

**Bankruptcy Legislation Amendment Act 1996**

**No. 44, 1996**

**An Act to amend the** Administrative Decisions (Judicial Review) Act 1977 **and the** Bankruptcy Act 1966**, and for related purposes**

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**An Act to amend the** Administrative Decisions (Judicial Review) Act 1977 **and the** Bankruptcy Act 1966, **and for related purposes**

[Assented to 25 October 1996]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Bankruptcy Legislation Amendment Act 1996.*

2 Commencement

(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), Schedule 1 commences on a day to be fixed by Proclamation.

(3) If Schedule 1 does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(4) Schedule 2 commences immediately after the commencement of Schedule 1.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of various Acts

**Part 1—Amendments**

***Administrative Decisions* *(Judicial Review) Act 1977***

1 Paragraph 9(4) (a)

Repeal the paragraph.

***Bankruptcy Act 1966***

2 Subsection 5(1)

Insert:

**approved form** means a form approved by the Inspector-General.

3 Subsection 5(1)

Insert:

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

4 Subsection 5(1)

Insert:

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

5 Subsection 5(1)

Insert:

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

6 Subsection 5(1) (definition of *Deputy Registrar*)

Repeal the definition.

7 Subsection 5(1) (definition of *examinable matter*)

Repeal the definition.

8 Subsection 5(1) (definition of *maintenance order*)

Repeal the definition, substitute:

**maintenance order** means:

(a) an order relating to the maintenance of a person, including an order relating to the payment of arrears of maintenance, that is made or registered under a law of the Commonwealth or of a State or Territory of the Commonwealth; or

(b) an assessment made under the Child Support (Assessment) Act 1989.

9 Subsection 5(1)

Insert:

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

10 Subsection 5(1) (definition of *prescribed*)

Repeal the definition.

11 Subsection 5(1) (definition of *Registrar*)

Repeal the definition, substitute:

**Registrar** means the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Federal Court.

12 Subsection 5(1) (definition of *resolution*)

After “personally”, insert by telephone".

13 Subsection 5(1) (definition of *special resolution*)

After “personally”, insert by telephone”.

14 Subsection 5(1) (definition of *State Court*)

Repeal the definition.

15 Subsection 5(1) (definition of *the date of the bankruptcy*)

Omit “56”, substitute "56E”.

16 Subsection 5(1)

Insert:

**the Official Receiver:**

(a) in relation to a matter referred to in section 5AA, means the Official Receiver for the District in which the matter originated, as determined under section 5AA; and

(b) in any other case, means any Official Receiver.

17 Subsection 5(1) (definition of *the repealed Act*)

Repeal the definition.

18 Subsection 5(1) (definition of *the rules*)

Repeal the definition.

19 Subsection 5(1) (definition of *this Act*)

Omit “the rules and”.

20 Subsections 5(2) and (3)

Repeal the subsections, substitute:

(2) A person is **solvent** if, and only if, the person is able to pay all the person’s debts, as and when they become due and payable.

(3) A person who is not solvent is **insolvent**.

21 After section 5

Insert:

5AA Place of origin of bankruptcy and insolvency matters

(1) This section identifies the place of origin of each of the matters set out in column 2 of the table. The place of origin of each matter is worked out using column 3 of the table.

|  |  |  |
| --- | --- | --- |
| **Place of origin of bankruptcy and insolvency matters** | | |
|  | **Matter** | **Place of origin** |
| 1 | Bankruptcy that resulted from acceptance of a debtor’s petition | The District in which the debtor’s petition was accepted |
|
| 2 | Any other bankruptcy | The District in which the sequestration order was made |
| 3 | Control of a debtor’s property under section 50 | The District in which the Court made an order directing a trustee to take control of the debtor’s property |
|

|  |  |  |
| --- | --- | --- |
| **Place of origin of bankruptcy and insolvency matters** | | |
|  | **Matter** | **Place of origin** |
| 4 | Scheme of arrangement or composition under Division 6 of Part IV | The District in which there originated the bankruptcy that was annulled under section 74 on acceptance of the proposal for the scheme or composition |
| 5 | Matter relating to a debt agreement proposal | The District in which the debt agreement proposal was accepted for processing |
| 6 | Part X administration | The District in which the Official Receiver was given a copy of the authority under section 188 that relates to the administration |
| 7 | Administration under Part XI | The District in which the Court made the order for the administration |

(2) For the purposes of item 6 of the table, an authority under section 188 relates to a deed of assignment, a deed of arrangement or a composition if a special resolution relating to the deed or composition was passed at a meeting of creditors called under the authority.

(3) In this section:

***matter relating to a debt agreement proposal*** includes:

(a) a debt agreement; and

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

***Part X* administration** means:

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

(b) a deed of assignment under Part X; or

(c) a deed of arrangement under Part X; or

(d) a composition under Part X.

22 Section 5B

Omit and only if,”.

23 At the end of paragraphs 5B(a) to (h)

Add “or”.

24 At the end of section 5B

Add:

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

(a) holds property jointly with the person; or

(b) is dealing with the person’s property as an agent for the person; or

(c) is a trustee of a trust under which the person is capable of benefiting; or

(d) acquires or disposes of property as a result of dealing with the person.

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

25 Section 5C

Omit “, and only if,’’.

26 Paragraph 5C(a)

Repeal the paragraph, substitute:

(a) holds property jointly with the associate; or

27 At the end of paragraph 5C(b)

Add “or”.

28 After paragraph 5C(b)

Insert:

(ba) can benefit under a trust of which the associate is a trustee; or

29 At the end of paragraphs 5C(c) and (d)

Add “or”.

30 After paragraph 5C(d)

Insert:

(da) is a principal for whom the associate acts as an agent; or

31 At the end of paragraphs 5C(e) and (f)

Add “or”.

32 At the end of section 5C

Add:

(2) A natural person (the **associate**) is also associated with another person if the associate has acquired or disposed of property as a result of dealing with the other person.

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

33 Subsection 6A(1)

Omit “and paragraphs 55(2)(b), 56(2)(a) and (b), 56(13)(a) and (b) and 57(2)(a) and (b)”, substitute paragraphs 55(2)(b), 56B(3)(a) and (b), 56F(1)(a) and (b), 57(2)(a) and (b) and sections 185D and 188A".

Note: The heading to section 6A is replaced by the heading “**Statement of affairs for purposes other than Part XI**”.

34 Paragraph 6A(2)(b)

Repeal the paragraph.

35 Paragraph 6A(3)(a)

Omit “who was a bankrupt when the statement was filed, or has since become a bankrupt,”.

36 Subsection 6A(3)

Omit “the bankrupt" (wherever occurring), substitute "the person”.

37 Subsection 6A(4)

Repeal the subsection.

38 Subsection 6B(1)

Omit “subparagraph 188(2) (c) (i),”.

Note: The heading to section 6B is altered by omitting “**Part X or XI**” and substituting "**Part XI**”**.**

39 Paragraph 6B(2)(a)

Repeal the paragraph, substitute:

(a) is in a form that has been:

(i) approved by the Inspector-General for the purposes of the provision under which the statement is made; and

(ii) published in the Gazette; and

40 At the end of section 6B

Add:

(3) If the trustee administering the estate of a deceased person under Part XI has reasonable grounds to suspect that:

(a) any particulars set out in a statement of affairs that was filed by a person under subsection 246(1) or 247(1) are false or misleading in a material respect; or

(b) any material particulars have been omitted from that statement;

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

41 Subsection 7(1)

Omit “married women,”.

42 Subsection 7(3)

Omit “the prescribed modifications (if any)”, substitute “any modifications prescribed by the regulations”.

43 Subsection 11(2)

Repeal the subsection, substitute:

(2) The Inspector-General has:

(a) the general administration of this Act; and

(b) the other powers and other functions conferred or imposed on him or her by this Act.

(3) The Inspector-General may exercise any of the powers (including the power under section 18), and perform any of the functions, of an Official Receiver, in the same way as the Official Receiver.

(4) The Inspector-General may by signed instrument delegate to an officer of the Department all or any of the powers and functions of the Inspector-General under this Act.

44 At the end of paragraph 12(1)(a)

Add “and”.

45 At the end of subparagraphs 12(1)(b)(i), (ii) and (iii)

Add “or”.

46 At the end of paragraph 12(1)(b)

Add:

or (vi) property in relation to which the trustee is the controlling trustee under an authority given under section 188; and

47 At the end of subparagraph 12(1)(ba)(i)

Add “or”.

48 After subparagraph 12(1)(ba)(ii)

Insert:

(iia) a debtor under a debt agreement proposal or debt agreement under Part IX; or

(iib) a debtor whose property is subject to control under Division 2 of Part X; or

49 Paragraph 12(1)(c)

Omit “Registrars,”.

50 At the end of subsection 12(1)

Add:

; and (d) must give the Minister, after the end of each financial year, a report on the operation of this Act during that financial year for presentation by the Minister to the Parliament.

51 Subsection 12(1B)

Omit “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”, substitute “may give a copy of the report of the results of the inquiry or investigation to any person the Inspector-General thinks fit”.

52 Paragraphs 12(2)(a) and (b)

Repeal the paragraphs, substitute:

(a) require the production of any books kept by an Official Receiver or by a trustee; and

(b) require a trustee to answer an inquiry made to him or her in relation to any of the following matters in which the trustee is, or has been, engaged:

(i) a bankruptcy;

(ii) the control of property under an authority given under section 188;

(iii) an administration under Part XI;

(iv) a deed of assignment, deed of arrangement, scheme of arrangement or composition; and

53 Paragraph 12(2)(c)

Omit “and”.

54 Paragraph 12(2)(d)

Repeal the paragraph.

55 Subsection 12(3)

Repeal the subsection.

56 Subsection 12(4)

Omit or a person authorised in writing by the Inspector-General to exercise the powers of the Inspector-General under this subsection".

57 Sections 13, 14 and 14A

Repeal the sections, substitute:

13 Bankruptcy Districts

The Inspector-General, by notice in the Gazette, may declare any part, or any parts, of Australia to be a Bankruptcy District for the purposes of this Act.

58 Subsection 15(2)

Repeal the subsection.

59 Subsections 15(4) and (5)

Repeal the subsections, substitute:

(4) An Official Receiver may by signed instrument delegate to an officer of the Department all or any of the powers and functions of the Official Receiver under this Act.

(5) The Court may review an act done by an Official Receiver.

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

60 Section 16

Omit each Registrar and Deputy Registrar".

Note: The heading to section 16 is replaced by the heading "**Appointment of Inspector-General and Official Receivers**".

61 Sections 17A and 17AA

Repeal the sections.

62 Subsection 18(1)

Repeal the subsection, substitute:

(1) The corporation sole known as the Official Trustee in Bankruptcy, that existed immediately before this subsection commenced, continues in existence as a body corporate with the same name.

63 Subsection 18(3)

Repeal the subsection.

64 Subsection 18(8)

Repeal the subsection, substitute:

(8) The Official Receiver for a District may exercise the powers, and perform the functions, of the Official Trustee that relate to a matter that is determined under section 5AA to have originated in that District.

(8AA) In exercising powers or performing functions under subsection (8), an Official Receiver must act in the name of, and on behalf of, the Official Trustee.

65 Subsection 18(8A)

Omit “, or under the authority of,".

66 Subsections 18(8B) and (8C)

Repeal the subsections, substitute:

(8B) The Inspector-General may exercise any of the powers, and perform any of the functions, of the Official Trustee that are not mentioned in subsection (8).

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

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

67 Subsection 18(9)

Omit “or of the repealed Act in its continued application by virtue of this Act”.

68 Paragraph 18(9)(a)

Omit “, or with the authority of, any Official Receiver”, substitute “a person who may exercise the power or perform the function under subsection (8) or (8B)”.

69 Paragraph 18(9)(b)

Omit “by, or with the authority of, any Official Receiver, in the exercise of such a power, or performance of such a function,”.

70 At the end of paragraphs 18A(1)(a), (b), (c) and (d)

Add “or”.

71 Paragraph 18A(1)(e)

Omit “or” (last occurring).

72 Paragraph 18A(1)(f)

Repeal the paragraph.

73 At the end of subsection 18A(2)

Add:

; or (c) for any act done, or omitted to be done, by the Official Trustee:

(i) under Part IX; or

(ii) under the authority contained in a debt agreement to deal with the property of the person who is a party (as debtor) to the agreement.

74 Subsections 19(1) to (1D)

Repeal the subsections, substitute:

(1) The duties of the trustee of the estate of a bankrupt include the following:

(a) notifying the bankrupt’s creditors of the bankruptcy;

(b) determining whether the estate includes property that can be realised to pay a dividend to creditors;

(c) reporting to creditors within 3 months of the date of the bankruptcy on the likelihood of creditors receiving a dividend before the end of the bankruptcy;

(d) giving information about the administration of the estate to a creditor who reasonably requests it;

(e) determining whether the bankrupt has made a transfer of property that is void against the trustee;

(f) taking appropriate steps to recover property for the benefit of the estate;

(g) taking whatever action is practicable to try to ensure that the bankrupt discharges all of the bankrupt’s duties under this Act;

(h) considering whether the bankrupt has committed an offence against this Act;

(i) referring to relevant law enforcement authorities any evidence of an offence by the bankrupt against this Act;

(j) administering the estate as efficiently as possible by avoiding unnecessary expense;

(k) exercising powers and performing functions in a commercially sound way.

75 Section 19AA

Repeal the section, substitute:

19AA Power of investigation of bankrupt’s affairs

(1) A registered trustee who is the trustee of the estate of a bankrupt may investigate:

(a) the bankrupt’s conduct and examinable affairs; and

(b) books, accounts and records kept by the bankrupt;

so far as they relate to the bankruptcy.

(2) An Official Receiver may investigate:

(a) any bankrupt’s conduct and examinable affairs; and

(b) books, accounts and records kept by the bankrupt;

so far as they relate to the bankruptcy.

76 Subsection 19A(1)

Omit “or under the Bankruptcy Act 1924-1965 in its continued application by virtue of this Act" (wherever occurring).

77 Subsection 19A(2)

Omit “or the Bankruptcy Act 1924-1965 in its continued application by virtue of this Act".

78 Subsection 19A(3)

Omit ", a Deputy Registrar" (wherever occurring).

Note: The heading to section 19A is altered by omitting "**Registrars, Deputy Registrars,**”.

79 Sections 19B and 20

Repeal the sections.

80 Subsection 20B(7)

Omit “or of the Bankruptcy Act 1924-1965 in its continued application by virtue of this Act".

81 Subsection 20D(5)

Repeal the subsection.

82 At the end of subparagraph 20J(1)(b)(i)

Add “or”.

83 Subparagraph 20J(1)(b)(ii)

Omit “or” (last occurring).

84 Subparagraph 20J(1)(b)(iii)

Repeal the subparagraph.

85 Subsection 20J(2)

Omit “Registrar”, substitute “Inspector-General”.

86 Subsection 20J(2)

After “prescribed", insert “by the regulations".

87 Subsection 20J(4)

After “prescribed”, insert “by the regulations”.

88 Division 1 of Part III

Repeal the Division.

89 Subsection 27(1)

Repeal the subsection, substitute:

(1) The Federal Court has jurisdiction in bankruptcy, and that jurisdiction is exclusive of the jurisdiction of all courts other than the jurisdiction of the High Court under section 75 of the Constitution.

90 Subsections 27(1A), (2) and (3)

Repeal the subsections.

91 Section 28

Repeal the section.

92 Paragraph 29(5)(b)

After “prescribed”, insert “by the regulations”.

Note: The heading to section 29 is replaced by the heading “**Courts to help each other**".

93 Paragraph 30(1)(a)

Omit “X or Part”, substitute “IX, X or”.

94 Subsection 30(4)

Repeal the subsection.

95 Paragraph 31(1)(h)

Repeal the paragraph.

96 Section 31A

Repeal the section.

97 Subsection 33(2)

Repeal the subsection.

98 Section 35

Repeal the section.

99 Subparagraph 35A(3)(f)(iv)

Omit “in Bankruptcy, a Deputy Registrar in Bankruptcy or a Registrar of the Federal Court”.

100 Subsection 36(2)

Omit “the hand of the Registrar and".

101 Section 38

Repeal the section.

102 Paragraph 40(1)(da)

Omit “Registrar", substitute "Official Receiver”.

103 Subparagraph 40(1)(g)(i)

Omit “fixed by the Registrar by whom the notice was issued”, substitute “specified in the notice”.

104 After paragraph 40(1)(h)

Insert:

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

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

(he) if the debtor breaches a debt agreement;

(hd) if a debt agreement to which the debtor was a party (as a debtor) is terminated under section l85P or 185Q;

105 Paragraph 40(1)(m)

Omit “or” (last occurring).

106 Paragraph 40(1)(n)

Omit “and, before the annulment, the debtor’s bankruptcy has been annulled".

107 Paragraph 40(3)(c)

Repeal the paragraph.

108 Paragraph 40(3)(f)

Omit “, being maintenance that was:”.

109 Subparagraphs 40(3)(f)(i) and (ii)

Repeal the subparagraphs.

110 Subsection 40(4)

Omit “by post to the creditors in accordance with section 194”, substitute “to the creditors”.

111 Subsections 41(1) to (2C)

Repeal the subsections, substitute:

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

(a) is described in paragraph 40(1)(g); and

(b) is for an amount of at least $2,000.

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

112 Subsection 41(4)

Repeal the subsection.

113 Subsection 41(6A)

Omit “by the Court or the Registrar”.

114 Paragraph 41(6A)(b)

Repeal the paragraph, substitute:

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

115 Subsection 41(6B)

Repeal the subsection.

116 Paragraph 41(6C)(a)

Omit “or the Registrar".

117 Subsection 41(6C)

Omit “or the Registrar, as the case may be,” (wherever occurring).

118 Subsection 41(7)

Omit “filed with the Registrar an affidavit to the effect that he”, substitute “applied to the Court for an order setting aside the bankruptcy notice on the ground that the debtor”.

119 Subsections 41(8) and (9)

Repeal the subsections.

120 Paragraph 44(1)(a)

Omit “$1,500” (wherever occurring), substitute “$2,000”.

121 Subsection 44(5)

Omit “the prescribed time”, substitute “3 months”.

122 Subsection 47(1)

Repeal the subsection, substitute:

(1) A creditor’s petition must be verified by an affidavit of a person who knows the relevant facts.

(1A) If the rules of court prescribe a form for the purposes of this subsection, the petition must be in the form prescribed.

123 Subsection 50(1)

Repeal the subsection, substitute:

(1) At any time after a bankruptcy notice is issued in relation to a debtor, but before the debtor becomes a bankrupt, the Court may:

(a) direct the Official Trustee or a specified registered trustee to take control of the debtor’s property; and

(b) make any other orders in relation to the property.

(1A) The Court may give a direction or make an order only if:

(a) a creditor has applied for the Court to make a direction; and

(b) the Court is satisfied that it is in the interests of the creditors to do so; and

(c) the debtor has not complied with the bankruptcy notice.

(1B) If the Court directs a trustee to take control of the debtor’s property, the Court must specify when the control is to end.

124 Subsection 50(5)

Omit “the prescribed modifications (if any)”, substitute “any modifications prescribed by the regulations”.

125 After subsection 52(1)

Insert:

(1A) If the Court makes a sequestration order, the creditor who obtained the order must give a copy of it to the Official Receiver for the District in which the order was made.

126 Paragraph 54(1)(a)

Omit “Registrar”, substitute “Official Receiver”.

127 At the end of subsection 54(1)

Add:

Penalty: 5 penalty units.

128 Paragraph 54(2)(a)

Omit “Registrar”, substitute “Official Receiver”.

129 At the end of subsection 54(2)

Add:

Penalty: 5 penalty units.

130 Subsections 54(3) and (3A)

Repeal the subsections.

131 Subsection 54(4)

Omit “prescribed fee”, substitute “fee prescribed by the regulations”.

132 Section 54A

Omit “Registrar a declaration, in accordance with the prescribed”, substitute “Official Receiver a declaration, in the approved”.

133 Section 54C

Omit “Registrar” (wherever occurring), substitute “Official Receiver”.

134 Paragraph 54C(a)

Omit “prescribed”, substitute “approved”.

135 Subparagraph 54C(a)(ii)

Omit “and seal”.

136 Subsection 54D(1)

Repeal the subsection, substitute:

(1) Before accepting a declaration presented by a debtor under section 54A, the Official Receiver must give the debtor the information prescribed by the regulations.

Note: The heading Jo section 54D is replaced by the heading "**Official Receiver to give nformation to debtor**”.

137 Subsection 54D(2)

Omit “Registrar’s”, substitute “Official Receiver’s”.

138 Subsection 54E(1)

Omit “sealed copy of the declaration”, substitute “copy of the declaration signed by the Official Receiver who accepted it”.

139 Subsection 54F(1)

Omit “sealed copy of the declaration”, substitute “copy of the declaration signed by the Official Receiver who accepted it”.

140 Section 54G

Omit “sealed copy of the declaration”, substitute “copy of the declaration signed by the Official Receiver who accepted it”.

141 Subsection 54H(1)

Omit “sealed copy of the declaration”, substitute “copy of the declaration signed by the Official Receiver who accepted it”.

142 Paragraph 54H(2)(b)

Omit “sealed”, substitute “signed”.

143 Subsection 54H(4)

Repeal the subsection.

144 Subsection 55(1)

Omit “Registrar”, substitute “Official Receiver”.

145 Paragraph 55(2)(a)

Omit “prescribed”, substitute “approved".

146 Subsections 55(3), (3A) and (4)

Repeal the subsections, substitute:

(3) The Official Receiver may reject a debtor’s petition if:

(a) the petition does not comply substantially with the approved form; or

(b) the petition is not accompanied by a statement of affairs; or

(c) the Official Receiver thinks that the statement of affairs accompanying the petition is inadequate.

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

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

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

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

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

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

147 Subsection 55(4A)

Omit “Registrar” (wherever occurring), substitute “Official Receiver”.

148 Subsection 55(5)

Repeal the subsection, substitute:

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

(a) notify the trustee of the bankruptcy; and

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

(5A) A debtor who is a party (as debtor) to a debt agreement must not present a debtor’s petition unless the Court gives the debtor permission to do so.

149 Subsection 55(7)

Omit “(6)”, substitute “(5A), (6)”.

150 Subsection 55(9)

Omit “prescribed fee”, substitute “fee prescribed by the regulations”.

151 Section 56

Repeal the section, substitute:

56A Persons who may present a debtor’s petition against a partnership

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

(a) all the partners; or

(b) a majority of the partners who are resident in Australia.

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

(3) A member of a partnership who has executed a deed of assignment under Part X must not join in presenting a petition against the partnership unless the deed has been declared void, the final dividend has been paid under the deed or the Court gives permission for the member to join in presenting a petition against the partnership.

(4) A member of a partnership who has executed a deed of arrangement under Part X must not join in presenting a petition against the partnership unless the deed has been declared void or

has been terminated or the Court gives permission for the member to join in presenting a petition against the partnership.

(5) A member of a partnership whose creditors have accepted a composition under Part X must not join in presenting a petition against the partnership unless the composition has been declared void, has been set aside or terminated, the final payment has been made under the composition or the Court gives permission for the member to join in presenting a petition against the partnership.

(6) A member of a partnership in relation to whom a stay under a proclaimed law applies must not join in presenting a petition against the partnership unless the Court gives the member permission to do so.

(7) If a member of a partnership contravenes subsection (2), (3), (4), (5) or (6) by joining in the presentation of a petition, the petition does not have any effect.

56B Presentation of a debtor’s petition against a partnership

(1) Any debtor’s petition against a partnership must be presented to the Official Receiver.

(2) A petition must be in accordance with the approved form.

(3) A petition must be accompanied by:

(a) a statement of affairs of each member of the partnership by whom the petition is presented; and

(b) a statement of the partnership affairs; and

(c) a copy of each of those statements.

(4) The Official Receiver may reject a petition if:

(a) the petition does not comply substantially with the approved form; or

(b) the petition is not accompanied by the statements of affairs of each petitioning partner and of the partnership; or

(c) the Official Receiver thinks that any of the statements of affairs accompanying the petition is inadequate.

(5) Before accepting a debtor’s petition against a partnership, the Official Receiver must give the information prescribed by the regulations to each member of the partnership who joined in presenting the petition.

56C Referral to the Court of a debtor’s petition against a partnership

(1) The Official Receiver must refer a debtor’s petition against a partnership to the Court for a direction to accept or reject the petition if either or both of the following conditions are met:

(a) the petition was presented against the partnership by some, but not all, members of the partnership;

(b) there is at least one creditor’s petition pending against at least one of the members of the partnership (not counting a creditor’s petition against all the members of the partnership and no-one else).

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

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

Example 3: Meredith, Ramsay and Wilson are the members of a partnership. When they all present a debtor's petition against the partnership, there are 2 creditor’s petitions pending. Both of the creditor’s petitions are against Meredith, Ramsay and Wilson (and no-one else). There is no requirement for the Official Receiver to refer the debtor’s petition to the Court.

(2) If the Official Receiver refers a petition to the Court because the petition was presented by some, but not all, of the members of the partnership, the Official Receiver must give notice in accordance with the regulations to the members who did not present the petition.

(3) After a petition has been referred to the Court, the Court must direct the Official Receiver:

(a) to accept the petition in the form in which it was referred to the Court; or

(b) to accept the petition after amending it as directed by the Court; or

(c) to reject the petition.

(4) If:

(a) a debtor’s petition is presented against a partnership that includes a person to whom a stay applies under a proclaimed law; and

(b) the person is not one of the petitioning partners;

the Court must not give a direction in relation to the petition until the person administering the proclaimed law has had an opportunity to be heard.

(5) If the Court directs the Official Receiver to accept (either with or without amendments) a petition referred to the Court, the Court must specify the time of the commencement of the bankruptcy of each of the persons who becomes a bankrupt as a result of the acceptance of the petition.

56D Acceptance of a debtor’s petition against a partnership by the Official Receiver

(1) The Official Receiver must accept a debtor’s petition against a partnership unless the Official Receiver rejects it under section 56B or is directed by the Court to reject the petition.

(2) When the Official Receiver accepts the petition, the Official Receiver must note on it the fact that it has been accepted.

56E Effects of acceptance of a debtor’s petition against a partnership

(1) When the Official Receiver notes the fact of acceptance on a petition that has not been amended under a direction of the Court, each member of the partnership becomes a bankrupt by force of this section.

(2) When the Official Receiver notes the fact of acceptance on a petition that has been amended under a direction of the Court, each member of the partnership to whom the petition applies becomes a bankrupt by force of this section.

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

(a) he or she is discharged by force of subsection 149(1) or in accordance with Division 3 of Part VII; or

(b) his or her bankruptcy is annulled by force of subsection 74(5) or 153A(1)or under section 153B.

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

(a) notify the trustee of the bankruptcy; and

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

56F Extra duties of non-petitioning partners who become bankrupts

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

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

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

within 14 days after the day that the member was notified of his or her bankruptcy, unless the member has a reasonable excuse.

Penalty: 5 penalty units.

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

(3) A member of a partnership who must give statements of affairs to the Official Receiver under subsection (1) must give copies of the statements to the trustee in the member’s bankruptcy if the trustee is a registered trustee.

56G Inspection of statements of affairs of partners and partnerships

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

(2) Before inspecting, copying or taking extracts from a statement, the person must pay the fee prescribed by the regulations, unless:

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

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

152 Subsection 57(1)

Omit “Registrar”, substitute “Official Receiver”.

153 Subsection 57(2)

Omit “prescribed", substitute “approved”.

154 Subsections 57(3), (3A) and (4)

Repeal the subsections, substitute:

(3) The Official Receiver may reject a debtor’s petition if:

(a) the petition does not comply substantially with the approved form; or

(b) the petition is not accompanied by all the statements of affairs required by subsection (2); or

(c) the Official Receiver thinks that any of the statements of affairs accompanying the petition is inadequate.

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

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

(a) is pending against at least one of the debtors (whether or not the creditor’s petition also relates to other persons); and

(b) does not relate only to all the joint debtors who presented the debtor’s petition.

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

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

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

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

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

155 Subsection 57(5)

Omit “Registrar" (wherever occurring), substitute “Official Receiver”.

156 Subsection 57(6)

Repeal the subsection, substitute:

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

(a) notify the trustee of the bankruptcy; and

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

(6A) A debtor who is a party (as debtor) to a debt agreement must not present a debtor’s petition unless the Court gives the debtor permission to do so.

157 Subsection 57(9)

Omit “(7)”, substitute “(6A), (7)’’.

158 Subsection 57(11)

Omit “prescribed fee”, substitute “fee prescribed by the regulations”.

159 Section 57A

Omit “Registrar”, substitute “Official Receiver”.

160 Subsection 63A(1) (paragraph (b) of the definition of *joint* *bankruptcy*)

Omit “56”, substitute “56E”.

161 After paragraph 64D(a)

Insert:

(aa) if the creditor has been assigned a debt that the bankrupt owes to the creditor—the value of the consideration that the creditor gave for the assignment of the debt; and

162 Paragraph 64G(I)

Omit “his or her remuneration to be fixed by the Registrar”, substitute “to be remunerated as prescribed by the regulations”.

163 Subsection 64U(2)

Omit “his or her remuneration to be fixed by the Registrar under subsection 162(4)”, substitute “to be remunerated as prescribed by the regulations”.

164 Paragraph 64Z(5)(d)

Omit “file the certificate with the Registrar”, substitute “keep it and allow the bankrupt, a creditor or an officer of the Department to inspect it at any reasonable time”.

165 At the end of section 64ZB

Add:

(8) For the purposes of determining whether a motion proposed at the meeting is resolved, the value of a creditor who:

(a) has been assigned a debt; and

(b) is present at the meeting personally, by telephone, by attorney or by proxy; and

(c) is voting on the motion;

is to be worked out by taking the value of the assigned debt to be equal to the value of the consideration that the creditor gave for the assignment of the debt.

166 After subsection 73(2)

Insert:

(2A) The report must indicate whether the proposal would benefit the bankrupt’s creditors generally.

167 Subsection 74(5A)

Omit “to the Registrar a written certificate”, substitute “the Official Receiver a written notice”.

168 Subsection 74(5B)

Repeal the subsection.

169 Subsection 76(1)

Omit “the prescribed modifications (if any)”, substitute “any modifications prescribed by the regulations”.

170 Subsection 76(2)

Omit “prescribed modifications”, substitute “modifications prescribed by the regulations”.

171 Section 76A

Omit “rules”, substitute “regulations”.

172 Subsection 77AA(1)

Omit “and for that purpose may make copies of, or take extracts from, any such book.”, substitute:

and for that purpose:

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

(b) may remove from premises any books that the Official Receiver or officer reasonably considers may be relevant to the examinable affairs of:

(i) a bankrupt whose affairs are being administered under Part IV; or

(ii) a person who is a party (as debtor) to a debt agreement; or

(iii) a debtor whose affairs are being administered under Part X; or

(iv) a deceased debtor whose affairs are being administered under Part XI or are subject to a debt agreement.

173 After subsection 77AA(1)

Insert:

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

(a) the Official Receiver has given written authority for the registered trustee to do so; and

(b) the exercise of the powers under subsection (1) relates to a bankrupt, debtor or deceased debtor whose affairs the registered trustee is administering.

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

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

(a) it is not reasonably practicable to make copies of, or take extracts from, the books on the premises; or

(b) it would be an unreasonable intrusion on the affairs of the occupier of the premises to remain on the premises to make copies of, or take extracts from, the books.

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

XI, the Official Receiver or officer may keep the books until he or she decides that:

(a) he or she no longer needs the books; or

(b) the books are not relevant to the examinable affairs of any bankrupt, person who is a party (as debtor) to a debt agreement, debtor or deceased debtor.

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

Note: The heading to section 77AA is altered by inserting “**and others**” after “**Official Receiver**”.

174 Subsections 77E(3), (4) and (5)

Omit “rules” (wherever occurring), substitute “regulations”.

175 Section 79

Repeal the section.

176 Subsection 80(1)

Omit “the Registrar and”.

177 Subsection 80(4)

Repeal the subsection.

178 Subsection 81(1)

Omit “the Registrar”, substitute “a Registrar”.

179 Subsection 81(16)

Repeal the subsection.

180 Subsection 81(17)

Omit “(being a transcript certified, or certified, signed and sealed, in pursuance of section 255)”.

181 Paragraph 81(17)(b)

Omit “prescribed fee", substitute “fee prescribed by the regulations”.

182 Subsection 82(1A)

Repeal the subsection, substitute:

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

183 Paragraph 84(2)(b)

Omit "prescribed", substitute ‘‘approved’’.

184 Subsection 84(3)

Omit “notice, in accordance with the prescribed form,", substitute “written notice".

185 Subsection 84(4)

Repeal the subsection, substitute:

(4) A statutory declaration verifying matters in a proof of debt lodged by a creditor may be made by:

(a) the creditor; or

(b) a person whose own knowledge includes the facts set out in the statutory declaration and the proof of debt, and who is authorised by the creditor to make the declaration.

186 Subsection 85(2)

Omit “prescribed”, substitute “approved”.

187 Subsection 85(2A)

Omit “notice, in accordance with the prescribed form,”, substitute “written notice”.

188 Subsection 85(2B)

Repeal the subsection, substitute:

(2B) A statutory declaration verifying matters in a proof of debt lodged by a person (the **creditor**) under this section may be made by:

(a) the creditor; or

(b) another person whose own knowledge includes the facts set out in the statutory declaration and the proof of debt, and who is authorised by the creditor to make the declaration.

189 Subsection 91(2)

Omit “or, in default of agreement, as the Registrar directs”.

190 Subsection 99(2)

After “rules”, insert “of court”.

191 Paragraph 109(1)(a)

Omit “rules”, substitute “regulations”.

192 Paragraph 109(1)(a)

Omit not being an audit carried out by the Auditor-General”.

193 Paragraph 109(1)(b)

Repeal the paragraph, substitute:

(b) second, if the bankrupt had signed an authority under section 188 before the date of the bankruptcy, in payment of:

(i) the remuneration of the controlling trustee (as defined in section 187); and

(ii) the costs, charges and expenses properly and reasonably incurred by the controlling trustee while the authority was in force (including any debts incurred by the controlling trustee that are provable in the bankruptcy);

194 Paragraph 109(1)(e)

After “prescribed”, insert “by the regulations”.

195 After subsection 109(7)

Insert:

(7A) The trustee must keep the minutes of the meeting, and a written record of the terms of a special resolution, referred to in paragraph (1)(j).

(7B) The trustee must allow a creditor or an officer of the Department to inspect the minutes and record at any reasonable time.

196 Subsection 109(8)

Repeal the subsection, substitute:

(8) A payment must not be made under paragraph (1)(j) until 28 days after the day on which the special resolution referred to in that paragraph was passed.

**197 Subsection 114(2) (definitions of *composition, deed of*** ***arrangement*, deed of assignment** and **scheme of arrangement)**

Repeal the definitions.

198 Subsection 115(2)

Repeal the subsection, substitute:

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

|  |  |  |
| --- | --- | --- |
| **Debtor’s petition bankruptcy—time to which bankruptcy has relation back and time bankruptcy commences** | | |
|  | **Circumstances in which debtor’s petition was presented or accepted** | **Time to which bankruptcy has relation back and time of commencement of bankruptcy** |
| 1 | Petition accepted by the Official Receiver under a direction of the Court | Time specified by the Court as the commencement of the bankruptcy |
| 2 | Petition presented when at least one creditor’s petition was pending against the petitioning debtor (whether alone, as a member of a partnership or as a joint debtor), and accepted by the Official Receiver without a direction from the Court | Time of the commission of the earliest act of bankruptcy on which any of the creditor’s petitions was based |
| 3 | Petition presented when no creditor’s petitions were pending but the debtor had committed at least one act of bankruptcy in the past 6 months, and accepted by the Official Receiver without a direction from the Court | Time of commission of the earliest act of bankruptcy within the 6 months before the petition was presented |
| 4 | Petition presented when no creditor’s petitions were pending and the debtor had not committed any act of bankruptcy in the past 6 months, and accepted by the Official Receiver without a direction from the Court | Time of presentation of the petition |

199 Paragraphs 116(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) the bankrupt’s household property that is:

(i) of a kind prescribed by the regulations; or

(ii) identified by a resolution passed by the creditors before the trustee realises the property;

(c) the bankrupt’s property that is for use by the bankrupt in earning income by personal exertion and:

(i) does not have a total value greater than the limit prescribed by the regulations; or

(ii) is identified by a resolution passed by the creditors; or

(iii) is identified by an order made by the Court on an application by the bankrupt;

200 Paragraph 116(2)(ca)

Omit “prescribed amount”, substitute “amount prescribed by the regulations”.

201 Subsection 116(2A)

Repeal the subsection.

202 Subsection 116(2B)

Omit “determination by the creditors, or”, substitute “resolution passed by the creditors, or an order made”.

203 Subsections 116(6), (7) and (8)

Omit “rules" (wherever occurring), substitute “regulations”.

204 Subparagraph 118(5)(b)(i)

Omit “notice of the presentation of the petition, being a notice in accordance with the prescribed form,”, 2 substitute “a written notice of the presentation of the petition”.

205 Subparagraph 118(6)(b)(i)

Omit “notice of the presentation of the petition, being a notice in accordance with the prescribed form,”, substitute “a written notice of the presentation of the petition”.

206 Subsection 119(3)

Omit “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”, substitute “written notice setting out details of the maintenance agreement or maintenance order”.

207 Subsection 119(6)

Omit “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”, substitute “written notice setting out details of the maintenance agreement or maintenance order”.

208 Sections 120 and 121

Repeal the sections, substitute:

120 Undervalued transactions

*Transfers that are void against trustee*

(1) A transfer of property by a person who later becomes a bankrupt (the **transferor**) to another person (the **transferee**) is void against the trustee in the transferor’s bankruptcy if:

(a) the transfer took place in the period beginning 5 years before the commencement of the bankruptcy and ending on the date of the bankruptcy; and

(b) the transferee gave no consideration for the transfer or gave consideration of less value than the market value of the property.

*Exemptions*

(2) Subsection (1) does not apply to:

(a) a payment of tax payable under a law of the Commonwealth or of a State or Territory; or

(b) a transfer to meet all or part of a liability under a maintenance agreement or a maintenance order; or

(c) a transfer of property under a debt agreement; or

(d) a transfer of property if the transfer is of a kind described in the regulations.

Transfers *that are not void*

(3) Despite subsection (1), a transfer is not void against the trustee if:

(a) the transfer took place more than 2 years before the commencement of the bankruptcy; and

(b) the transferee proves that, at the time of the transfer, the transferor was solvent.

*Refund of* consideration

(4) The trustee must pay to the transferee an amount equal to the value of any consideration that the transferee gave for a transfer that is void against the trustee.

*What is not consideration*

(5) For the purposes of subsections (1) and (4), the following have no value as consideration:

(a) the fact that the transferee is related to the transferor;

(b) if the transferee is the spouse or de facto spouse of the transferor—the transferee making a deed in favour of the transferor;

(c) the transferee’s promise to marry, or to become the de facto spouse of, the transferor;

(d) the transferee’s love or affection for the transferor.

*Protection of* successors *in title*

(6) This section does not affect the rights of a person who acquired property from the transferee in good faith and by giving consideration that was at least as valuable as the market value of the property.

*Meaning of* ***transfer of property*** *and* ***market value***

(7) For the purposes of this section:

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

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

(c) the **market value** of property transferred is its market value at the time of the transfer.

121 Transfers to defeat creditors

*Transfers that are void*

(1) A transfer of property by a person who later becomes a bankrupt (the **transferor**) to another person (the **transferee**) is void against the trustee in the transferor’s bankruptcy if:

(a) the property would probably have become part of the transferor’s estate or would probably have been available to creditors if the property had not been transferred; and

(b) the transferor’s main purpose in making the transfer was:

(i) to prevent the transferred property from becoming divisible among the transferor’s creditors; or

(ii) to hinder or delay the process of making property available for division among the transferor’s creditors.

*Showing the* transferor’s *main purpose in making a transfer*

(2) The transferor’s main purpose in making the transfer is taken to be the purpose described in paragraph (1)(b) if it can reasonably be inferred from all the circumstances that, at the time of the transfer, the transferor was, or was about to become, insolvent.

*Other* ways *of showing the transferor's main purpose in making a transfer*

(3) Subsection (2) does not limit the ways of establishing the transferor’s main purpose in making a transfer.

*Transfer* not *void if transferee acted in good faith*

(4) Despite subsection (1), a transfer of property is not void against the trustee if:

(a) the consideration that the transferee gave for the transfer was at least as valuable as the market value of the property; and

(b) the transferee did not know that the transferor’s main purpose in making the transfer was the purpose described in paragraph (1)(b); and

(c) the transferee could not reasonably have inferred that, at the time of the transfer, the transferor was, or was about to become, insolvent.

*Refund of* consideration

(5) The trustee must pay to the transferee an amount equal to the value of any consideration that the transferee gave for a transfer that is void against the trustee.

*What is not consideration*

(6) For the purposes of subsections (4) and (5), the following have no value as consideration:

(a) the fact that the transferee is related to the transferor;

(b) if the transferee is the spouse or de facto spouse of the transferor—the transferee making a deed in favour of the transferor;

(c) the transferee’s promise to marry, or to become the de facto spouse of, the transferor;

(d) the transferee’s love or affection for the transferor.

*Exemption* of *transfers of property under debt agreements*

(7) This section does not apply to a transfer of property under a debt agreement.

*Protection of successors in title*

(8) This section does not affect the rights of a person who acquired property from the transferee in good faith and for at least the market value of the property.

*Meaning* of***transfer of property*** *and* ***market value***

(9) For the purposes of this section:

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

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

(c) the **market value** of property transferred is its market value at the time of the transfer.

209 Subsection 122(1)

Repeal the subsection, substitute:

(1) A transfer of property by a person who is insolvent (the **debtor**) in favour of a creditor is void against the trustee in the debtor’s bankruptcy if the transfer:

(a) had the effect of giving the creditor a preference, priority or advantage over other creditors; and

(b) was made in the period that relates to the debtor, as indicated in the following table.

|  |  |  |
| --- | --- | --- |
| **Periods during which transfers of property may be void** | | |
|  | **Description of petition leading to debtor’s bankruptcy** | **Period during which the transfer was made** |
|
| 1 | Creditor’s petition | Period beginning 6 months before the presentation of the petition and ending immediately before the date of the bankruptcy of the debtor |
| 2 | Debtor’s petition presented when at least one creditor’s petition was pending against a petitioning debtor or a member of a partnership against which the debtor's petition was presented | Period beginning on the commencement of the debtor’s bankruptcy and ending immediately before the date of the bankruptcy of the debtor |
|
|
|
| 3 | Debtor’s petition presented in any other circumstances | Period beginning 6 months before the presentation of the petition and ending immediately before the date of the bankruptcy of the debtor |
|

210 Subsection 122(1A)

Omit “conveyance or transfer of property, a charge on property or a payment made, or an obligation incurred,”, substitute “transfer of property”.

211 Paragraph 122(1A)(b)

Repeal the paragraph, substitute:

(b) whether or not the property transferred is the debtor’s own property or is the property of the debtor and one or more other persons;

212 Paragraph 122(2)(a)

Omit “in good faith and for valuable consideration and in the ordinary course of business;”, substitute “in the ordinary course of business who acted in good faith and who gave consideration at least as valuable as the market value of the property; or”.

213 Paragraph 122(2)(b)

Omit “making title in good faith and for valuable consideration through or under a creditor of the debtor’’, substitute “who is making title through or under a creditor of the debtor in good faith and who gave consideration at least as valuable as the market value of the property”.

214 At the end of subsection 122(2)

Add:

; or (d) a transfer of property under a debt agreement.

215 Paragraph 122(4)(a)

Repeal the paragraph, substitute:

(a) a transfer of property is taken to have been made in favour of a creditor if it is made in favour of a person in trust for the creditor; and

216 Paragraph 122(4)(b)

Omit “valuable consideration”, substitute “consideration equal in value to the payment”.

217 Paragraph 122(4)(c)

Omit “conveyance, transfer, charge, payment or obligation was executed, n or incurred”, substitute "transfer of property was made".

218 Subparagraph 122(4)(c)(ii)

Omit “conveyance, transfer, charge, payment or obligation”, substitute “transfer”.

219 Subsection 122(5)

Repeal the subsection, substitute:

(5) If a transfer of property is set aside by the trustee in a bankruptcy as a result of this section, the creditor to whom the property was transferred may prove in the bankruptcy as if the transfer had not been made.

220 Subsection 122(6)

Repeal the subsection.

221 At the end of section 122

Add:

(8) For the purposes of this section:

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

(b) a person who does something that results in another person becoming the owner of property that did not previously exist

is taken to have transferred the property to the other person; and

(c) the ***market* value** of property transferred is its market value at the time of the transfer.

222 Subsection 123(1)

Omit “valuable consideration” (wherever occurring), substitute “market value”.

Note: The heading to section 123 is altered by omitting “**transactions**” and substituting “**transfers of property**".

223 Subsection 125(3) (definition of *prescribed organization*)

After “prescribed” (second occurring), insert “by the regulations”.

224 Subsection 127(3)

Omit “settlement, covenant, contract, payment or”.

225 Subsection 127(4)

Omit “disposition”, substitute “transfer”

226 Subsection 127(5)

Omit “conveyance, transfer, charge, payment or obligation”, substitute “transfer of property”.

227 Subsection 129(4B)

Omit “prescribed”, substitute “approved”.

228 Subsection 133(2)

Omit “, when filed with the Registrar,”.

229 Subsection 133(3)

Repeal the subsection, substitute:

(3) If a trustee disclaims property whose transfer must be registered under a law of the Commonwealth or of a State or Territory of the Commonwealth, the trustee must give notice of the disclaimer as soon as practicable to the officer who has the function of registering the transfer.

230 Paragraph 133(4)(a)

After “days”, insert “written”.

231 Paragraph 133(4)(b)

After “by”, insert “written”.

232 Subsections 133(4A), (4B), (6A) and (6B)

Repeal the subsections.

233 Paragraph 134(1)(b)

Omit "for its beneficial disposal or winding-up”, substitute “to dispose of it or wind it up for the benefit of creditors”.

234 Paragraph 134(1)(da)

Omit “having a net value not exceeding the prescribed amount,”.

235 Paragraph 134(1)(e)

Omit “, not exceeding the prescribed amount,” (twice occurring).

236 Paragraph 134(1)(f)

Omit “and not claimed to exceed the prescribed amount”.

237 Paragraph 134(1)(g)

Omit “, not exceeding the prescribed amount,”.

238 Paragraph 134(1)(m)

Omit “until the end of 2 months beginning on the date of the bankruptcy,’’.

239 At the end of subsection 134(1)

Add:

; (n) superintend the management of the whole, or a part, of the property of the bankrupt;

(o) administer the property of the bankrupt in any other way.

240 Subsections 134(2) and (2A)

Repeal the subsections.

241 At the end of subsection 134(4)

Add:

Note: Section 178 allows an application to be made to the Court by the bankrupt, a creditor or any other person who is affected by an act, omission or decision of the trustee.

242 Subsection 135(1)

Omit “, with the permission of the creditors granted by resolution passed at a meeting of the creditors, with the permission of the committee of inspection or with the leave of the Court,”.

Note: The heading to section 135 is replaced by the heading “**Further powers exercisable by trustee**”.

243 Paragraphs 135(1)(a), (d), (f), (g) and (h)

Repeal the paragraphs.

244 Paragraph 135(1)(j)

Omit “bankrupt; and”, substitute “bankrupt.”.

245 Paragraph 135(1)(k)

Repeal the paragraph.

246 Subsections 135(2), (3) and (4)

Repeal the subsections.

247 Section 139K (definition of *actual income threshold* amount)

Omit “, in relation to a bankrupt, at a particular time,”, substitute “, at the time an assessment is made in relation to a contribution assessment period,”.

**248 Section 139K (paragraphs (b), (c), (d), (e) and (f) of the** **definition** **of *actual income threshold amount*)**

Repeal the paragraphs, substitute:

(b) if the bankrupt has one dependant at that time—the base income threshold amount increased by 18%; or

(c) if the bankrupt has 2 dependants at that time—the base income threshold amount increased by 27%; or

(d) if the bankrupt has 3 dependants at that time—the base income threshold amount increased by 32%; or

(e) if the bankrupt has 4 dependants at that time—the base income threshold amount increased by 34%; or

(f) if the bankrupt has more than 4 dependants at that time—the base income threshold amount increased by 36%.

249 Section 139K (definition of *base income threshold* *amount*)

Repeal the definition, substitute:

**base income threshold amount**,at the time when an assessment is made in relation to a contribution assessment period, means:

(a) for a contribution assessment period of one year—3.5 times the amount that, at that time, is specified in column 3, item 2, Table B, point 1064-B1, Pension Rate Calculator A, in the Social Security Act 1991; or

(b) for a contribution assessment period less than one year—a proportionally smaller amount based on the number of whole days in the period.

250 Section 139K (definition of *contribution assessment* *period*)

Repeal the definition, substitute:

***contribution* assessment period**, in relation to a bankrupt, means a period that:

(a) begins on the day the bankrupt becomes a bankrupt or an anniversary of that day during the bankruptcy; and

(b) ends one year after that day or anniversary, as the case requires, or if the bankrupt is discharged or the bankruptcy is annulled within that year, ends upon the discharge or annulment.

251 Section 139L (definition of *income*)

Repeal the definition, substitute:

**income**, in *relation* to a bankrupt, has its ordinary meaning, subject to the following qualifications:

(a) the following are income in relation to a bankrupt (whether or not they come within the ordinary meaning of “income”):

(i) an annuity or pension paid to the bankrupt from a provident, benefit, superannuation, retirement or approved deposit fund;

(ii) a payment to the bankrupt in consequence of a termination of any office or employment;

(iii) an amount of annuity or pension received by the bankrupt under a policy of life insurance or endowment insurance;

(iv) an amount received by the bankrupt as a beneficiary under a trust to the extent that the amount was paid out of income of the trust;

(v) the value of a benefit that:

(A) is provided in any circumstances by any person (the **provider**) to the bankrupt; and

(B) is a benefit within the meaning of the Fringe Benefits Tax Assessment Act 1986 as in force at the beginning of 1 July 1992 (other than a benefit that would be an exempt benefit for the purposes of that Act if the provider were the employer of the bankrupt as an employee and the provider had provided the benefit in respect of the employment of the bankrupt);

being that value as worked out in accordance with the provisions of that Act but subject to any modifications of any provisions of that Act made by the regulations under this Act;

(vi) the value of a loan made to the bankrupt by an associated entity of the bankrupt, including:

(A) a loan under which the loan money is not paid to the bankrupt, but is paid or applied at the bankrupt’s direction; and

(B) a loan that is not enforceable at law or in equity;

(vii) the amount of any money, or the value of any other consideration, received by a person other than the bankrupt from another person as a result of work done or services performed by the bankrupt, less any expenses (other than expenses of a capital nature) necessarily incurred by the first-mentioned person in connection with the work or services;

(b) the following are not income in relation to a bankrupt (even if they come within the ordinary meaning of “income”):

(i) an amount paid to the bankrupt:

(A) from the Child Support Trust Account established under the Child Support (Registration and Collection) Act 1988;or

(B) from another source for the maintenance of children of whom the bankrupt has custody; or

(ii) an amount that is not income for the purposes of the Social Security Act 1991 because of subsection 8(8) of that Act, except for:

(A) a payment under that Act other than family payment under Part 2.17 of that Act; and

(B) an amount referred to in paragraph (b), (h), (ha), (k), (ka), (m), (z), (za) or (zb) of that subsection; or

(iii) an amount that is not income for the purposes of Part 8 of the Student and Youth Assistance Act 1973 because of subsection 8(8) of the Social Security Act 1991 (other than paragraph (b), (h), (ha), (k), (ka), (m), (z), (za) or (zb) of that subsection) as that subsection has effect for the purposes of that Part because of section 57 of the Student and Youth Assistance Act 1973;

(iv) a payment to the bankrupt under:

(A) a legal aid scheme or service established under a law of the Commonwealth or of a State or Territory of the Commonwealth; or

(B) a legal aid scheme or service approved by the Attorney-General for the purposes of paragraph 2(4)(a) of the Federal Court of Australia Regulations; or

(C) any other legal aid scheme or service established to provide assistance to people on low incomes;

(v) a payment or amount that the regulations provide is not income of the bankrupt.

252 Subparagraph 139N(a)(ii)

Repeal the subparagraph.

253 Subparagraph 139N(a)(iii)

After “Family Law Act 1975",insert “or under a maintenance order”.

254 Subparagraph 139N(a)(iii)

After “that agreement”, insert "or order”.

255 Paragraph 139T(2)(f)

Omit “prescribed reason”, substitute “reason prescribed by the regulations”.

256 Subsection 139W(1)

Omit “and before the bankrupt is discharged”.

257 Subsection 139W(1)

After “derived”, insert “, or was derived,”.

258 Subsection 139W(2)

Omit “but before the bankrupt is discharged”.

259 Paragraph 139W(2)(b)

After “increased”; insert “or decreased”.

260 Section 139ZB

Repeal the section.

261 Subsection 139ZU(1)

Omit “section”, substitute “subsection”.

262 Paragraph 139ZV(1)(a)

Omit “Registrar”, substitute “Court”.

263 Section 139ZY

After “rules”, insert “of court”.

264 Section 139ZZ

After “rules”, insert “of court”.

Note: The heading to section 139ZZ is replaced by the heading "**Procedure for applications to be prescribed by rules of court**”.

265 Subsection 140(3)

Repeal the subsection, substitute:

(3) Before declaring the first dividend, the trustee must give written notice of the trustee’s intention to declare the dividend to anyone the trustee knows of who claims, or might claim, to be a creditor but has not lodged a proof of debt.

266 Subsection 140(8)

Omit “prescribed”, substitute “approved".

267 Subsection 140(9)

After “prescribed”, insert “by the regulations”.

268 Subsection 149(5)

Repeal the subsection.

269 Section 149B

Omit “or Official Receiver may file with the Registrar a written notice of objection to the discharge”, substitute “may file with the Official Receiver a written notice of objection to the discharge, or the Official Receiver may file such a notice on the Official Receiver’s own initiative”.

270 At the end of section 149B

Add:

(2) The trustee of a bankrupt’s estate must file a notice of objection to the discharge if the trustee believes:

(a) that doing so will help make the bankrupt discharge a duty that the bankrupt has not discharged; and

(b) that there is no other way for the trustee to induce the bankrupt to discharge any duties that the bankrupt has not discharged.

271 Section 149E

Repeal the section.

272 Paragraph 149F(1)(b)

Repeal the paragraph, substitute:

(b) if:

(i) the trustee is a registered trustee; and

(ii) the notice of objection is filed by the Official Receiver;

the Official Receiver must give a copy of the notice to the trustee.

Note: The heading to section I49F is altered by omitting “**and Official Receiver**”.

273 Section 149G

Omit “the notice of objection is filed", substitute “details of the notice of objection are entered in the National Personal Insolvency Index”.

274 Section 149H

Repeal the section, substitute:

149H Trustee or Official Receiver ceasing to object on some grounds

(1) If at any time before a bankrupt is discharged the trustee ceases to object to the discharge on a particular ground, the trustee must give the Official Receiver a notice specifying the ground and give the bankrupt a copy of the notice.

(2) If at any time before a bankrupt is discharged the Official Receiver ceases to object to the discharge on a particular ground, the official Receiver must:

(a) give a notice to the bankrupt specifying the ground of objection; and

(b) if the trustee is a registered trustee—give a copy of the notice to the trustee.

(3) If there is no longer an objection on any ground, the objection ceases to have effect at the beginning of the last day when details of a notice under subsection (1) or (2) are entered in the National Personal Insolvency Index.

(4) If one or more grounds of objection remain, the objection continues to have effect on the remaining ground or grounds.

275 Section 149J

Repeal the section, substitute:

149J Withdrawal of objection

(1) If at any time before a bankrupt is discharged the trustee withdraws the objection, the trustee must give the Official Receiver a notice of the withdrawal of the objection and give the bankrupt a copy of the notice.

(2) If at any time before a bankrupt is discharged the Official Receiver withdraws the objection, the Official Receiver must:

(a) give to the bankrupt written notice of the withdrawal; and

(b) if the trustee is a registered trustee—give a copy of the notice to the trustee.

(3) The withdrawal takes effect at the beginning of the day when details of a notice under subsection (1) or (2) are entered in the National Personal Insolvency Index.

276 Section 149L

Repeal the section.

277 Subsection 149R(2)

Omit “filing of such a statement under section 54, 55, 56 or 57”, substitute “giving of the statement to the Official Receiver under section 54, 55, 56B, 56F or 57”.

278 Subsection 149ZF(3)

Repeal the subsection, substitute:

(3) As soon as practicable after signing the certificate, the trustee must:

(a) send a copy of the certificate to the former bankrupt; and

(b) if the trustee is a registered trustee—give the certificate to the Official Receiver.

279 Section 149ZI

Repeal the section.

280 Subsections 153A(2), (4) and (5)

Omit “Registrar” (wherever occurring), substitute “Official Receiver”.

281 Subsection 153A(3)

Repeal the subsection.

282 Section 153B

Omit “Registrar”, substitute “Official Receiver”.

283 Sections 154A, 155, 155A, 155B and 156

Repeal the sections, substitute:

154A Application to become a registered trustee

(1) An individual may apply to the Inspector-General to be registered as a trustee.

(2) The application must be in the approved form.

(3) The application must be accompanied by:

(a) any information or documents prescribed by the regulations; and

(b) the fee prescribed by the regulations.

155 Processing of an application

(1) After receiving an application, the Inspector-General must convene a committee to consider the application.

(2) The committee must consist of:

(a) the Inspector-General; and

(b) an officer of the Department; and

(c) registered trustee chosen by the Insolvency Practitioners’ Association of Australia (A.C.N. 002 472 362).

(3) The committee must consider the application and interview the applicant.

Note: The regulations may provide for the way in which the committee must do its work: see section 315.

155A Committee’s decision on an application

Time limit for decision

(1) Within 60 days of interviewing the applicant, the committee must decide whether the applicant should be registered as a trustee or not.

Mandatory decision in favour of registration

(2) The committee must decide that the applicant should be registered if the committee is satisfied that the applicant:

(a) has the qualifications, experience, knowledge and abilities prescribed by the regulations; and

(b) will take out insurance against liabilities that the applicant may incur working as a registered trustee; and

(c) has not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; and

(d) has not been a bankrupt or a party (as debtor) to a debt agreement or Part X administration within 10 years before making the application; and

(e) has not had his or her registration as a trustee cancelled within 10 years before making the application on the ground that:

(i) he or she contravened any conditions imposed by a committee on his or her practice as a registered trustee; or

(ii) he or she failed to exercise the powers of a registered trustee properly; or

(iii) he or she failed to carry out the duties of a registered trustee properly.

Discretion to decide in favour of registration

(3) If the committee considers that the applicant is suitable to be registered as a trustee, it may decide that the applicant should be registered even if it is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed by the regulations for the purposes of paragraph (2)(a).

Mandatory decision against registration

(4) The committee must decide that the applicant should not be registered if it is satisfied that the applicant:

(a) will not take out insurance against liabilities that the applicant may incur working as a registered trustee; or

(b) has been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; or

(c) has been a bankrupt or a party (as debtor) to a debt agreement or a Part X administration within 10 years before making the application; or

(d) has had his or her registration as a trustee cancelled within 10 years before making the application on the ground that:

(i) he or she contravened any conditions imposed by a committee on his or her practice as a registered trustee; or

(ii) he or she failed to exercise the powers of a registered trustee properly; or

(iii) he or she failed to carry out the duties of a registered trustee properly.

Conditions on registration

(5) If the committee decides that the applicant should be registered, it may decide that specified conditions should apply to the applicant’s practice as a registered trustee.

Report of decision

(6) The committee must give the applicant and the Inspector-General a report on all of its decisions relating to the application, and the reasons for them.

Review of decision

(7) The applicant may apply to the Administrative Appeals Tribunal for review of a decision of the committee.

155B Effect of committee’s decision

The Inspector-General must give effect to all of the committee’s decisions, subject to paragraph 155C(1)(b).

155C Registration as a trustee

(1) The Inspector-General must register the applicant as a trustee if:

(a) the committee has decided that the applicant should be registered; and

(b) the applicant has given the Inspector-General the registration fee prescribed in the regulations.

(2) The Inspector-General registers an applicant by entering in the National Personal Insolvency Index the details relating to the applicant that are prescribed in the regulations.

(3) After registering a person as a trustee, the Inspector-General must give the person a certificate of registration.

(4) The registration has effect for 3 years.

155D Extension of registration

The Inspector-General must extend the registration of a person as trustee for three years from the expiry of the person’s registration if:

(a) the person applies in writing to the Inspector-General for the extension before the person’s registration expires; and

(b) the person gives the Inspector-General the registration fee prescribed in the regulations.

155E Application for change of conditions on practising as a registered trustee

(1) If a committee has decided under this Division that conditions should apply to a person’s practice as a registered trustee, the

person may apply to the Inspector-General for the conditions to be changed or removed.

(2) The application must be in the approved form.

(3) The application must be accompanied by:

(a) any information or documents prescribed by the regulations; and

(b) the fee prescribed by the regulations.

(4) After receiving an application, the Inspector-General must convene a committee to consider the application.

(5) The committee must consist of:

(a) the Inspector-General; and

(b) an officer of the Department; and

(c) a registered trustee chosen by the Insolvency Practitioners’ Association of Australia (A.C.N. 002 472 362).

(6) The committee must consider the application and interview the applicant.

Note: The regulations may provide for the way in which the committee must do its work: see section 315.

155F Decision on application for change of conditions

(1) Within 60 days of interviewing the applicant, the committee must:

(a) decide that the conditions on the applicant’s practice as a registered trustee should not be changed; or

(b) decide that specified modifications should be made to the conditions that apply to the applicant’s practice as a registered trustee.

Note: See the definition of ***modifications*** in subsection 5(1).

(2) The committee must give the applicant and the Inspector-General a report of its decision relating to the application, and the reasons for the decision.

(3) The applicant may apply to the Administrative Appeals Tribunal for review of the committee’s decision.

(4) The Inspector-General must give effect to the committee’s decision.

155G Voluntary termination of registration

(1) A person who is a registered trustee may give the Inspector-General a written request that the person cease to be registered as a trustee.

(2) The person ceases to be registered as a trustee when the Inspector-General accepts the request.

155H Consideration of involuntary termination of registration

(1) The Inspector-General may ask a registered trustee to give the Inspector-General a written explanation why the trustee should continue to be registered, if the Inspector-General believes that:

(a) the trustee no longer has a qualification or ability that is prescribed by the regulations made for the purposes of paragraph 155A(2)(a); or

(b) the trustee has been convicted of an offence involving fraud or dishonesty since registration as a trustee; or

(c) the trustee is not insured against liabilities that the trustee may incur, or has incurred, working as a registered trustee; or

(d) the trustee is no longer practising as a registered trustee; or

(e) the trustee has contravened any conditions imposed by the committee on the trustee’s practice; or

(f) the trustee has failed to exercise powers of a registered trustee properly or has failed to carry out the duties of a registered trustee properly.

(2) If the Inspector-General does not receive an explanation within a reasonable time, or is not satisfied by the explanation, the Inspector-General must convene a committee to consider whether the trustee should continue to be registered.

(3) The committee must consist of:

(a) the Inspector-General; and

(b) an officer of the Department; and

(c) a registered trustee chosen by the Insolvency Practitioners’ Association of Australia (A.C.N. 002 472 362).

(4) In considering whether the trustee should continue to be registered, the committee must take into account the matters mentioned in paragraphs (l)(a) to (0.

Note: The regulations may provide for the way in which the committee must do its work: see section 315.

155I Decision on involuntary termination of registration

(1) The committee must:

(a) decide that the trustee should continue to be registered; or

(b) decide that the trustee should cease to be registered.

(2) The committee may decide under paragraph (l)(a) that:

(a) the trustee should continue to be registered unconditionally; or

(b) the trustee should continue to be registered on the condition that:

(i) the trustee meets specified conditions; or

(ii) specified conditions are imposed on the trustee’s practice; or

(iii) specified modifications are made to conditions on the trustee’s practice.

Note: See the definition of ***modifications*** in subsection 5(1).

(3) The committee may decide under paragraph (1)(b) that:

(a) the trustee should cease to be registered unconditionally; or

(b) the trustee should cease to be registered if the trustee fails to meet specified conditions.

(4) The committee must give the trustee and the Inspector-General a report of its decision relating to the application, and the reasons for the decision.

(5) The trustee may apply to the Administrative Appeals Tribunal for review of the committee’s decision.

(6) The Inspector-General must give effect to the committee’s decision.

Note: Sections 176 and 182 specify other circumstances in which a trustee may involuntarily cease to be registered.

155J After termination of registration

(1) If a person ceases to be registered as a trustee for any reason, the person must give his or her certificate of registration to the Inspector-General, unless the person has a reasonable excuse.

Penalty: 1 penalty unit.

(2) A person who ceases to be registered is not entitled to a refund of all or part of any registration fee that the person had paid.

284 Subsection 156A(1)

Omit “Registrar”, substitute "Official Receiver”.

285 Subsection 156A(2)

Omit “prescribed”, substitute “approved".

286 Subsection 156A(4)

Omit “Registrar for the appropriate district”, substitute “Court”.

287 After subsection 156A(5)

Insert:

(5A) If the Court removes the trustee and appoints another trustee, the creditor who applied for the removal must give the Official Receiver written notice of the removal and appointment as soon as practicable.

288 Subsection 156A(6)

Omit “Registrar shall”, substitute “Official Receiver must”.

289 Subsections 157(3) and (4)

Omit “Registrar”, substitute “Official Receiver”.

290 Subsection 157(6)

Omit “Registrar for the appropriate district”, substitute “Court”.

291 After subsection 157(7)

Insert:

(7A) If the Court cancels the appointment of a trustee and appoints another trustee, the creditor who filed the objection must give the Official Receiver written notice of the cancellation and appointment as soon as practicable.

292 Subsection 157(8)

Omit “Registrar shall”, substitute “Official Receiver must”.

293 Section 161A

Repeal the section, substitute:

161A Registered trustee to notify Inspector-General of certain events

(1) If a registered trustee is convicted of an offence involving fraud or dishonesty, the registered trustee must give the Inspector-General written notice of the conviction and the nature of the offence as soon as practicable.

(2) If a registered trustee becomes a bankrupt, or enters as debtor into an insolvency administration, under the law of a foreign country, the registered trustee must give the Inspector-General written notice of the fact as soon as practicable.

294 Subsections 161B(1) and (2)

Repeal the subsections, substitute:

(1) If the total remuneration payable to the trustee under section 162 would be less than $1,109, the trustee is entitled to be paid additional remuneration equal to the shortfall.

(2) If there are insufficient funds in the bankrupt’s estate to pay the trustee the amount (if any) payable under subsection (1), the trustee may recover that amount from the person who is or was the bankrupt as a debt due to the trustee by action in a court of competent jurisdiction.

Note 1: The heading to section 161B is replaced by the heading "**Trustee’s remuneration—minimum entitlement**”.

Note 2: The heading to section 162 is replaced by the heading “**Trustee’s remuneration—general**”.

295 Subsections 12(2) and (3)

After “prescribed”, insert “by the regulations".

296 Subsection 162(4)

Omit “Registrar may fix the remuneration”, substitute “trustee is to be remunerated as prescribed by the regulations”.

297 Subsection 162(5)

Repeal the subsection.

298 Subsection 163(1)

After “prescribed”, insert “by the regulations”.

299 Subsections 163A(1) and (2)

Omit “If the”, substitute “If any”.

300 Subsection 163A(2)

Omit “prescribed fee to the Official Receiver”, substitute “to the Official Receiver the fee prescribed by the regulations”.

301 Subsection 163A(3)

Omit “the Official Receiver”, substitute “any Official Receiver”.

302 Section 164

Repeal the section, substitute:

164 Two or more trustees acting in succession

(1) If one person acts as a trustee of the estate of a bankrupt after another person has acted as the trustee, their remuneration and expenses are to be divided between them, if necessary, on a basis:

(a) that they agree on; and

(b) that is endorsed by a resolution passed at a meeting of the creditors.

(2) When a person (the **earlier trustee**) ceases to be the trustee of the estate of a bankrupt because another person (the **later trustee**) has become trustee, the earlier trustee must:

(a) prepare an account of his or her receipts and payments (including remuneration and expenses) for the period that he or she was trustee; and

(b) keep a copy of the account; and

(c) give each creditor a copy of the account; and

(d) give the later trustee a copy of the account and any other accounts the earlier trustee has received from a person who was the trustee before the earlier trustee.

(3) The later trustee must allow an officer of the Department to inspect at any reasonable time an account received from the earlier trustee.

303 Subsections 167(1) and (2)

Repeal the subsections, substitute:

(1) The trustee of a bankrupt’s estate may require a bill of costs for services provided by a person in relation to the administration of the estate to be taxed by a taxing officer. The trustee may make the

requirement on the trustee’s own initiative, or at the request of the bankrupt or a creditor.

304 Subsection 167(3)

Omit “or bill of charges is required by this section to be taxed may at his option”, substitute “is required to be taxed may”.

305 Subsection 167(4)

Omit “or a bill of charges”.

306 Subsections 167(4) and (5)

Omit “or charges”.

307 Subsection 167(6)

Omit “or bill of charges is required (whether by this section or by an order of the Court) to be taxed to deliver his bill”, substitute “is required to be taxed to give the person’s bill”.

308 Subsection 167(9)

Repeal the subsection, substitute:

(9) In this section:

**taxing officer** means a person appointed by the Inspector-General for the purposes of this section.

309 Subsection 175(1)

Omit “shall furnish to the Registrar, at the prescribed times”, substitute “must give the Official Receiver, at the times prescribed by the regulations”.

310 Subsection 175(2)

Omit “furnished to the Registrar”, substitute “given to the Official Receiver”.

311 Paragraph 176(2)(b)

Repeal the paragraph, substitute:

(b) if the person is a registered trustee—an order directing the Inspector-General to cancel the person’s registration as a trustee;

312 Subsection 179(1)

Omit “the Registrar,”.

313 Subsection 179(2)

Omit “Registrar, the”.

314 Division 4A of Part VIII

Repeal the Division.

315 Subsections 182(1), (2) and (3)

Repeal the subsections, substitute:

(1) If a registered trustee becomes bankrupt, becomes a party (as debtor) to a debt agreement or signs an authority under section 188, the trustee’s registration is cancelled.

316 Subsection 182(4)

Omit “Registrar”, substitute “Official Receiver”.

317 Subsection 183(3)

Repeal the subsection, substitute:

(3) In hearing the application, the Court must also consider any objection to the order sought that is made by the Inspector-General, the Official Receiver, a creditor or any other interested person.

318 Subsection 184(1)

Repeal the subsection, substitute:

(1) If the trustee of the estate of a bankrupt:

(a) is a registered trustee; and

(b) has not already been released from being trustee of the estate under section 183;

the trustee is released at the end of 7 years from the date on which the Official Receiver entered in the National Personal Insolvency Index the fact that the administration of the estate was finalised.

319 Subsections 184A(2) to (7)

Repeal the subsections, substitute:

(2) The Official Trustee is released from being trustee of the estate of a bankrupt at the end of 7 years from the date on which the Official Receiver entered in the National Personal Insolvency Index the fact that the administration of the estate was finalised.

320 After Part VIII

Insert:

**Part IX—Debt agreements**

**Division 1—Definitions and procedures**

185 Definitions

Definitions

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

**affected creditor** means:

(a) in relation to a proposal to vary or terminate a debt agreement—a creditor who is a party (as creditor) to the agreement; or

(b) in relation to a debt agreement proposal—a creditor who would be a party to the proposed debt agreement if it were made.

**debtor** means a person who is insolvent, or would be insolvent if he or she had not been released from debts under section 185J.

**frozen debt** means a debt that:

(a) is owed by a debtor who has given a debt agreement proposal that has been accepted by the Official Trustee for processing; and

(b) would be provable in bankruptcy if the debtor had become a bankrupt when the Official Trustee accepted the debt agreement proposal for processing;

but does not include a debt arising under a maintenance agreement or maintenance order (whenever entered into or made).

**provable debt**, in relation to a debt agreement, means a debt that would have been provable in bankruptcy if the debtor had become a bankrupt when the making of the debt agreement was recorded in the National Personal Insolvency Index.

Deadline for a proposal

(2) The **deadline** for a proposal is:

(a) if it is a debt agreement proposal—the end of the 25th working day after the Official Trustee accepted the proposal for processing; or

(b) if it is a proposal to vary or terminate a debt agreement—the end of the 25th working day after the proposal was given to the Official Trustee.

Working day

(3) For the purposes of subsection (2), a **working day** is:

(a) in relation to a debt agreement proposal—a day that is not a Saturday, Sunday or a public holiday in the District in which the proposal was accepted for processing; or

(b) in relation to a proposal to vary or terminate a debt agreement—a day that is not a Saturday, Sunday or public holiday in the District in which the proposal for the debt agreement was accepted for processing.

185A Procedures for dealing with proposals

Processing of proposals by the Official Trustee

(1) Whenever the Official Trustee is required by this Part to process a proposal relating to a debt agreement, the Official Trustee must:

(a) call a meeting of the affected creditors who are known to the Official Trustee to allow those creditors to consider the proposal; or

(b) write to each of the affected creditors who is known to the Official Trustee, asking each affected creditor to indicate whether the proposal should be accepted.

Meetings to deal with a proposal

(2) Division 5 of Part IV, with any modifications prescribed by the regulations, applies in relation to any meeting called by the Official Trustee under paragraph (1)(a) as if:

(a) the debtor were a bankrupt; and

(b) the Official Trustee were the trustee of the debtor’s estate in bankruptcy.

Writing to creditors to deal with a proposal

(3) When writing to each affected creditor under paragraph (1)(b) about a proposal, the Official Trustee must:

(a) explain the proposal; and

(b) ask the creditor to state in writing whether or not the proposal should be accepted; and

(c) inform the creditor of the person to whom the statement should be given and of the need to give the statement before the deadline.

185B Acceptance of a proposal

Acceptance by special resolution

(1) A proposal is accepted if a meeting of affected creditors passes a special resolution before the deadline accepting the proposal.

Timing of acceptance by special resolution

(2) A proposal accepted under subsection (1) is accepted at the time the special resolution is passed.

Acceptance in writing

(3) A proposal is also accepted if:

(a) the Official Trustee writes to affected creditors of a debtor under section 185A; and

(b) a majority in number, and at least three-quarters in value, of the creditors who reply before the deadline state that the proposal should be accepted.

Timing of acceptance of a proposal in writing

(4) A proposal that is accepted under subsection (3) is taken to be accepted at the deadline.

Value of a creditor

(5) In assessing the value of a creditor for the purposes of paragraph (3)(b), any debt that was assigned to the creditor is taken to have a value equal to the value of the consideration that the creditor gave for the assignment.

**Division 2—Debt agreement proposals**

185C Giving a debt agreement proposal to the Official Trustee

Giving a debt agreement proposal

(1) A debtor may give the Official Trustee a written proposal for a debt agreement.

Requirements for a debt agreement proposal

(2) A debt agreement proposal must:

(a) identify the debtor’s property that is to be dealt with under the agreement; and

(b) specify how the property is to be dealt with; and

(c) authorise a specified person (being the Official Trustee, a registered trustee or another person) to deal with the identified property in the way specified.

What a debt agreement proposal may include

(3) A debt agreement proposal may provide for any matter relating to the debtor’s financial affairs.

If the person specified under paragraph (2)(c) is not the Official Trustee, the proposal may also provide for the remuneration of that person.

When a debtor cannot give a debt agreement proposal

(4) A debtor cannot give the Official Trustee a debt agreement proposal at a particular time (the **proposal time**) if:

(a) at any time in the 10 years immediately before the proposal time the debtor:

(i) has been a bankrupt; or

(ii) has been a party (as debtor) to a debt agreement; or

(iii) has given an authority under section 188; or

(b) at the proposal time the debtor’s unsecured debts total more than:

(i) the threshold amount; or

(ii) if the regulations prescribe a greater amount for this purpose—the amount prescribed; or

(c) at the proposal time, the value of the debtor’s property that would be divisible among creditors if the debtor were bankrupt is more than the threshold amount; or

(d) the debtor’s after tax income (see subsection (5)) in the year beginning at the proposal time is likely to exceed half the threshold amount.

(5) In this section:

**after tax income**, in relation to a debtor and a year, means the amount that is likely to be the taxable income of the debtor for the year less the income tax and the medicare levy imposed on that

taxable income (worked out treating the year as a year of income if it is not actually a year of income).

Note: For the purposes of this definition, ***taxable income***, ***income tax*** and **year of income** have the same meanings as in the Income Tax Assessment Act 1936, and **medicare levy** means the levy imposed by the Medicare Levy Act 1986.

**threshold amount**, in relation to a particular time, means 7 times the amount that, at that time, is specified in column 3, item 2, Table B, point 1064-B1, Pension Rate Calculator A, in the Social Security Act 1991.

**unsecured debt** includes the amount by which the value of a debt exceeds the value of a security given for the debt.

185D Statement of affairs to be given with a debt agreement proposal

A debtor who gives the Official Trustee a debt agreement proposal must give the Official Trustee a statement of the debtor’s affairs with the proposal.

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

185E Accepting a debt agreement proposal for processing

(1) Before accepting a debt agreement proposal for processing, the Official Trustee must give the debtor the information prescribed by the regulations.

(2) If a debtor gives the Official Trustee a debt agreement proposal, the Official Trustee may accept the proposal for processing if the Official Trustee thinks that subsections 185C(2) and (4) have been complied with and the statement of affairs accompanying the proposal is in order.

(3) The Official Trustee must not accept a debt agreement proposal for processing if the Official Trustee thinks that the creditors’ interests would be better served by not accepting the proposal for processing.

(4) A debtor who gives the Official Trustee a debt agreement proposal may apply to the Administrative Appeals Tribunal for review of the Official Trustee’s decision on whether to accept the proposal for processing.

(5) If the Official Trustee accepts a debt agreement proposal for processing, the Official Trustee must process the proposal.

(6) If the Official Trustee processes the proposal by writing to creditors under section 185A, the Official Trustee must:

(a) ask each creditor to include with the creditor’s statement the following information for each debt owed to the creditor by the debtor:

(i) the amount of the debt;

(ii) whether the creditor holds a security for the debt;

(iii) if the creditor holds a security—the creditor’s estimate of the value of the security and the value of the debt after deducting the value of the security;

(iv) the transaction and circumstances that gave rise to the debt;

(v) whether the debt was assigned to the creditor;

(vi) if the debt was assigned to the creditor—the value of the consideration that the creditor gave for the assignment; and

(b) give each creditor a summary of the debtor’s statement of affairs.

185F Effect of accepting a debt agreement proposal for processing

(1) After acceptance of a debt agreement proposal for processing is recorded in the National Personal Insolvency Index:

(a) a creditor cannot apply for enforcement of, or enforce, a remedy against the debtor’s person or property in respect of a frozen debt; and

(b) a sheriff must not take action, or further action, to execute, or sell property under, any process issued by a court to enforce payment of a frozen debt owed by the debtor; and

(c) a person who is entitled under a law of the Commonwealth, or of a State or Territory of the Commonwealth, to retain or deduct money from money that is or will be owing or payable to the debtor must not retain or deduct money;

until any of the following events occurs:

(d) the deadline arrives;

(e) the proposal is rejected by the creditors at a meeting;

(f) the proposal lapses.

(2) Subsection (1) does not prevent a creditor from:

(a) starting a legal proceeding in respect of a frozen debt; or

(b) taking a fresh step in such a proceeding (except to enforce a judgment).

185G Lapsing of a debt agreement proposal

A debt agreement proposal lapses if:

(a) the Official Trustee accepts the proposal for processing and calls a meeting of affected creditors to consider it, but the creditors do not pass a special resolution accepting the proposal before the deadline; or

(b) the Official Trustee accepts the proposal for processing and writes to affected creditors about it, but no replies are received before the deadline; or

(c) the debtor dies after giving the proposal to the Official Trustee but before a debt agreement is made on the basis of the proposal.

Note: Section 185H deals with the making of a debt agreement.

**Division 3—Making a debt agreement**

185H Making a debt agreement

A debt agreement is made in the terms of a debt agreement proposal when the proposal is accepted.

Note: Section 185B explains how a proposal is accepted.

185I Parties to a debt agreement

The parties to a debt agreement arc:

(a) the debtor; and

(b) the creditors to whom the debtor owed debts immediately before the debt agreement was made.

185J Release of debtor from debts

Time and effect of release

(1) When details of a debt agreement are entered in the National Personal Insolvency Index, the debtor is released from provable debts from which the debtor would have been released if he or she had been discharged from bankruptcy immediately after the details were entered in the Index.

End of release

(2) The release ceases to operate if the debt agreement:

(a) is terminated under section 185P, 185Q or I85R; or

(b) is declared void by the Court.

Limits on release

(3) The release does not:

(a) release anyone else from a debt that he or she owes jointly with the debtor; or

(b) release a guarantor from the guarantee that the guarantor gave for the debtor’s debt; or

(c) prevent a secured creditor from dealing with a security to obtain payment of a secured debt, or part of a secured debt, for which the creditor has not made a claim:

(i) in a statement under section 64D as it is applied by subsection 185A(2); or

(ii) under subparagraph 185E(6)(a)(i).

185K Prevention of proceedings relating to debts

(1) While a debt agreement is in force and details of it are entered on the National Personal Insolvency Index, a creditor cannot:

(a) present a creditor’s petition against the debtor; or

(b) proceed further with a creditor’s petition that was presented against the debtor before details of the debt agreement were entered in the Index; or

(c) enforce a remedy against the debtor’s person or property, or start or take a fresh step in legal proceedings, in respect of a debt that would have been provable had the debtor become bankrupt when details of the debt agreement were entered in the Index.

(2) Paragraph (1)(c) does not prevent a creditor from enforcing a remedy against the debtor or the debtor’s property for a liability under a maintenance agreement or maintenance order.

185L Distribution of property under a debt agreement

If:

(a) the property subject to a debt agreement is not sufficient to pay in full, or to the extent provided by the agreement, all the debtor's provable debts; and

(b) the debt agreement does not specify how the property is to be distributed among the creditors;

the property must be distributed among the creditors in proportion to the provable debts.

**Division 4—Varying a debt agreement**

185M Varying a debt agreement

Proposing to vary a debt agreement

(1) A debtor or creditor who is a party to a debt agreement may give the Official Trustee a written proposal to vary the agreement.

Processing a proposal to vary a debt agreement

(2) The Official Trustee must process the proposal.

Note: Section 185A explains what is involved in processing a proposal.

Varying the agreement

(3) If the proposal is accepted, the agreement is varied in the way set out in the proposal.

Note: Section 185B explains how a proposal is accepted.

**Division 5—Ending a debt agreement**

185N End of debt agreement on discharge of obligations under agreement

Time of end of debt agreement

(1) A debt agreement ends when all the obligations that it created have been discharged, unless the agreement has been terminated earlier under section 185P, 185Q or 185R.

Keeping surplus property that was subject to an agreement

(2) When a debt agreement ends under subsection (1), the debtor is entitled to any property that was subject to the debt agreement but that was not required by the agreement to be distributed to creditors.

Example: Rhea entered into a debt agreement that required her to sell her boat and car and to pay her creditors $15,000 from the proceeds. The debt agreement ended when she sold her boat and car for $16,000 and paid her creditors $15,000. She may keep the remaining $1,000 received from the sale.

Certificate of the end of a debt agreement

(3) If a debt agreement ends under subsection (1), the Official Trustee must give the debtor a certificate to that effect.

Evidentiary value of certificate

(4) The certificate is prima facie evidence of the facts stated in it.

185P Terminating a debt agreement by accepting a proposal

Proposing to terminate a debt agreement

(1) The debtor (or the debtor’s personal representative if the debtor has died) or a creditor who is bound by a debt agreement may give the Official Trustee a written proposal to terminate the agreement.

Processing a proposal to terminate debt agreement

(2) The Official Trustee must process the proposal.

Note: Section 185A explains what is involved in processing a proposal.

Termination of the debt agreement when the proposal is accepted

(3) The debt agreement is terminated when the proposal is accepted.

Note: Section 185B explains how a proposal is accepted.

185Q Terminating a debt agreement by order of the Court

Applying for an order

(1) Any of the following persons may apply to the Court for an order terminating a debt agreement:

(a) the debtor (or the debtor’s personal representative if the debtor has died);

(b) a creditor of the debtor;

(c) the Official Trustee.

Simultaneous application for a sequestration order

(2) A creditor may include an application for a sequestration order in an application for an order terminating a debt agreement.

Effect of applying for a sequestration order

(3) For the purposes of this Act, making an application for a sequestration order under subsection (2) is taken to be presenting a creditor’s petition against the debtor, but subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to the application.

Prerequisites for making an order terminating a debt agreement

(4) The Court may make an order terminating a debt agreement if it is satisfied:

(a) that the debtor (or the debtor’s personal representative if the debtor has died) has failed to carry out a term of the agreement and that it is in the creditors’ interest to terminate the agreement; or

(b) that carrying out the agreement would cause injustice or undue delay to the creditors or the debtor (or the debtor’s estate if the debtor has died); or

(c) that for any other reason the agreement should be terminated and that it is in the creditors’ interest to do so.

Sequestration order

(5) If the Court makes an order terminating a debt agreement, the Court may also make a sequestration order if a creditor applied for the sequestration order.

185R Terminating a debt agreement by the bankruptcy of the debtor

A debt agreement is terminated if the debtor becomes a bankrupt.

Note: Despite section 185K, there are a number of ways in which a debtor who is a party to a debt agreement could become bankrupt. For example, the debtor could become bankrupt on a debtor's petition if the Court gave permission for the debtor to present, or join in presenting, the petition, or the debtor could become bankrupt as a result of the presentation of a petition against a partnership.

185S Validity of things done under a debt agreement that was terminated

If a debt agreement is terminated under section 185P, 185Q or 185R, anything that was done in good faith under the agreement by a person before the person had notice of the termination:

(a) is valid; and

(b) cannot be voided by a trustee under section 120, 121 or 122 (whether applying of its own force or under subsection 231(2)).

Note: This section docs not preserve a release from debts under a debt agreement that is terminated: see paragraph 185J(2)(a).

**Division 6—Voiding a debt agreement**

185T Applying for an order declaring a debt agreement void

Persons who may apply for an order

(1) The debtor (or the debtor’s personal representative if the debtor has died), a creditor or the Official Trustee may apply to the Court for an order declaring that all, or a specified part, of a debt agreement is void.

Grounds for applying for an order

(2) A person mentioned in subsection (1) may apply for an order only if:

(a) there is doubt on a specific ground that all or part of the debt agreement was not made in accordance with this Part or does not comply with this Part; or

(b) the statement of affairs lodged with the debt agreement was deficient because it omitted a material particular or because it was incorrect in a material particular.

Time limit on applying for an order

(3) A person cannot apply for an order declaring a debt agreement void after all the obligations created by the agreement have been discharged.

Simultaneous application for a sequestration order

(4) A creditor may include an application for a sequestration order in an application for an order declaring all or part of a debt agreement void.

Effect of applying for a sequestration order

(5) For the purposes of this Act, making an application for a sequestration order under subsection (4) is taken to be presenting a creditor’s petition against the debtor, but subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to the application.

185U Making an order declaring a debt agreement void

Power to make order

(1) On an application under section 185T, the Court may make an order declaring a debt agreement void.

Limit on declaring debt agreement void on grounds of non-compliance with this Part

(2) The Court must not declare all or part of a debt agreement void on the ground that it does not comply with this Part if the agreement or part of the agreement complies substantially with this Part.

Declaring a debt agreement void on grounds of deficient statement of affairs

(3) The Court must not declare all or part of a debt agreement void on the ground that the statement of affairs lodged with the debt agreement was deficient, unless the Court is satisfied that it is in the creditors’ interests to declare the agreement or part of the agreement void.

Sequestration order

(4) If the Court makes an order declaring all of a debt agreement void, the Court may also make a sequestration order if a creditor applied for the sequestration order.

185V Validity of things done under a debt agreement that was declared void

If a debt agreement is declared void, anything that was done in good faith under the agreement by a person before the person had notice of the declaration:

(a) is valid; and

(b) cannot be voided by a trustee under section 120, 121 or 122 (whether applying of its own force or under subsection 231(2)).

Note: This section does not preserve a release from debts under a debt agreement that is declared void: see paragraph 185J(2)(b).

**Division 7—Miscellaneous**

185W Court directions to the Official Trustee

(1) Any of the following persons may apply to the Court for an order directing the Official Trustee or another person how to exercise the Official Trustee’s powers under this Part:

(a) a debtor who is a party to a debt agreement (or the debtor’s personal representative if the debtor has died);

(b) a creditor who is a party to a debt agreement;

(c) the Official Trustee.

(2) On an application under subsection (1), the Court may make an order directing the Official Trustee or another person how to exercise the Official Trustee’s powers under this Part.

Note: Other persons who might be exercising the Official Trustee’s powers are an Official Receiver (see subsection 18(8)) or a registered trustee to whom powers have been delegated (see section 185Y).

185X No stamp duty payable on a debt agreement

Stamp duty under a State or Territory law is not payable on a debt agreement or a variation of a debt agreement.

185Y Delegation of powers and functions relating to processing of proposals

(1) The Official Trustee may delegate to a registered trustee all or any of the Official Trustee’s processing powers and functions in relation to a particular:

(a) debt agreement proposal that has been accepted for processing; or

(b) proposal to vary a debt agreement; or

(c) proposal to terminate a debt agreement.

(2) A delegation can only be made with the written consent of the debtor and the registered trustee.

(3) A delegation must be in writing.

(4) A delegation is subject to any conditions:

(a) specified in the instrument of delegation; or

(b) specified by the Official Trustee by notice in writing given to the registered trustee.

(5) The Official Trustee’s **processing powers and functions** in relation to a proposal are:

(a) if it is a debt agreement proposal—the powers and functions of the Official Trustee in relation to the proposal under subsections 185E(5) and (6) and section 185A (including the provisions applied by subsection 185A(2)); or

(b) if it is a proposal to vary a debt agreement—the powers and functions of the Official Trustee in relation to the proposal under subsection 185M(2) and section 185A (including the provisions applied by subsection 185A(2)); or

(c) if it is a proposal to terminate a debt agreement—the powers and functions of the Official Trustee in relation to the

proposal under subsection 185P(2) and section 185A (including the provisions applied by subsection 185A(2)).

Note: An Official Receiver may exercise powers of the Official Trustee under this section (see subsection 18(8)).

185Z Remuneration of registered trustees and other persons

(1) A person (other than the Official Trustee) who is dealing with property under a debt agreement may be remunerated as provided in the agreement (see subsection 185C(3)).

Note: For the remuneration payable to the Official Trustee, see section 163.

(2) A registered trustee to whom powers or functions have been delegated under section 185Y is not entitled to be remunerated for, or to be reimbursed for costs incurred in, the exercise or performance of those powers or functions.

**321 Subsection 187(1)**

Insert:

**controlling trustee**,in relation to a debtor whose property is subject to control under Division 2, means the person who is the controlling trustee under section 188 or 192.

**322 Subsection 187(1) (definition of** debtor)

Omit “unable to pay his debts as they become due out of his own moneys”, substitute “insolvent”.

**323 Subsection 187(1) (definition of** the controlling trustee)

Repeal the definition.

**324 Subsection 187(1) (definition of** the Registrar)

Repeal the definition.

**325 Subsection 187(1A)**

Omit all the words after “being”, substitute “insolvent, even if the person may ultimately cease to be insolvent”.

**326 Subsection 188(1)**

Omit “prescribed form:”, substitute “approved form naming and authorising a registered trustee, a solicitor or the Official Trustee to call a meeting of the debtor’s creditors and to take control of the debtor’s property.”.

Note: The heading to section 188 is altered by omitting “**call meeting of creditors etc.**" and substituting "**be controlling trustee**”.

**327 Paragraphs 188(1)(e) and (f)**

Repeal the paragraphs.

**328 Paragraph 188(2)(a)**

Repeal the paragraph, substitute:

(a) if the person authorised is a registered trustee or solicitor— the person has consented in writing to exercise the powers given by the authority; and

(aa) if the person authorised is the Official Trustee—an Official Receiver has given the debtor written approval to name the Official Trustee in the authority; and

**329 Paragraph 188(2)(b)**

Omit “witness; and”, substitute “witness.".

**330 Paragraph 188(2)(c)**

Repeal the paragraph.

**331 Subsection 188(4)**

Repeal the subsection, substitute:

(4) Subject to subsection 192(1), a debtor cannot give an authority within 6 months of giving another authority, unless the Court grants leave to do so.

(5) A registered trustee or solicitor who consents to exercise the powers given by an authority must, within 14 days of consenting, give a copy of the authority to the Official Receiver for the District in which the debtor resides.

(6) When an authority becomes effective, the person authorised by it becomes the controlling trustee.

**332 After section 188**

Insert:

188A Statement of debtor’s affairs and proposal for dealing with them

Within 14 days after an authority under section 188 becomes effective, the debtor must give the controlling trustee a statement

of the debtor’s affairs and a proposal for dealing with them under this Part.

**333 Subsection 189(1)**

Repeal the subsection, substitute:

(1) When an authority given by a debtor under section 188 becomes effective, the property of the debtor becomes subject to control under this Division.

(1A) The control continues until one of the following events happens:

(a) the creditors resolve at a meeting called under this Part that the property cease to be subject to control;

(b) the debtor and a trustee make a deed of assignment or a deed of arrangement following a special resolution of creditors;

(c) the creditors accept a composition under this Division;

(d) 4 months pass since the authority under section 188 became effective;

(e) the Court, under section 208, releases the property from control;

(f) the debtor becomes a bankrupt;

(g) the debtor dies.

Note: The heading to section 189 is replaced by the heading “**Control of property of a debtor who has given authority under section 188**”.

**334 After section 189**

Insert:

189AA Court orders with effect during period of control of debtor’s property

(1) The Court may make an order that has effect while the property of the debtor is subject to control:

(a) discharging an order made at any time against the person or property of the debtor under a law relating to the imprisonment of fraudulent debtors; or

(b) staying a civil or criminal legal process begun at any time against the person or property of the debtor for the debtor’s failure:

(i) to pay a debt that would be provable if the debtor were bankrupt; or

(ii) to pay a pecuniary penalty payable as a result of the failure to pay a debt that would be provable if the debtor were bankrupt; or

(iii) to obey an order of a court to pay a debt that would be provable if the debtor were bankrupt; or

(c) if the debtor has been imprisoned under a law described in paragraph (a) or for a failure described in paragraph (b)— releasing the debtor from custody.

(2) Paragraph (1)(b) does not allow the Court to stay any proceedings under the Proceeds of Crime Act 1987 or a corresponding law.

189AB Charge over debtor’s property that is subject to control

Creation of charge

(1) When the debtor’s property becomes subject to control under this Division, the debtor’s property is charged with:

(a) the debtor’s unsecured debts at the time the debtor signed the authority under section 188; and

(b) any amount by which the debtor’s secured debts exceeded the value of the property secured for payment of the debts at the time the debtor signed the authority under section 188.

Charge continues despite changing ownership of charged property

(2) Subject to subsections (3) and (9), the charge is not affected by any change of ownership of the charged property.

Certain other charges have priority

(3) The charge created by subsection (1) is subject to:

(a) any charge or encumbrance that was on the debtor’s property immediately before the debtor signed the authority under section 188; and

(b) any charge or encumbrance acquired in good faith and for market value by a person who did not have notice of the charge created by subsection (1).

Priority over some other charges

(4) The charge created by subsection (1) has priority over a charge or encumbrance that is not described in subsection (3).

Registration of charge

(5) The controlling trustee may register a charge created by subsection (1) over particular property if a law of the Commonwealth, or of a State or Territory, provides for registration of a charge over that sort of property.

Effect of registration of charge

(6) If the trustee registers the charge over particular property, a person who acquires the property or an interest in the property after the charge is registered is taken to have notice of the charge for the purposes of subsections (3) and (9).

Controlling trustee may sell charged property

(7) The controlling trustee may sell property that is subject to a charge under subsection (1).

Application of proceeds of sale

(8) Any proceeds from the sale of charged property that are not needed to meet a charge or encumbrance that has higher priority than the charge created by subsection (1) are the debtor’s property.

End of charge on property that is sold

(9) A charge created by subsection (1) ceases to have effect in relation to property if the property is acquired by a person:

(a) in good faith for consideration at least as valuable as the market value of the property without notice of the charge; or

(b) from the controlling trustee in a sale under subsection (7).

Charge ends when property ceases to be subject to control

(10) Unless it has already ceased to have effect under subsection (9), the charge ceases to have effect when control of the debtor’s property ends under subsection 189(1A).

Meaning of debtor’s property

(11) In this section:

**debtor’s property** has the meaning given in subsection 190(5).

**335 Sections 189A and 189B**

Repeal the sections, substitute:

189A Report by controlling trustee

(1) The controlling trustee must prepare a report:

(a) summarising and commenting on the information about the debtor’s affairs that is available to the controlling trustee; and

(b) if the debtor has given the controlling trustee a proposal for dealing with the debtor’s affairs under this Part—stating whether the controlling trustee believes that creditors’ interests would be better served by accepting the proposal or by the bankruptcy of the debtor.

(2) The trustee must:

(a) give a copy of the report to the Official Receiver and to each of the creditors; and

(b) keep a copy of the report.

189B Controlling trustee to prepare statement about possible resolutions

(1) A controlling trustee under an authority under section 188 must prepare a written statement about the special resolutions under section 204 that may reasonably be expected to be passed at a meeting of creditors called under the authority.

(2) The trustee must:

(a) give a copy of the statement to the Official Receiver and to each of the creditors; and

(b) keep a copy of the statement.

**336 Subsection 190(1)**

Repeal the subsection, substitute:

(1) The controlling trustee must call a meeting of the debtor’s creditors under this Division.

Note: The heading to section 190 is altered by omitting "**trustee or solicitor**" and substituting "**controlling trustee**".

**337 Subsection 190(2)**

Omit “Where a registered trustee consents to exercise the powers conferred by such an authority, he is, by force of this section,”, substitute “The controlling trustee is”.

**338 Subsection 190(3)**

Repeal the subsection.

**339 After subsection 190(4)**

Insert:

(4A) The controlling trustee or any person affected by an act or omission of the controlling trustee may apply to the Court for directions on a matter connected with control of the debtor’s property under this Division.

(4B) The Court may make any orders it thinks just on a matter raised by an application.

**340 Subsection 190(5)**

Omit “a registered trustee”.

**341 Section 191**

Omit “trustee” (first occurring), substitute “controlling trustee”.

**342 Section 191**

Omit “pay out of the debtor’s moneys any debts of the debtor”, substitute “make any payments from the debtor’s money”.

**343 Section 192**

Repeal the section, substitute:

192 Changing the controlling trustee

(1) If a registered trustee or solicitor who has consented to exercise the powers given by an authority under section 188:

(a) dies; or

(b) ceases to be a registered trustee or solicitor; or

(c) becomes incapable of exercising his or her powers under this Part; or

(d) gives the Official Trustee a written request to be relieved of duties under this Part;

then:

(e) the Official Trustee becomes the controlling trustee; and

(f) the debtor may sign a new authority under section 188.

(2) If the debtor signs a new authority under section 188 naming a registered trustee or solicitor, the registered trustee or solicitor becomes the controlling trustee when he or she consents to exercise the powers given by the authority.

(3) If:

(a) a meeting of creditors or the Court nominates a registered trustee or the Official Trustee to be the trustee of a deed of assignment or a deed of arrangement; and

(b) the nominated trustee is not already the controlling trustee;

the nominated trustee becomes the controlling trustee when the nominated trustee consents to act as trustee of the deed.

(4) A person who becomes the controlling trustee under this section:

(a) has the same powers and duties as the person originally authorised by the debtor under section 188; and

(b) is taken for the purposes of this Division to have done any act or thing duly done earlier by an earlier controlling trustee.

**344 Sections 193 and 194**

Repeal the sections, substitute:

194 Time for calling meeting

The meeting that is to be called under an authority under section 188 must be held:

(a) not more than 35 days after the debtor signed the authority; or

(b) if the debtor signed the authority in December—not more than 42 days after the debtor signed the authority.

**345 After subsection 195(1)**

Insert:

(2) At the meeting, the debtor must help the person presiding to the best of the debtor’s knowledge and ability.

**346 Subsection 195(3A)1.**

Omit “acting as”.

**347 Sections 196 to 203**

Repeal the sections, substitute:

196 Procedure for calling and holding meeting

Division 5 of Part IV applies, with any modifications prescribed by the regulations, in relation to a meeting called under an authority under section 188 as if:

(a) the debtor who signed the authority were bankrupt; and

(b) the controlling trustee were the trustee in the bankruptcy.

**348 Subsections 204(4) and (5)**

Omit "registered” (wherever occurring).

**349 Subsections 204(7) and (8)**

Repeal the subsections, substitute:

(7) In this section:

**trustee** means registered trustee or Official Trustee.

**350 Subsection 205(2)**

Omit “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”, substitute “written notice setting out details of the maintenance agreement or maintenance order”.

**351 Subsection 205(4)**

Omit “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”, substitute "written notice setting out details of the maintenance agreement or maintenance order”.

**352 Subsection 206(2)**

Omit “Registrar shall”, substitute “creditor who presents the petition must”.

**353 At the end of subsection 206(2)**

Add “and to the Official Receiver”.

**354 Section 208**

Repeal the section, substitute:

208 Termination of control of debtor’s property by the Court

The Court may make an order releasing the debtor’s property from control under this Division if:

(a) an interested person applies to the Court for such an order; and

(b) the Court is satisfied that special circumstances justify it making the order.

**355 Paragraph 209(a)**

Omit “to a registered trustee”.

**356 Sections 210 to 212B**

Repeal the sections, substitute:

210 Other provisions about controlling trustee

Part VIII, with any modifications prescribed by the regulations, applies in relation to the controlling trustee in relation to a debtor as if:

(a) the debtor were a bankrupt; and

(b) the controlling trustee were the trustee of the estate of the bankrupt debtor.

**357 Division 2A of Part X**

Repeal the Division.

**358 Paragraph 214(2)(b)**

Omit “prescribed”, substitute “approved”.

**359 Section 215**

Repeal the section, substitute:

215 Prerequisites for trustee of deed or composition

Only a registered trustee or the Official Trustee can be a trustee of a deed or composition under this Part.

**360 Subsection 215A(1)**

Repeal the subsection, substitute:

(1) A resolution that is passed at a meeting of creditors and purports to:

(a) nominate one or more persons under subsection 204(4) to be a trustee or trustees; or

(b) appoint a person under subsection 220(1) to a vacant office of trustee of a deed of assignment, deed of arrangement or composition;

is void unless the person or each of the persons gave written consent before the meeting to act as a trustee of the deed or composition.

(1A) As soon as possible after the resolution is passed, each person (except the Official Trustee) nominated or appointed by the resolution must give to the Official Receiver a copy of the consent that relates to that person.

**361 Section 215B**

Repeal the section.

**362 Subsection 217(1)**

Omit “rules”, substitute “regulations”.

**363 Subsection 217(2)**

Omit “Registrar”, substitute “Court”.

**364 Paragraph 218(1)(a)**

Repeal the paragraph, substitute:

(a) notify each creditor of the debtor as soon as practicable after the debtor and the trustee have executed the deed; and

**365 Paragraph 218(1)(b)**

Omit “Registrar”, substitute “Official Receiver”.

**366 Subsection 218(2)**

Repeal the subsection, substitute:

(2) As soon as practicable after a special resolution accepting a composition is passed under section 204, the trustee of the composition must notify each creditor of the debtor that the special resolution has been passed.

(3) A trustee must notify creditors under paragraph (1)(a) or subsection (2) in the way prescribed by the regulations.

**367 Subsection 220(2)**

Omit “on the report of the Registrar or”.

**368 Paragraph 221 (1)(b)**

Omit all the words after “arrangement”, substitute has failed without sufficient cause to execute the deed within the time prescribed by this Act; or".

**369 Subsection 221(1)**

Omit a person authorised in writing by the Inspector-General”.

**370 Subsection 222(1)**

Omit “a person authorised in writing by the Inspector-General, the Registrar,”.

**371 Subsection 222(4)**

Omit “a person authorised in writing by the Inspector-General,”.

**372 Subsection 222(10)**

Repeal the subsection.

**373 Subsection 223(2)**

Repeal the subsection.

**374 Subsection 223(3)**

Omit all the words from and including “for the purposes”, substitute “for the purposes of appointing a trustee of the deed or composition”.

**375 Section 223A**

Repeal the section, substitute:

223A Rules in relation to meetings

(1) Division 5 of Part IV applies, with any modifications prescribed by the regulations, in relation to a meeting called under section 223 as if:

(a) the debtor who signed the authority under section 188 were bankrupt; and

(b) the person who called the meeting were the trustee in the bankruptcy.

(2) Section 195 applies, with any modifications prescribed by the regulations, in relation to a meeting called under section 223 as if references in section 195 to the controlling trustee included

references to the trustee of a deed of assignment, a deed of arrangement or a composition.

**376 Subsections 224A(1) and (2)**

Omit “Registrar”, substitute “Official Receiver”.

**377 Subsection 224A(3)**

Repeal the subsection, substitute:

(3) If:

(a) the Court makes an order:

(i) declaring void a deed of assignment, a deed of arrangement or a composition; or

(ii) terminating a deed of arrangement or a composition; or

(iii) setting aside a composition; and

(b) a registered trustee was the trustee of the deed or composition;

the registered trustee must give written notice of the order to the Official Receiver.

**378 Subsections 226(3) and (4)**

Omit “prescribed fee”, substitute “fee prescribed by the regulations”.

**379 Subsections 226(3) and (4)**

Omit “Registrar”, substitute “Official Receiver”.

**380 Subsections 231(4), 237(4) and 243(3)**

Omit “Subsections 157(6) and (7) and actions 162 to 184 (inclusive) apply, with the prescribed modifications (if any)”, substitute “Part VIII applies, with any modifications prescribed by the regulations”.

**381 Subsection 243(1)**

Omit “82”, substitute “81”.

**382 Subsection 244(1)**

Omit “$1,500” (wherever occurring), substitute “$2,000”.

**383 Subsection 244(7)**

Omit "the prescribed time”, substitute “3 months”.

**384 At the end of section 244**

Add:

(14) If the Court makes an order that the estate be administered under this Part, the creditor who obtained the order must give a copy of the order to the Official Receiver.

**385 Subsection 245(1)**

Omit “or under the repealed Act”.

**386 At the end of section 245**

Add:

(3) If the Court makes an order that the estate be administered under this Part, the creditor who obtained the order must give a copy of the order to the Official Receiver.

**387 Paragraph 246(1)(a)**

Omit “and file in the office of the Registrar for the District in which the order was made”.

Note: The heading to section 246 is altered by omitting “**Filing of statement**" and substituting "**Statement**”.

**388 Paragraph 246(1)(b)**

Repeal the paragraph, substitute:

(b) give a copy of the statement to the Official Receiver.

**389 At the end of subsection 246(1)**

Add:

Penalty: 5 penalty units.

**390 Subsections 246(2) and (3)**

Repeal the subsections.

**391 Subsection 246(5)**

Omit “prescribed fee”, substitute “fee prescribed by the regulations”.

**392 At the end of section 246**

Add:

(6) If the trustee of the estate is a registered trustee, the Official Receiver must give the trustee a copy of the order and a copy of the statement of affairs.

**393 Subsection 248(1)**

Omit sections 64 to 68 (inclusive)”, substitute “Division 5 of Part IV”.

**394 Subsection 248(1)**

Omit “138H”, substitute “139H”.

**395 Subsection 248(1)**

Omit “the prescribed modifications (if any)”, substitute “any modifications prescribed by the regulations”.

**396 Subsection 248(3)**

Omit “rules”, substitute “regulations”.

**397 Subsections 252A(2), (4) and (5)**

Omit “Registrar” (wherever occurring), substitute “Official Receiver”.

**398 Subsection 252A(3)**

Repeal the subsection.

**399 Section 253C**

Repeal the section, substitute:

253C Notice about stay under proclaimed law

The relevant authority may give to the Official Receiver a written notice that a stay under a proclaimed law applies to a person specified in the notice.

**400 Section 253D**

Repeal the section.

**401 Subsection 253E(1)**

Omit “Registrar”, substitute “Official Receiver”.

**402 Section 253F**

Repeal the section, substitute:

253F Relevant authority may be heard on application relating to debtor’s petition

(1) The relevant authority may appear and be heard at the hearing of:

(a) an application under subsection 55(6A) for leave to present a petition against a debtor in relation to whom a stay applies under a proclaimed law; or

(b) an application under subsection 56A(7) by a person to whom a stay under a proclaimed law applies for the Court’s permission to join in presenting a petition against a partnership; or

(c) an application under subsection 57(8) by a person in relation to whom a stay under a proclaimed law applies for leave to join in presenting a petition under section 57.

(2) The relevant authority may appear in person or be represented by a barrister or solicitor.

**403 Paragraph 254(1)(b)**

Omit whether the deed was executed under this Act or the repealed Act”.

**404 Paragraph 234(1)(c)**

Omit whether the composition or scheme was accepted or approved under this Act or the repealed Act”.

**405 Paragraph 254(1)(d)**

Omit “Part X of the repealed Act or”.

**406 Subsection 254(4)**

Omit “Minister” (wherever occurring), substitute “Official Receiver”.

**407 Section 255**

Repeal the section, substitute:

255 Record of proceedings or evidence

(1) A transcript or electronic or magnetic recording that purports to be a record of proceedings under section 77C or 81, or of proceedings before a court, is to be taken to be a record of that kind, unless the contrary is proved.

(2) The transcript or recording is admissible as evidence of the matters described by a person whose words are recorded in the transcript

or recording, unless the Court, or a court in which the transcript is sought to be introduced, makes an order to the contrary.

(3) The cost of preparing a transcript or recording is an expense of administration of the estate of the bankrupt or debtor to which the matters recorded relate.

**408 Sections 259 and 260**

Repeal the sections.

**409 Subsection 262(1)**

Omit “a Registrar,”.

**410 Subsection 263(3) (definition of *composition*)**

Omit “includes a composition under Division 5 of Part IV of the repealed Act or under Part XI of the repealed Act but”.

**411 Subsection 263(3) (definition of *deceased person*)**

Omit “or Part X of the repealed Act”.

**412 Subsection 263(3) (definition of *deed of arrangement*)**

Omit “includes a deed of arrangement under Part XII of the repealed Act but”.

**413 Subsection 263(3) (definition of *deed of assignment*)**

Repeal the definition.

**414 Subsection 263(3) (definition of *scheme of arrangement*)**

Omit “includes a scheme of arrangement under Division 5 of Part IV of the repealed Act or under Part XI of the repealed Act but”.

**415 Section 263C**

Repeal the section, substitute:

263C False claims about a creditor’s entitlement to vote

(1) A creditor must not give to the trustee a section 64D statement knowing or reckless that the statement is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

(2) In this section:

**give** includes cause to be given.

**section 64D statement** means a statement that is:

(a) described in section 64D, as that section applies of its own force, or as it is applied by another provision of this Act; and

(b) given to the trustee at or before a meeting called for the purposes of Part IV, IX, X or XI.

**trustee** means:

(a) a trustee in a bankruptcy; or

(b) a trustee of a composition or scheme of arrangement under Division 6 of Part IV; or

(c) the Official Trustee when the Official Trustee has accepted for processing a debt agreement proposal; or

(d) a controlling trustee as defined in Part X; or

(e) a trustee of a deed of arrangement, a deed of assignment or a composition under Part X; or

(f) a trustee of an estate being administered under Part XI.

**416 Paragraph 264(a)**

Omit “or Deputy Registrar".

**417 Paragraph 267(1)(b)**

Omit “56(1)”, substitute “56B(1)”.

**418 Paragraph 267(1)(c)**

Omit “56(13)(a) or (b)”, substitute “56F(l)(a) or (b)".

**419 At the end of subsection 267(1)**

Add:

; or (e) is given to the Official Trustee under section 185D with a debt agreement proposal; or

(f) is given to the controlling trustee under section 188A.

**420 Subsections 273(6) and (7)**

Repeal the subsections.

**421 Part XV**

Repeal the Part.

**422 After section 302A**

Insert:

302B Certain provisions in trust deeds void

A provision of a trust deed is void to the extent that it has the effect of:

(a) cancelling, reducing or qualifying a beneficiary’s interest under the trust; or

(b) allowing the trustee to exercise a discretion to the detriment of a beneficiary’s interest;

if the beneficiary becomes a bankrupt, commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement under this Act.

**423 Paragraph 303(a)**

Omit “or to the Registrar”.

Note: The heading to section 303 is altered by omitting "**or Registrar**".

**424 Subsection 304A(1) (paragraph (f) of the definition of *indexable amount*)**

Omit “rules”, substitute “regulations”.

**425 Subsection 304A(1) (paragraph (i) of the definition of *indexable amount*)**

Repeal the paragraph, substitute:

(i) the amount of $1,109 referred to in subsection 161B(1); or

**426 Subsection 305(1)**

Omit “or Part X of the repealed Act”.

**427 Subsection 306B(1)**

Omit “filed”, substitute “given to a person”.

**428 Subsection 306B(1)**

Omit “19AA(2), 150(3), 154A(3)or 189A(1)”, substitute “155A(6), 155F(2) or 1551(4) or section 189A”.

**429 Subsection 309(1)**

Repeal the subsection.

**430 Subsection 309(1A)**

Omit all the words after “sent”, substitute “to the trustee at any of those addresses”.

**431 Section 310**

Repeal the section.

**432 Paragraph 311(1)(b)**

Omit “, whether the deed was executed under this Act or the repealed Act”.

**433 Paragraph 311(1)(c)**

Omit whether the composition or scheme was accepted or approved under this Act or the repealed Act”.

**434 Paragraph 311(1)(d)**

Omit “Part X of the repealed Act or”.

**435 Paragraph 311(2)(a)**

Omit “or the repealed Act”.

**436 Section 312**

Repeal the section, substitute:

312 Return or destruction of old accounts and records

(1) During the administration of the estate of a bankrupt or debtor, the trustee may destroy or give back to the bankrupt or debtor any books that:

(a) the bankrupt or debtor gave to any trustee of the estate; and

(b) the trustee considers will not help the administration.

(2) After the end of the administration of the estate of a bankrupt or debtor, the last trustee to administer the estate:

(a) may give back to the bankrupt or debtor any books that the bankrupt or debtor gave to any trustee of the estate; and

(b) may destroy any other books relating to the estate in accordance with subsection (3) or (4).

(3) The trustee may destroy books relating to the estate at any time at least 6 years after the end of the administration if, by the end of the administration:

(a) no property had been realised; and

(b) no dividends had been distributed to creditors; and

(c) the trustee considered that there was no chance of realising any property or distributing dividends.

(4) The trustee may destroy books relating to the estate at any time at least 15 years after the end of the administration if, by the end of the administration:

(a) property had been realised; and

(b) the trustee had received some remuneration.

(5) A trustee may destroy books only in accordance with this section.

(6) This section does not limit a trustee’s power to give back to a bankrupt or debtor books that the bankrupt or debtor gave to any trustee of the estate of the bankrupt or debtor.

(7) This section does not limit a trustee’s power to require a bankrupt or debtor to give books to the trustee (even if the books have previously been given to a trustee of the estate).

(8) In this section:

end of the administrationmeans:

(a) in the case of a bankruptcy—the day on which the bankrupt is discharged or the bankruptcy is annulled, whichever happens first; or

(b) in the case of an administration under Part X—the day 3 years after the day on which a deed or composition made by the debtor for the administration of the debtor’s estate took effect; or

(c) in the case of an administration under Part XI—the day 3 years after the day on which the administration is taken to have commenced under section 247A.

**437 Subsections 313(1), (2) and (4)**

Omit “the Registrars,”.

**438 Subsection 313(5)**

Omit “the Registrar,”.

Note: The heading to section 313 is altered by omitting “**the Registrars,**”.

**439 Sections 314 and 315**

Repeal the sections, substitute:

315 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may:

(a) provide for the establishment, maintenance, correction and inspection of the National Personal Insolvency Index; and

(b) specify matters that must be, or may be, entered in the Index; and

(c) provide for the obtaining of extracts of material entered in the Index; and

(d) provide for the use of extracts of material entered in the Index in evidence in proceedings under this Act and other laws of the Commonwealth or of a State or Territory; and

(e) provide for immunity from actions for defamation arising out of publication of material in the Index or publication of extracts of material from the Index; and

(f) provide for information and documents to be given to persons for entry in the Index; and

(g) provide for the means of service of documents; and

(h) provide for the publication of notice of specified events; and

(i) provide for the manner in which committees referred to in Division 1 of Part VIII are to perform their functions, including:

(i) the convening of meetings of committees; and

(ii) the number of members of a committee who form a quorum; and

(iii) disclosure of interest in a matter before a committee; and

(iv) the manner in which questions are to be decided by the committee; and

(j) provide for the charging and payment of fees in relation to:

(i) proceedings under this Act; and

(ii) inspection of material entered in the Index; and

(iii) obtaining extracts of material entered in the Index; and

(iv) inspection and copying of documents given to Official Receivers; and

(k) prescribe penalties not exceeding 10 penalty units for offences against the regulations.

**440 Schedule 2**

Repeal the Schedule.

**Part 2—Application and transitional provisions relating to amendments of the Bankruptcy Act 1966**

**Division 1—Provisions relating to particular amending items**

**441 Items 2 to 5 and 8, 9, 11 and 16**

Application

(1) The new definitions inserted or substituted by items 2 to 5 and 8, 9, 11 and 16 apply to all provisions of the Bankruptcy Act 1966 applying to bankruptcies and other insolvency administrations that are current on or after the commencement of this Schedule.

Transitional—item 11

(2) Despite the substitution of the definition of **Registrar** by item 11:

(a) the Court may still make orders under paragraphs 30(5)(c) and (d) of the Bankruptcy Act 1966 in relation to a failure to comply with an order, direction or requirement that was given or made by a Registrar in Bankruptcy before this Schedule commenced; and

(b) the Court may still extend or abridge, under paragraph 33(1)(c) of the Bankruptcy Act 1966,a time that was fixed by a Registrar in Bankruptcy before this Schedule commenced; and

(c) the Court or a magistrate may issue a warrant under subsection 264B(1) of the Bankruptcy Act 1966 for the arrest of a person who failed to attend before, or appear and report to, the Registrar in Bankruptcy before this Schedule commenced.

**442 Items 46 and 52**

The amendments made by the following items apply in relation to authorities given under section 188 of the Bankruptcy Act 1966 after this Schedule commences:

(a) item 46;

(b) item 52, so far as it substitutes a new paragraph 12(2)(b) of the Bankruptcy Act 1966.

**443 Items 89 and 90**

The amendments made by items 89 and 90 do not apply in relation to proceedings in bankruptcy that were begun in the Supreme Court of a State or of the Northern Territory before this Schedule commenced.

**444 Item 91**

The amendment made by item 91 does not apply in relation to proceedings in bankruptcy that were begun in the Supreme Court of a State or of the Northern Territory before this Schedule commenced.

**445 Item 101**

The amendment made by item 101 does not apply in relation to appeals from any proceedings continued under item 444 in the Supreme Court of a State or of the Northern Territory after this Schedule commenced.

**446 Items 108 and 109**

The amendments made by items 108 and 109 apply in relation to all acts of bankruptcy committed on or after the commencement of this Schedule.

**447 Item 120**

The amendment made by item 120:

(a) applies to the presentation of creditor’s petitions after this Schedule commences; and

(b) does not prevent the continuation of proceedings begun before this Schedule commenced by the presentation of a creditor’s petition against a debtor who owed the petitioning creditors one or more debts totalling at least $1,500 but less than $2,000.

**448 Items 144 to 150**

The amendments made by items 144 to 150 apply to:

(a) debtor’s petitions that were presented, but not accepted or rejected, before this Schedule commenced; and

(b) debtor’s petitions that are presented after this Schedule commences.

**449 Item 151**

The new sections substituted by item 151 apply to:

(a) debtor’s petitions that were presented, but not accepted or rejected, before this Schedule commenced; and

(b) debtor’s petitions that are presented after this Schedule commences.

**450 Items 152 to 158**

The amendments made by items 152 to 158 apply to:

(a) debtor’s petitions that were presented, but not accepted or rejected, before this Schedule commenced; and

(b) debtor’s petitions that are presented after this Schedule commences.

**451 Item 161**

The amendment made by item 161 applies in relation to a meeting held after this Schedule commences, except a meeting:

(a) notice of which was given before the commencement of this Schedule; or

(b) continuing a meeting described in paragraph (a) that was adjourned.

**452 Item 165**

The amendment made by item 165 applies in relation to a meeting held after this Schedule commences, except a meeting:

(a) notice of which was given before the commencement of this Schedule; or

(b) continuing a meeting described in paragraph (a) that was adjourned.

**453 Item 182**

The new subsection substituted by item 182 applies to debts provable in a bankruptcy that is current on or after the commencement of this Schedule, regardless of when the maintenance agreement or maintenance order under which the debt arose was made.

**454 Item 193**

The amendment made by item 193 applies to bankruptcies for which the date of the bankruptcy is on or after the commencement of this Schedule.

**455 Item 198**

The amendment made by item 198 applies to bankruptcies for which the date of the bankruptcy is on or after the commencement of this Schedule.

**456 Items 199 to 202**

The amendments made by items 199 to 202 apply in relation to bankruptcies current on or after the commencement of this Schedule. However, the amendments:

(a) do not affect any distribution of a dividend before this Schedule commenced; and

(b) do not make a trustee liable for any act or omission of the trustee that occurred before this Schedule commenced.

**457 Item 208**

The new sections inserted by item 208 apply to bankruptcies for which the date of the bankruptcy is on or after the commencement of this Schedule.

**458 Items 209 to 221**

The amendments made by items 209 to 221 apply to all bankruptcies that are current on or after the day on which this Schedule commences, but do not affect any distributions made before this Schedule commenced.

**459 Item 222**

The amendment made by item 222 applies in relation to debtors who are bankrupt when this Schedule commences or who become bankrupt after this Schedule commences. However, the amendment:

(a) does not affect any distribution of a dividend before this Schedule commenced; and

(b) does not make a trustee liable for any act or omission of the trustee that occurred before this Schedule commenced.

**460 Items 233 to 241**

The amendments made by items 233 to 241 apply to all bankruptcies current on or after the commencement f this Schedule.

**461 Items 242 to 246**

The amendments made by items 242 to 246 apply to all bankruptcies current on or after the commencement of this Schedule.

**462 Item 250**

The new definition of **contribution assessment period** substituted by item 250 applies to bankruptcies for which the date of the bankruptcy is on or after the commencement of this Schedule.

**463 Items 252 to 254**

The amendments made by items 252 to 254 apply in relation to all bankruptcies current on or after the commencement of this Schedule. However, the amendments do not affect any assessment made before this Schedule commenced.

**464 Items 256 to 258**

The amendments made by items 256 to 258 apply in relation to each bankrupt for whom the date of the bankruptcy was on or after the commencement of this Schedule.

**465 Item 259**

The amendment made by item 259 applies to all bankruptcies current on or after the commencement of this Schedule.

**466 Item 277**

The amendment made by item 277 applies to statements given to the Official Receiver after this Schedule commences.

**467 Item 282**

Despite the amendment made by item 282, the Court may make an order annulling a bankruptcy that resulted from the Registrar in Bankruptcy accepting a debtor’s petition.

**468 Item 283**

The new sections inserted by item 283 apply in relation to:

(a) applications made after this Schedule commences; and

(b) persons who were registered trustees immediately before this Schedule commenced; and

(c) persons who become registered as trustees after this Schedule commences.

**469 Items 293 and 425**

The amendments made by items 293 and 425 apply to trustees who consent to act as trustee after the commencement of this Schedule.

**470 Items 303 to 308**

The amendments made by items 303 to 308 apply to all bankruptcies current on or after the commencement of this Schedule.

**471 Items 315 and 316**

The amendments made by items 315 and 316 apply to a person registered as a trustee on or after the day on which this Schedule commences.

**472 Items 321, 323 and 324**

The amendments made by items 321, 323 and 324 apply in relation to authorities given under section 188 after this Schedule commences.

**473 Item 332**

The section inserted by item 332 applies in relation to authorities signed by debtors on or after the day on which this Schedule commences.

**474 Item 333**

The amendment made by item 333 applies in relation to an authority under section 188 of the Bankruptcy Act 1966 that is current on or after the day on which this Schedule commences.

**475 Item 334**

The new sections inserted by item 334 apply in relation to an authority under section 188 of the Bankruptcy Act 1966 that is current on or after the day on which this Schedule commences.

**476 Item 344**

The new section substituted by item 344 applies in relation to a meeting called under an authority under section 188 of the Bankruptcy Act 1966 that is current on or after the day on which this Schedule commences.

**477 Items 345 and 346**

The amendments made by items 345 and 346 apply in relation to a meeting held after this Schedule commences, except a meeting:

(a) notice of which was given before the commencement of this Schedule; or

(b) continuing a meeting described in paragraph (a) that was adjourned.

**478 Item 347**

The amendment made by item 347 applies in relation to a meeting held after this Schedule commences, except a meeting:

(a) notice of which was given before the commencement of this Schedule; or

(b) Continuing a meeting described in paragraph (a) that was adjourned.

**479 Items 348 and 349**

The amendments made by items 348 and 349 apply in relation to resolutions and special resolutions at a meeting held after this Schedule commences, except a meeting:

(a) notice of which was given before the commencement of this Schedule; or

(b) continuing a meeting described in paragraph (a) that was adjourned.

**480 Item 356**

The new section substituted by item 356 applies in relation to all persons who are controlling trustees on or after the commencement of this Schedule.

**481 Item 360**

The amendment made by item 360 applies in relation to resolutions at a meeting held after this Schedule commences, except a meeting:

(a) notice of which was given before the commencement of this Schedule; or

(b) continuing a meeting described in paragraph (a) that was adjourned.

**482 Items 368 and 369**

The amendments made by items 368 and 369 do not apply in relation to a special resolution passed at a meeting:

(a) called before this Schedule commences; or

(b) held after this section commences as a continuation of a meeting called before this Schedule commences.

**483 Items 373 and 374**

The amendments made by items 373 and 374 apply in relation to a meeting held after this Schedule commences, except a meeting:

(a) notice of which was given before the commencement of this Schedule; or

(b) continuing a meeting described in paragraph (a) that was adjourned.

**484 Item 375**

The amendment made by item 375 applies in relation to a meeting held after this Schedule commences, except a meeting:

(a) notice of which was given before the commencement of this Schedule; or

(b) continuing a meeting described in paragraph (a) that was adjourned.

**485 Item 382**

Despite the amendment made by item 382, proceedings begun before the commencement of this Schedule by presentation of a petition to the Court in relation to one or more debts totalling at least $1,500 but less than $2,000 may continue.

**486 Item 402**

The new section substituted by item 402 applies in relation to debtor’s petitions that:

(a) are presented after this Schedule commences; or

(b) were presented, but not dealt with by the Registrar in Bankruptcy, before this Schedule commenced.

**487 Item 415**

The new section substituted by item 415 applies only in relation to section 64D statements given on or after the day this Schedule commences.

**488 Item 417**

The amendment made by item 417 applies in relation to debtor’s petitions that are presented after this Schedule commences.

**489 Item 418**

The amendment made by item 418 applies to statements given to the Official Receiver in relation to debtor’s petitions that:

(a) are presented after this Schedule commences; or

(b) were presented, but not dealt with by the Registrar in Bankruptcy, before this Schedule commenced.

**490 Item 422**

The new section inserted by item 422 applies to trust deeds regardless of when they were made.

**491 Items 427 and 428**

Despite the amendments made by items 427 and 428, an action, suit or proceeding does not lie in respect of a statement made in good faith in a report referred to in subsection 19AA(2), 150(3), 154A(3) or 189A(1) of the Bankruptcy Act 1966 as in force before this Schedule commenced.

**Division 2—General provisions**

**492 Bankruptcy Districts**

An area that was a Bankruptcy District because of a proclamation in force immediately before the commencement of this Schedule continues to be a Bankruptcy District as if it had been declared by the Inspector-General by notice in the Gazette.

**493 Orders made by State and Northern Territory Supreme** **Courts**

The Bankruptcy Act 1966 applies in relation to an order made at any time by the Supreme Court of a State or of the Northern Territory exercising its jurisdiction in bankruptcy as if the order had been made by the Federal Court of Australia.

**494 Examinations being conducted by Registrar in** **Bankruptcy**

An examination that was being conducted by a Registrar in Bankruptcy under section 81 of the Bankruptcy Act 1966 before this Schedule commenced may be continued by the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Federal Court after this Schedule commences, as if he or she had been conducting the examination before this Schedule commenced.

**495 Failure to comply with bankruptcy notice issued by** **Registrar in Bankruptcy**

Failure to comply with a bankruptcy notice issued by a Registrar in Bankruptcy before this Schedule commenced is an act of bankruptcy, even if one or both of the following conditions are met:

(a) the time fixed by the Registrar in Bankruptcy ends after the commencement of this Schedule;

(b) the bankruptcy notice related to a debt of less than $2,000.

**496 Debtor’s petition presented to Registrar in Bankruptcy**

The Official Receiver must deal with a debtor’s petition that was presented to a Registrar in Bankruptcy before this Schedule commenced, but which the Registrar had not accepted or rejected. In particular, if the Registrar had referred the petition to the Court, but had not received or had not acted on the Court’s direction, the Official Receiver must act on the Court’s direction.

**497 Registration of trustees**

Registration of trustees registered previously

(1) A person who was a registered trustee immediately before this Schedule commenced is taken to be registered as a trustee under section 155C of the Bankruptcy Act 1966, without needing to pay a registration fee.

No refund of fees paid previously

(2) A person who was registered as a trustee immediately before this Schedule commenced is not entitled to the refund of any fees paid in relation to that registration.

Applicants for registration

(3) If, before the commencement of this Schedule:

(a) a person had applied:

(i) for a report stating the Official Receiver’s opinion about the applicant; or

(ii) to be registered as a trustee; and

(b) the Court had not decided whether to direct that the applicant be registered or to refuse the application;

then:

(c) section 154A, and subsections 155(2), (3), (3A), (3B) and (8),of the Bankruptcy Act 1966 as in force immediately before the commencement of this Schedule apply in relation to the application; and

(d) if the Court directs that the applicant be registered, the Inspector-General must register the applicant under section 155C of the Bankruptcy Act 1966 without payment of the registration fee indicated in that section.

**498 Debts to which** **debt agreement proposal may relate**

A debt agreement proposal can be made under Part IX of the Bankruptcy Act 1966 whether the debts to which the proposal relates were incurred before or after this Schedule commenced.

**499 Remuneration of controlling trustee**

A person who was a controlling trustee immediately before the commencement of this Schedule is to continue to be remunerated under the arrangements existing immediately before that commencement.

**500 Orders under subsection 254(3)**

If, before this Schedule commenced, the Minister received an office copy of an order under subsection 254(3) of the Bankruptcy Act 1966 but had not paid the amount specified in the order to the person in whose favour the order was made, the Official Receiver must pay the person.

**Schedule 2—Gender neutral language**

***Bankruptcy Act 1966***

**1 The whole of the Act (references to “he”)**

Insert ‘‘or she" after "he” (wherever occurring, except where already followed by “or she”).

**2 The whole of the Act (references to “him”)**

Insert “or her" after “him" (wherever occurring, except where already followed by "or her”).

**3 The whole of the Act (references to “himself”)**

Insert “or herself’ after “himself’ (wherever occurring, except where already followed by “or herself’).

**4 The whole of the Act (references to “his”)**

Insert “or her" after “his” (wherever occurring, except where already followed by “or her”).

Note: The heading to section 107 is altered by inserting “**or her**” after “**his**”

[Minister’s second reading speech made in—

House of Representatives on 26 June 1996 Senate on 8 October 1996]