charge, payment, obligation or judicial proceeding.

289 Existing compositions, &c., under Division 5 of Part IV of repealed Act

- (1) A composition or scheme of arrangement approved by the Court under Division 5 of Part IV of the repealed Act continues in force notwithstanding the repeal effected by section 4 of this Act.
- (2) The provisions of Division 5 of Part IV of the *Bankruptcy Act 1924* continue to apply to and in relation to proposals for compositions

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and schemes of arrangement accepted by special resolution of a meeting of creditors held under Division 5 of Part IV of the repealed Act, and to compositions and schemes of arrangement approved by the Court under that Division.

290 Administration of estates ordered to be administered summarily under Part IX of repealed Act

- (1) Where an order for the administration of a debtor's estate in a summary manner has been made under Part IX of the repealed Act, but the administration of the estate has not been completed before the commencement of this Act, the estate shall, so far as is practicable, be administered as if an order had been made under Part IX of this Act for its administration under that Part.
- (2) The power conferred on the Court by subsection 185(2) of this Act may be exercised in relation to such an estate as if an order had been made under subsection 185(1) of this Act.

291 Application of Part X of *Bankruptcy Act 1924* to existing estates

- (1) Where an order for the administration in bankruptcy of a deceased debtor's estate has been made under Part X of the repealed Act, but the administration of the estate has not been completed before the commencement of this Act, the estate of the deceased debtor shall, subject to this section, be administered and distributed as if an order for administration of the estate had been made under Part XI of this Act, and the provisions of that Part shall apply in relation to the estate accordingly.
- (2) All orders and applications made, notices and consents given, matters advertised, meetings held, resolutions passed, debts proved and acts and things done before the commencement of this Act in relation to the estate of a deceased debtor shall, in relation to the administration and distribution of the estate under Part XI be deemed to have been made, given, advertised, held, passed, proved or done under that Part.

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- (3) The preceding provisions of this section do not apply in relation to the administration or distribution of the estate of a deceased debtor where any payment has been made under paragraph 84(1)(e), (f), (g), (h), (i) or (j) of the repealed Act, or any dividend has been declared, in respect of his estate before the commencement of this Act and, in such a case, the administration and distribution of the estate shall be completed, and the provisions of Part X of the *Bankruptcy Act 1924* shall apply in relation to the administration and distribution of the estate, as if this Act had not been passed.
- (4) The provisions of section 288 of this Act apply, so far as they are capable of application, in relation to the estate of a deceased debtor in respect of which an order has been made under Part X of the repealed Act, as if the references to the trustee of the estate of a bankrupt were references to the trustee of the estate of a deceased debtor and the references to a person who became a bankrupt before the commencement of this Act were references to a deceased debtor in respect of whose estate an order has been made under Part X of the repealed Act.

292 Application of Part XI of *Bankruptcy Act 1924* to existing deeds of assignment, &c.

- (1) A composition or scheme of arrangement accepted under Part XI of the repealed Act, and a deed of assignment executed by a debtor under Part XI of that Act, before the commencement of this Act continues in force notwithstanding the repeal effected by section 4 of this Act, and, subject to subsection (4) of this section, the provisions of Part XI of the *Bankruptcy Act 1924* continue to apply to and in relation to the composition, scheme of arrangement or deed.
- (2) Where a meeting of creditors has been called under Part XI of the repealed Act before the commencement of this Act (whether or not the meeting was held before the commencement of this Act), the provisions of Part XI of the *Bankruptcy Act 1924* continue to apply in relation to the meeting, any proposal for a composition or scheme of arrangement accepted by the creditors at the meeting

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and any deed of assignment executed by the debtor in pursuance of a resolution of the meeting as if this Act had not been passed.

- (3) Where, in relation to a meeting of creditors, a composition or scheme of arrangement, a proposal for a composition or scheme of arrangement or a deed of assignment to which the provisions of Part XI of the *Bankruptcy Act 1924* continue to apply by virtue of the preceding provisions of this section, an act or omission that, but for the repeal of that Act, would have constituted an act of bankruptcy under paragraph 52(1) of that Act takes place after the commencement of this Act—
- (a) that act or omission shall be deemed to constitute an act of bankruptcy under this Act; and
 - (b) subject to the restrictions specified in that paragraph, a creditor's petition may be presented, and a sequestration order made, under this Act in respect of that act of bankruptcy.
- (4) The provisions of section 184 of the *Bankruptcy Act 1924* have effect, after the commencement of this subsection, in accordance with this section, in relation to a composition or scheme of arrangement accepted, or a deed of assignment executed, under Part XI of the repealed Act, as if—
- (a) the references in paragraphs (1)(a) and (c) of that section, and in subsections (3), (4) and (5) of that section, to the official receiver were references to the Official Trustee; and
 - (b) subsection (6) of that section were omitted and the following subsection substituted:
- ‘(6) Where the Official Trustee is appointed to act as trustee in pursuance of this section, no security shall be required in respect of the appointment.’

293 Application of Part XII of *Bankruptcy Act 1924* to existing deeds of arrangement

- (1) A deed of arrangement executed by a debtor under Part XII of the repealed Act continues in force notwithstanding the repeal effected

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by section 4 of this Act, and, subject to subsection (2) of this section, the provisions of Part XII of the *Bankruptcy Act 1924* continue to apply to and in relation to the deed.

- (2) The provisions of section 203A of the *Bankruptcy Act 1924* have effect, after the commencement of this subsection, in accordance with this section, in relation to a deed of arrangement executed under Part XII of the repealed Act as if—
 - (a) the references in paragraphs (1)(a) and (c) of that section, and in subsections (3), (4) and (5) of that section, to the official receiver were references to the Official Trustee; and
 - (b) subsection (6) of that section were omitted and the following subsection substituted:

‘(6) Where The Official Trustee is appointed to act as trustee in pursuance of this section, no security shall be required in respect of the appointment.’

295 Closing of Bankruptcy Estates Account

- (1) Upon the commencement of this Act, the moneys standing to the credit of The Bankruptcy Estates Account established under section 208 of the repealed Act shall be paid to the Consolidated Revenue Fund and that Account shall be closed.
- (2) A person who claims to be entitled to any moneys paid into The Bankruptcy Estates Account in pursuance of section 208 of the repealed Act, being moneys paid to the Consolidated Revenue Fund in pursuance of subsection (1) of this section, may apply to the Court for an order under this section declaring him to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or any part of those moneys, it may make an order accordingly.
- (3) Upon receipt by the Minister of an office copy of an order under this section, the Minister shall pay to the person in whose favour the order was made the amount specified in the order out of moneys lawfully available for the purpose.

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296 Application of certain offence provisions of *Bankruptcy Act 1924* after the commencement of this Act

- (1) The provisions of subsections 210(2) and (3) of the *Bankruptcy Act 1924* apply, notwithstanding the repeal effected by section 4 of this Act, in relation to acts and things done or omitted to be done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act, whether the petition on which, or by virtue of the presentation of which, he becomes a bankrupt was presented before or after the commencement of this Act.
- (2) The provisions of subsection 210(4) of the *Bankruptcy Act 1924* apply, notwithstanding the repeal effected by section 4 of this Act, in relation to acts done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act.
- (3) The provisions of section 212 of the *Bankruptcy Act 1924* apply, notwithstanding the repeal effected by section 4 of this Act, in relation to acts done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act.
- (4) For the purposes of the application of subsections 210(2), (3) and (4) and section 212 of the *Bankruptcy Act 1924* by virtue of the preceding provisions of this section in relation to acts and things done or omitted to be done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act, a person who becomes a bankrupt by force of section 55 of this Act shall be deemed to be a person against whom a sequestration order is made.
- (5) The defence provided by subsection 210(6) of the *Bankruptcy Act 1924* is applicable in relation to a charge under subsection (2) or (4) of that section as applying by virtue of this section.
- (6) The provisions of section 221 of the *Bankruptcy Act 1924* apply, notwithstanding the repeal effected by section 4 of this Act, in relation to a trustee who, after the commencement of this Act, acts

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under a deed of arrangement executed by a debtor under the repealed Act—

- (a) after the deed has to his knowledge become void by reason of non-compliance with any of the requirements of the repealed Act; or
 - (b) after he has failed to give security within the time and in the manner provided by the repealed Act.
- (7) An offence against a provision of the *Bankruptcy Act 1924* referred to in the preceding provisions of this section constituted by an act or thing done or omitted to be done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act shall, for the purposes of Part XIV, be deemed to be an offence against this Act.
- (8) Nothing in this section affects the operation of section 8 of the *Acts Interpretation Act 1901* in relation to a provision of the *Bankruptcy Act 1924* referred to in this section.

297 References to the Court, &c., in *Bankruptcy Act 1924* in its application after the commencement of this Act

In the application after the commencement of this Act by virtue of this Part of a provision of the *Bankruptcy Act 1924* in relation to—

- (a) a bankrupt or the property of a bankrupt;
 - (b) a composition or scheme of arrangement or proposal for a composition or scheme of arrangement under Division 5 of Part IV of the repealed Act;
 - (c) a deceased debtor or the estate of a deceased debtor;
 - (d) a deed of assignment or a composition or scheme of arrangement under Part XI of the repealed Act; or
 - (e) a deed of arrangement under Part XII of the repealed Act,
- a reference to the Court or to a Court having jurisdiction in bankruptcy shall be read as a reference to a Court having jurisdiction in bankruptcy under this Act and a reference to a Registrar, Deputy Registrar or official receiver shall be read as a

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reference to a Registrar, Deputy Registrar or Official Receiver holding office under this Act.

298 Application of evidence provisions of *Bankruptcy Act 1924*

- (1) The provisions of Division 3 of Part III of the *Bankruptcy Act 1924* continue to apply to and in relation to—
 - (a) a notice inserted in the *Gazette* in pursuance of the repealed Act;
 - (b) minutes of proceedings at a meeting of creditors held under the repealed Act;
 - (c) a petition, order, certificate, instrument, affidavit, document, deed or extract from a deed or register made or used in the course of proceedings under the repealed Act or a copy of any such document;
 - (d) a deposition of a debtor or witness in a proceeding under the repealed Act where the debtor or witness has died; and
 - (e) transcript of a shorthand writer's notes under section 51 of the repealed Act.
- (2) The provisions of subsections 49(5) and (6) of the *Bankruptcy Act 1924* continue to apply to and in relation to a document and a mark of a stamp to and in relation to which those subsections applied immediately before the commencement of this Act.
- (3) Notes of an examination under section 68, 69 or 80 of the repealed Act duly signed by the person examined may be used in evidence after the commencement of this Act in any proceeding in which they could have been used before the commencement of this Act.

299 Costs, fees and remuneration

- (1) The costs and fees applicable to proceedings and matters under the repealed Act that take place after the commencement of this Act by virtue of this Part are those applicable to the like proceedings and matters under this Act.
 - (2) The maximum rate of commission payable to—
-

Section 300

- (a) a trustee in a bankruptcy under the repealed Act;
 - (b) a trustee of the estate of a deceased debtor in respect of which an order has been made under Part X of the repealed Act;
 - (c) a trustee of a deed of assignment, a deed of arrangement or a composition or scheme of arrangement under Part XI or XII of the repealed Act; or
 - (d) a trustee of a composition or scheme of arrangement under Division 5 of Part IV of the repealed Act,
- in respect of his services as trustee after the commencement of this Act, is that prescribed for the purposes of Division 2 of Part VIII of this Act.

300 Court may resolve difficulties

- (1) Where any difficulty arises in the application to a particular matter of the provisions of this Act or of the repealed Act by reason of the operation of this Part, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.
- (2) An order so made has effect notwithstanding anything contained in the repealed Act or in this Act.

Part XVI—Miscellaneous

301 Certain provisions in contracts, &c., to be void

- (1) A provision in a contract or agreement for the sale of property, in a lease of property, in a hire-purchase agreement or in a licence to the effect that—
 - (a) the contract, agreement, lease, hire-purchase agreement or licence is to terminate, or may be terminated by the vendor, lessor, owner or licensor;
 - (b) the operation of the contract, agreement, lease, hire-purchase agreement or licence is to be modified; or
 - (c) property to which the contract, agreement, lease, hire-purchase agreement or licence relates may be repossessed by or on behalf of the vendor, lessor, owner or licensor,if the purchaser, lessee, hirer or licensee becomes a bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement 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.
- (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.

302 Certain provisions in bills of sale, &c., to be void

- (1) A provision in a bill of sale, mortgage, lien or charge—

Section 303

- (a) enabling the grantee, mortgagee or person entitled to the benefit of the lien or charge to exercise any power or remedy; or
 - (b) to the effect that the operation of the bill of sale, mortgage, lien or charge is to be modified,
- if the grantor, mortgagor or person whose property is subject to the lien or charge becomes a bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement 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.

303 Applications to Court or Registrar

Where in respect of any matter this Act provides that—

- (a) an application may be made to the Court or to the Registrar; 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, or the power may be exercised on the application of, any person aggrieved by or interested in that matter.

304 Parts of dollar to be disregarded in determining majority in value of creditors, &c.

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.

305 Payment of expenses by Commonwealth

- (1) Where the Minister, upon the application of the Official Receiver, the trustee of the estate of a bankrupt or the trustee of the estate of
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Section 305

a deceased person that is being administered under Part XI of this Act or Part X of the repealed Act, is satisfied—

- (a) that proceedings relating to—
 - (i) the estate of the bankrupt or the deceased person, as the case may be; or
 - (ii) the trade dealings, property or affairs of the bankrupt or the deceased person, as the case may be, should be instituted, continued or defended; or
- (b) that inquiries should be made concerning—
 - (i) the estate of the bankrupt or his conduct, trade dealings, property or affairs; or
 - (ii) the estate of the deceased person or his trade dealings, property or affairs, as the case may be,

and is also satisfied that the moneys in the estate of the bankrupt 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, in whole or in part, by the estate of the bankrupt 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 under subsection (1).

306 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 on 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 deed entered into under this Act does not invalidate an act done by him in good faith.

306A Protection of Registrars, magistrates, &c., in relation to examinations under section 50, 69 or 81

- (1) A Registrar or magistrate has, in the exercise of the powers and the performance of the functions conferred on him by section 50, 69 or 81 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 being examined under section 50, 69 or 81, or a person entitled to take part in the examination of a person under section 50, 69 or 81, has in respect of the examination the same protection and immunity as a barrister has in 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 section 50, 69 or 81 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.

306B 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

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good faith in a report prepared or filed under subsection 12(1A) or (1B), paragraph 19(1)(c) or (g) or subsection 19(1C) or 150(3).

- (2) Subsection (1) shall not be taken to limit or affect any other right, privilege, immunity or defence existing apart from that subsection.

307 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.

308 Representation of corporation, &c.

Subject to this Act, for the purposes of this Act—

- (a) a corporation may act by any person duly authorized in that 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 or empowered by law to act for him; and
- (d) any person may act by his agent duly authorized in that behalf.

309 Service of notices, &c.

- (1) A notice or other document in relation to which no special manner of service is prescribed may be sent by post as a prepaid letter to the last-known address of the person to be served with the notice or other document and shall, unless the contrary is proved, be deemed to have been served at the time at which the letter would be delivered in the ordinary course of post.

- (1A) Where a trustee carries on business at 2 or more addresses, a notice or other document in relation to which no special manner of

Section 310

service is prescribed may be sent by post as a prepaid letter to the trustee at any of those addresses and shall, unless the contrary is proved, be deemed to have been served at the time at which the letter would have been delivered in the ordinary course of post.

- (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.

310 Publication of notice of making of sequestration order, discharge, &c.

- (1) Where—
- (a) a sequestration order is made against the estate of a debtor; or
 - (b) a debtor becomes a bankrupt by virtue of the presentation of his own petition,
- the Registrar shall cause notice of that fact to be published in the *Gazette* and in such other manner (if any) as is prescribed.
- (2) There shall be stated in the notice the name, address and description of the bankrupt and the date on which he became a bankrupt.
- (3) Subject to subsection (3A), where
- (a) a bankrupt is discharged from bankruptcy (whether by order of discharge or by the operation of section 149); or
 - (b) the bankruptcy of a person is annulled by the Court,
- the Registrar shall cause notice of that fact, specifying the name, address and description of the bankrupt, the date of the bankruptcy and the date on which he was discharged or on which his bankruptcy was annulled to be published in the *Gazette* and in such other manner (if any) as is prescribed.
- (3A) Nothing in subsection (3) shall be taken to have required, or to require, the Registrar to cause a notice referred to in that subsection to be published in respect of a person who—

Section 311

- (a) was an undischarged bankrupt immediately before the commencement of this Act, whether he became a bankrupt under a law of the Commonwealth or of a State or Territory; and
 - (b) was discharged from bankruptcy before the commencement of this section by virtue of subsection 149(2) of the *Bankruptcy Act 1966*.
- (4) Where an order is made for the administration of the estate of a deceased person under Part XI, the Registrar shall cause notice of that fact to be published in the *Gazette* and in such other manner (if any) as is prescribed.
- (5) There shall be stated in the notice the name and description of the deceased person, his address at the time of his death and the date on which the order under Part XI was made in respect of his estate.
- (6) Where the Court makes an order annulling the administration of the estate of a deceased person under Part XI or releasing the estate of a deceased person from administration under Part XI, the Registrar shall cause notice of that fact, specifying the name and description of the deceased person, his address at the time of his death and the date on which the order was made to be published in the *Gazette* and in such other manner (if any) as is prescribed.

311 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;
 - (b) a trustee of a deed of assignment or a deed of arrangement, whether the deed was executed under this Act or the repealed Act;
 - (c) a trustee of a composition or a scheme of arrangement, whether the composition or scheme was accepted or approved under this Act or the repealed Act; or
 - (d) a trustee of the estate of a deceased person in respect of which an order has been made under Part X of the repealed Act or Part XI of this Act.

Section 312

- (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 or the repealed Act;
 - (b) on a cheque received by a trustee in his 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 capacity as trustee.

312 Destruction of old accounts and records

- (1) An Official Receiver or a trustee may destroy any accounts or records in his custody relating to an appointment and direction under section 62 of the repealed Act, a direction under section 50 of this Act or relating to a bankruptcy, the administration of the estate of a deceased person in bankruptcy, a deed of assignment, a deed of arrangement, a composition or an arrangement, whether the bankruptcy or administration occurred, the deed was executed or the composition or arrangement was entered into or made before or after the commencement of this Act—
 - (a) with the approval in writing of the Registrar—at any time; or
 - (b) without obtaining the approval of the Registrar—if the appointment and direction was made and given, the direction was given, the bankruptcy or administration occurred, the deed was executed or the composition or arrangement was entered into or made not less than 25 years previously.
- (2) Subsection (1) does not authorize—
 - (a) the destruction of documents relating to a bankruptcy, where the bankrupt has not been discharged;
 - (b) the destruction of documents relating to the administration of the estate of a deceased person, where the estate has not been fully administered; or
 - (c) the destruction of documents relating to a deed of assignment or arrangement or a composition or arrangement where the trustee has not completed the administration of the debtor's affairs under the deed or the composition or arrangement.

Section 313

- (3) An Official Receiver or a trustee shall not destroy any accounts or records referred to in subsection (1) otherwise than in accordance with this section.

313 Audit of accounts and records of the Registrars, the Official Trustee and the Official Receivers

- (1) The Auditor-General shall inspect and audit the accounts and records of the Registrars, the Official Trustee and the Official Receivers, and shall 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 so doing.
- (2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records of the Registrars, 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 is entitled at all reasonable times to full and free access to all books of the Registrars, the Official Trustee and the Official Receivers.
- (5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any books of the Registrar, the Official Trustee or an Official Receiver.
- (6) The Auditor-General or a person authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as 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) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

314 Annual report

The Minister shall cause an annual report of the operation of this Act to be laid before each House of the Parliament.

315 Rules and regulations

- (1) The Governor-General may make rules or regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, prescribing matters for or in relation to—
- (a) the forms to be used under this Act;
 - (b) the practice and procedure of courts having jurisdiction under this Act, including costs and the taxation of costs;
 - (ba) the keeping of records of proceedings under this Act, including records of bankruptcy notices issued under this Act and of documents filed in the office of the Registrar under Part X. XI or XIA;
 - (bb) the keeping of indices of records kept in accordance with rules made for the purposes of paragraph (ba);
 - (bc) the inspection, upon payment of the prescribed fee (if any), of such records and indices kept in accordance with rules made for the purposes of paragraph (ba) or (bb), including records and indices kept for the purposes of this Act before the commencement of this paragraph and records and indices kept for the purposes of the repealed Act, as are permitted by the rules to be inspected;
 - (c) the application of provisions or the rules to proceedings instituted under subsection 9(3);
 - (d) the summoning of meetings of creditors and the proceedings at meetings of creditors, including the persons who are entitled to vote at such meetings;
 - (e) the appointment by telegram of proxies of creditors; and
 - (f) the fees or other payments to be charged in respect of proceedings under this Act or otherwise for the purpose of

Section 315

this Act and for prescribing the manner in which those fees or payments shall be paid.

- (2) Subject to subsection (3), the power to make rules conferred by subsection (1) includes power to make rules modifying or adapting the rules in force under the *Bankruptcy Act 1924* immediately before the commencement of this Act in their application to proceedings, matters and things to which, by virtue of this Act, the *Bankruptcy Act 1924* continues to apply.
- (3) Subsection (2) does not authorize the making of rules that could not have been made under the *Bankruptcy Act 1924* if that Act had not been repealed.
- (4) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to rules made under this section as if references in those sections to regulations were references to such rules.

Schedule 1

Section 4(1)

Acts Repealed

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

Section 24

Judicial Oath or Affirmation.

I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, and Her Heirs and Successors according to law, that I will well and truly serve Her in the office of Judge of the Federal Court of Bankruptcy and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

Or, I, _____, do solemnly and sincerely promise and declare that (as above, omitting the words "So help me God!").

Endnote 1—About the endnotes

Endnotes**Endnote 1—About the endnotes**

The endnotes provide information about this compilation and the compiled 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 that has amended (or will amend) the compiled law. The information includes 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 amendments 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 how an amendment is to be made. If, despite the misdescription, the amendment

Endnotes

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

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

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Bankruptcy Act 1966	33, 1966	1 June 1966	4 Mar 1968 (s 2 and gaz 1968, p 119 No. 3)	
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)	—
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), 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: 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 (s 2(7))	s 4
Bankruptcy Amendment Act 1976	161, 1976	9 Dec 1976	1 Feb 1977 (s 2 and gaz 1977, No 83, p 2)	s 5, 6(2), (3), 7-9
Remuneration and Allowances Amendment Act 1977	111, 1977	28 Oct 1977	s 7: 1 June 1977 (s 2(2))	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	Sch: 19 Oct 1979 (s 2(1))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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, Sch (items 1–3): 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)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Commonwealth Functions (Statutes Review) Act 1981	74, 1981	18 June 1981	s 123-147: 2 Nov 1981 (s 2(10) and gaz 1981, No S229) s 264: 18 June 1981 (s 2(1))	s 123(2), 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 37: 2 Nov 1981 (s 2(6))	—
Statute Law (Miscellaneous Amendments) Act 1981	176, 1981	2 Dec 1981	s 29, 30: 1 Feb 1992 (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 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), (2)
Public Service Reform Act 1984	63, 1984	25 June 1984	s 151(9) and Sch 4: 1 July 1984 (s 2(4) and gaz 1984, No S245) s 151(6): <u>awaiting commencement (s 2(4))</u>	s 151(9)
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), 35(2)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	s 7 and Sch 1 (in part): 9 June 1986 (s 2(2) and gaz 1986, No S264) s 16 and Sch 1 (in part): 16 Dec 1985 (s 2(1))	s 7, 16
Taxation Laws Amendment Act (No. 4) 1986	154, 1986	18 Dec 1986	s 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), (2) and Sch 1 (except for insertion of new section 31A): 18 Dec 1986 (s 2(1)) Sch 1 (insertion of new section 31A): 2 Mar 1987 (s 2(2) and gaz 1987, No S32)	s 5(1), 6(1), (2)
Proceeds of Crime (Miscellaneous Amendments) Act 1987	73, 1987	5 June 1987	s 4-10: 5 June 1987 (s 2)	—

Endnotes

Endnote 4—Amendment history

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 5.....	am No 121, 1968; No 122, 1970; No 155, 1979; No 12, 1980; No 70, 1980; No 21, 1985; No 73, 1987
s 7.....	am No 12, 1980
s 8.....	rs No 12, 1980
s 9.....	am No 12, 1980
Part II	
Division 1	
Division 1 heading.....	ad No 12, 1980
s 10.....	am No 91, 1976
s 12.....	am No 91, 1976; No 12, 1980; No 21, 1985; No 168, 1986; No 73, 1987
s 14.....	am No 12, 1980; No 21, 1985
s 14A.....	ad No 12, 1980
s 15.....	am No 12, 1980
s 16.....	am No 12, 1980; <u>No 63, 1984</u> ; No 21, 1985
s 17.....	am No 91, 1976; No 12, 1980 rs No 12, 1980 am No 21, 1985
s 17A.....	ad No 12, 1980 am No 21, 1985
s 17AA.....	ad No 193, 1985
s 17B.....	ad No 12, 1980
s 18.....	am No 91, 1976; No 12, 1980 rs No 12, 1980 am No 21, 1985; No 168, 1986

Endnote 4—Amendment history

Provision affected	How affected
s 18A.....	ad No 12, 1980
s 19.....	am No 12, 1980; No 12, 1980; No 74, 1981; No 21, 1985
s 19A.....	ad No 12, 1980
s 19B.....	ad No 12, 1980
s 20.....	am No 12, 1980
	rs No 168, 1986
Division 2	
Division 2	ad No 12, 1980
s 20A.....	ad No 12, 1980
	am No 168, 1986
s 20B.....	ad No 12, 1980
	am No 21, 1985; No 168, 1986
s 20C.....	ad No 12, 1980
	am No 63, 1984
	rep No 168, 1986
s 20D.....	ad No 12, 1980
	am No 168, 1986
s 20E.....	ad No 12, 1980
	am No 168, 1986
s 20F.....	ad No 12, 1980
	am No 168, 1986
s 20G.....	ad No 12, 1980
s 20H.....	ad No 12, 1980
	am No 21, 1985; No 168, 1986
s 20J.....	ad No 12, 1980
	am No 168, 1986
Part III	
Division 1	
s 21.....	am No 12, 1980
s 23.....	am No 12, 1980
s 24.....	am No 12, 1980

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 25.....	am No 40, 1969 rs No 111, 1977
s 26.....	am No 12, 1980
Division 2	
s 27.....	am No 161, 1976; No 12, 1980; No 176, 1981
s 28.....	am No 161, 1976; No 12, 1980
s 29.....	am No 12, 1980
s 30.....	am No 12, 1980
s 31.....	am No 12, 1980
s 31A.....	ad No 168, 1986
s 33.....	am No 12, 1980
s 35.....	am No 12, 1980 rs No 12, 1980
s 37.....	am No 12, 1980
s 38.....	rs No 161, 1976
s 39.....	rep No 161, 1976
Part IV	
Division 1	
s 40.....	am No 12, 1980; No 21, 1985
s 41.....	am No 12, 1980; No 193, 1985
s 42.....	am No 12, 1980; No 10, 1984
Division 2	
s 43.....	am No 12, 1980
s 44.....	am No 12, 1980; No 21, 1985
s 46.....	am No 12, 1980
s 48.....	am No 121, 1968; No 12, 1980 rep No 12, 1980
s 50.....	am No 12, 1980; No 74, 1981
s 51.....	am No 12, 1980
s 52.....	am No 12, 1980; No 74, 1981; No 21, 1985
s 53.....	am No 121, 1968; No 12, 1980

Endnote 4—Amendment history

Provision affected	How affected
s 54.....	am No 12, 1980; No 74, 1981; No 21, 1985
Division 3	
s 55.....	am No 122, 1970; No 12, 1980; No 74, 1981; No 21, 1985
s 56.....	am No 122, 1970; No 12, 1980
	rs No 12, 1980
	am No 74, 1981; No 21, 1985
s 57.....	rs No 12, 1980
	am No 74, 1981; No 21, 1985
s 58.....	am No 73, 1987
s 57A.....	ad No 12, 1980
Division 4	
s 58.....	am No 12, 1980; No 74, 1981
s 59.....	am No 12, 1980
	rs No 12, 1980
s 60.....	am No 12, 1980; No 73, 1987
Division 5	
s 64.....	rs No 12, 1980
	am No 12, 1981; No 21, 1985
s 66.....	am No 12, 1980 (md incorp)
s 68.....	am No 12, 1980
s 69.....	am No 121, 1968
	rs No 12, 1980
	am No 12, 1981; No 21, 1985
s 70.....	am No 12, 1980
s 71.....	am No 12, 1980
Division 6	
s 74.....	am No 12, 1980
s 75.....	am No 122, 1970; No 12, 1980
Part V	
s 78.....	am No 121, 1968; No 12, 1980
s 79.....	am No 56, 1975; No 12, 1980

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 80.....	am No 12, 1980
s 81.....	am No 121, 1968
	rs No 12, 1980
	am No 21, 1985
Part VI	
Division 1	
s 82.....	am No 12, 1980; No 73, 1987
s 84.....	am No 12, 1980
s 85.....	am No 12, 1980
s 90.....	am No 12, 1980
s 91.....	am No 12, 1980
s 93.....	am No 12, 1980
s 94.....	am No 12, 1980
s 95.....	am No 12, 1980
s 99.....	am No 12, 1980
s 100.....	am No 12, 1980
s 101.....	am No 12, 1980
s 102.....	am No 12, 1980
s 103.....	am No 12, 1980
s 104.....	am No 12, 1980
s 105.....	am No 12, 1980
s 106.....	am No 12, 1980
s 107.....	am No 12, 1980
Division 2	
s 109.....	am No 122, 1970; No 12, 1980
	rs No 12, 1980
	am No 18, 1983; No 21, 1985; No 154, 1986
s 109A.....	ad No 21, 1985
s 111.....	am No 12, 1980
s 112.....	am No 12, 1980

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s 115.....	am No 12, 1980
s 116.....	am No 12, 1980; No 168, 1986
s 117.....	am No 12, 1980
s 118.....	am No 12, 1980
	rs No 12, 1980
s 119.....	am No 12, 1980
	rs No 12, 1980
s 119A.....	ad No 12, 1980
	am No 168, 1986
s 120.....	am No 12, 1980
s 122.....	am No 12, 1980
s 123.....	am No 12, 1980
s 124.....	am No 12, 1980
s 125.....	am No 12, 1980; No 21, 1985
s 126.....	am No 12, 1980
s 127.....	am No 12, 1980
s 128.....	am No 12, 1980
Division 4	
s 129.....	am No 12, 1980
s 131.....	am No 12, 1980
s 132.....	am No 12, 1980; No 74, 1981; No 21, 1985
s 133.....	am No 12, 1980
s 134.....	am No 12, 1980
s 135.....	am No 12, 1980
s 136.....	am No 12, 1980
s 137.....	am No 12, 1980
s 139.....	am No 12, 1980; No 21, 1985
Division 5	
s 140.....	am No 121, 1968; No 12, 1980
s 145.....	rs No 12, 1980

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 147.....	rs No 12, 1980
s 148.....	am No 73, 1987
Part VII	
s 149.....	am No 12, 1980
	rs No 12, 1980
	am No 74, 1981
s 150.....	am No 12, 1980; No 74, 1981; No 21, 1985
s 151.....	am No 12, 1980
s 152.....	am No 12, 1980
s 153.....	am No 12, 1980; No 73, 1987
s 154.....	am No 12, 1980
Part VIII	
Division 1	
s 155.....	am No 12, 1980; No 21, 1985
s 156.....	am No 12, 1980; No 21, 1985
s 156A.....	ad No 74, 1981
s 157.....	am No 12, 1980; No 74, 1981
s 158.....	am No 12, 1980; No 74, 1981
s 159.....	am No 12, 1980
s 160.....	am No 12, 1980
	rs No 74, 1981
s 161.....	am No 12, 1980
s 161A.....	ad No 21, 1985
Division 2	
s 162.....	am No 12, 1980
s 163.....	am No 12, 1980
	rs No 12, 1980
s 164.....	am No 12, 1980
s 165.....	am No 12, 1980
s 166.....	rep No 74, 1981
s 167.....	am No 12, 1980

Endnote 4—Amendment history

Provision affected	How affected
s 168.....	am No 12, 1980
s 169.....	am No 12, 1980
s 170.....	am No 12, 1980
s 171.....	am No 12, 1980
s 172.....	am No 12, 1980; No 74, 1981
s 174.....	am No 12, 1980
s 175.....	am No 12, 1980; No 74, 1981
s 176.....	rs No 12, 1980
Division 4	
s 179.....	am No 12, 1980; No 21, 1985
Division 5	
s 180.....	am No 12, 1980
s 181.....	am No 12, 1980; No 74, 1981
s 182.....	am No 12, 1980
s 183.....	am No 12, 1980
s 184.....	am No 12, 1980
s 184A.....	ad No 12, 1980
Part IX.....	rep No 12, 1980
s 185.....	rep No 12, 1980
s 186.....	rep No 12, 1980
Part X	
Division 1	
s 187.....	am No 122, 1970; No 12, 1980
s 187A.....	ad No 12, 1980
Division 2	
s 188.....	am No 12, 1980
s 189.....	am No 12, 1980; No 21, 1985
s 190.....	am No 12, 1980; No 74, 1981
s 191.....	am No 12, 1980
s 192.....	am No 12, 1980
	rs No 12, 1980

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 193.....	rs No 12, 1980
s 194.....	am No 12, 1980
s 195.....	am No 12, 1980
s 198.....	am No 12, 1980
s 201.....	am No 12, 1980
s 202.....	am No 12, 1980
s 203.....	am No 12, 1980
s 204.....	am No 12, 1980
s 205.....	am No 12, 1980
	rs No 12, 1980
s 205A.....	ad No 12, 1980
s 207.....	am No 12, 1980
s 208.....	am No 12, 1980
s 209.....	am No 12, 1980
s 210.....	am No 12, 1980
s 211.....	am No 12, 1980; No 21, 1985
s 212.....	am No 12, 1980
	rs No 12, 1980
s 212A.....	ad No 12, 1980
s 212B.....	ad No 12, 1980
Division 3	
s 213.....	am No 12, 1980
s 214.....	am No 12, 1980
s 216.....	am No 12, 1980
s 217.....	am No 12, 1980
	rs No 12, 1980
s 218.....	am No 12, 1980
s 219.....	am No 12, 1980
s 220.....	am No 12, 1980
s 221.....	am No 122, 1970; No 12, 1980
s 222.....	am No 122, 1970; No 12, 1980

Endnote 4—Amendment history

Provision affected	How affected
s 223.....	am No 12, 1980
s 223A.....	ad No 12, 1980
s 224.....	am No 12, 1980
s 224A.....	ad No 12, 1980
s 225.....	am No 12, 1980
s 226.....	rs No 12, 1980
s 227.....	am No 12, 1980
Division 4	
s 228.....	am No 12, 1980
s 229.....	am No 12, 1980
s 230.....	am No 12, 1980
s 231.....	am No 12, 1980; No 193, 1985
s 232.....	am No 12, 1980
Division 5	
s 233.....	am No 12, 1980
s 235.....	am No 12, 1980
s 236.....	am No 122, 1970; No 12, 1980
s 237.....	am No 12, 1980; No 193, 1985
s 237A.....	ad No 12, 1980
Division 6	
Division 6 heading.....	rs No 122, 1970
s 238.....	am No 12, 1980
s 239.....	am No 122, 1970; No 12, 1980
s 240.....	am No 12, 1980
s 242.....	am No 122, 1970; No 12, 1980
s 243.....	am No 12, 1980; No 193, 1985
s 243A.....	ad No 12, 1980
Part XI	
s 244.....	am No 12, 1980; No 21, 1985
s 245.....	am No 12, 1980
s 246.....	am No 12, 1980

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 247.....	am No 122, 1970
s 247A.....	ad No 12, 1980
s 248.....	am No 12, 1980
s 248A.....	ad No 12, 1980
s 249.....	am No 12, 1980
s 249A.....	ad No 12, 1980
s 250.....	am No 12, 1980
	rs No 12, 1980
s 251.....	am No 12, 1980
s 252.....	am No 12, 1980
s 252A.....	ad No 12, 1980
Part XIA	
Part XIA.....	ad No 122, 1970
s 253A.....	ad No 122, 1970
s 253B.....	ad No 122, 1970
	rs No 12, 1980
	am No 168, 1986
s 253C.....	ad No 122, 1970
s 253D.....	ad No 122, 1970
	am No 12, 1980
s 253E.....	ad No 122, 1970
	am No 12, 1980
s 253F.....	ad No 122, 1970
	am No 12, 1980
Part XII	
s 254.....	am No 91, 1976; No 12, 1980; No 74, 1981
Part XIII	
s 255.....	am No 12, 1980
	rs No 12, 1980
s 256.....	am No 12, 1980
s 257.....	am No 12, 1980

Endnote 4—Amendment history

Provision affected	How affected
s 259.....	am No 12, 1980
s 260.....	rs No 12, 1980
s 261.....	am No 12, 1980
	rep No 12, 1980
s 262.....	am No 122, 1970; No 12, 1980
Part XIV	
s 263.....	am No 122, 1970; No 12, 1980
s 263A.....	ad No 122, 1970
	rep No 12, 1980
s 263B.....	ad No 12, 1980
s 264.....	am No 12, 1980
s 264A.....	ad No 12, 1980
s 264B.....	ad No 12, 1980
s 264C.....	ad No 12, 1980
s 264D.....	ad No 12, 1980
s 264E.....	ad No 12, 1980
s 265.....	am No 12, 1980
s 266.....	am No 12, 1980
s 267.....	am No 12, 1980
s 268.....	am No 12, 1980
s 269.....	am No 12, 1980
s 270.....	am No 12, 1980
s 271.....	am No 12, 1980
s 272.....	rs No 12, 1980
s 273.....	am No 12, 1980
s 274.....	rep No 12, 1980
s 276.....	am No 12, 1980
Part XV	
s 278.....	am No 12, 1980
s 279.....	am No 12, 1980
s 281.....	am No 12, 1980

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 282.....	am No 12, 1980
s 283.....	rep No 12, 1980
s 285.....	am No 12, 1980
s 286.....	rep No 12, 1980
s 287.....	am No 12, 1980
s 288.....	am No 12, 1980
s 290.....	am No 12, 1980
s 291.....	am No 12, 1980
s 292.....	am No 12, 1980
s 293.....	am No 12, 1980
s 294.....	rep No 12, 1980
s 295.....	am No 91, 1976; No 12, 1980
s 296.....	am No 12, 1980
s 297.....	am No 12, 1980
s 298.....	am No 12, 1980
Part XVI	
s 305.....	am No 91, 1976 rs No 12, 1980
s 306A.....	ad No 12, 1980
s 306B.....	ad No 12, 1980 am No 74, 1981; No 21, 1985
s 306C.....	ad No 12, 1980 rep No 74, 1981
s 309.....	am No 12, 1980
s 310.....	am No 12, 1980
s 311.....	am No 121, 1968
s 312.....	am No 12, 1980
s 313.....	am No 12, 1980 rs No 12, 1980
s 314.....	am No 91, 1976
s 315.....	am No 12, 1980

Endnote 4—Amendment history

Provision affected	How affected
The Schedules heading	rep No 12, 1980
Schedule 1	
First Schedule heading.....	rep No 12, 1980
Schedule 1 heading.....	ad No 12, 1980
Schedule 2	
Second Schedule heading	rep No 12, 1980
Schedule 2 heading	ad No 12, 1980
Third Schedule.....	rep No 12, 1980
Fourth Schedule.....	rep No 12, 1980