



# Bankruptcy Act 1966

## Act No. 33 of 1966 as amended

This compilation was prepared on 1 July 2006  
taking into account amendments up to Act No. 34 of 2006

**Volume 1** includes    Table of Contents  
                                 Sections 1–154

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
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# An Act relating to Bankruptcy

## Part I—Preliminary

### 1 Short title [see Note 1]

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

### 2 Commencement [see Note 1]

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

### 4 Repeal

- (1) The Acts specified in Schedule 1 are repealed.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stamp to which those provisions applied immediately before the commencement of this Act; as if those Acts had not been repealed.

## Part IA—Interpretation

### 5 Interpretation

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

**ADI** (authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (c) any other bank approved in writing for the purposes of this definition:
  - (i) by the Treasurer; or
  - (ii) by a person authorised in writing by the Treasurer to give approvals for the purposes of this definition.

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

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

**affidavit** includes affirmation and statutory declaration.

**approved form** means an electronic or other form approved by the Inspector-General.

**associated entity**, in relation to a person, means:

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

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

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



- (b) supporting the Official Receivers in the performance of their functions, or in the exercise of their powers, under this Act.

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

**bankrupt** means a person:

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

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

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

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

**child**, in relation to a person, includes an adopted child, a step-child, or an ex-nuptial child, of the person.

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

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

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

**company officer**, in relation to a corporation, includes:

- (a) a director or secretary of the corporation;  
(b) a receiver and manager of property of the corporation appointed under a power contained in an instrument;

Section 5

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- (ba) an administrator, within the meaning of the *Corporations Act 2001*, of the corporation;
- (bb) an administrator of a deed of company arrangement executed by the corporation under Part 5.3A of that Act;
- (c) an official manager or deputy official manager of the corporation;
- (d) a liquidator of the corporation appointed in a voluntary winding up of the corporation; and
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons;

but does not include:

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

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

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

**corporation** includes any body corporate.

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

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

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

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

**debt** includes liability.

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

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

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

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

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

***de facto spouse***, in relation to a person, means an individual of the opposite sex to that person who is living with that person as his or her spouse on a *bona fide* domestic basis although not legally married to that person.

***director***, in relation to a corporation, includes:

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

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

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

**end** means:

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

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

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

**entity** means a natural person, company, partnership or trust.

**examinable affairs**, in relation to a person, means:

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

**examinable period** has the meaning given by section 139CA.

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

- (a) if the relevant person is a debtor and property of the debtor is known or suspected to be in the possession of a person—that person;

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

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

***forfeiture order*** means a forfeiture order made under a proceeds of crime law.

***frozen debt*** means a debt that:

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

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

***goods*** includes all chattels personal.

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

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

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

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

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

***magistrate*** means:

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

Note: A Federal Magistrate is not covered by this definition.

***maintenance agreement*** means:

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

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

***maintenance order*** means:

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

***modifications*** includes additions, omissions and substitutions.

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

**net value**, in relation to property, means:

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

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

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

**oath** includes affirmation and statutory declaration.

**offence against this Act** includes an offence against section 137.1 or 137.2 of the *Criminal Code*, being an offence that relates to this Act.

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

**Official Receiver** includes a person acting as an Official Receiver.

**Official Trustee** means the Official Trustee in Bankruptcy.

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

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

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***parent***, in relation to a person, means a person of whom the first-mentioned person is a child.

***pecuniary penalty order*** means:

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

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

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

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

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

***petition*** means a petition under this Act.

***premises*** includes:

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

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

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

***proceeding*** means proceeding under this Act.

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

- (a) the proceeds of selling property under the enforcement process;



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

***proceeds of crime law*** means:

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

***proceeds of crime order*** means:

- (a) a restraining order; or
- (b) a forfeiture order; or
- (c) a pecuniary penalty order.

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

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

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

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

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

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

***Registrar*** means:

- (a) the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Federal Court; or
- (b) a Registrar of the Federal Magistrates Court.

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

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

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

**relative**, in relation to a person, means:

- (a) the spouse of the person; or
- (b) a parent or remoter lineal ancestor of the person or of the person's spouse; or
- (c) a child or remoter lineal descendant of the person or of the person's spouse; or
- (d) a brother or sister of the person or of the person's spouse; or
- (e) an uncle, aunt, nephew or niece of the person or of the person's spouse; or
- (f) the spouse of a person specified in paragraph (b), (c), (d) or (e).

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

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

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

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

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

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

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

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

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

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

- (a) the property and assets of the entity:
  - (i) whether held alone or jointly with another person or other persons; and
  - (ii) whether or not held as agent, bailee or trustee;
- (b) the liabilities of the entity:
  - (i) whether actual or contingent;
  - (ii) whether owed alone or jointly with another person or other persons; and
  - (iii) whether or not owed as trustee.

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

- (a) the period of 7 days beginning on that day ends;
  - (b) a creditor's petition or a debtor's petition is presented against the debtor;
  - (c) the debtor signs an authority under section 188; or
  - (d) a sequestration order is made against the debtor;
- whichever happens first.

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

***Territory***, except in the expression “Territory of the Commonwealth”, means the Australian Capital Territory or the Northern Territory of Australia.

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

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

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

***the Family Court*** means the Family Court of Australia.

***the Federal Court*** means the Federal Court of Australia.

***the Official Receiver:***

- (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.

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

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

(ii) any other property of the bankrupt.

**the trustee** means:

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

**this Act** includes the regulations.

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

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- (a) in relation to an estate or a personal insolvency agreement in respect of which there are 2 or more joint trustees—be read as a reference to all the trustees; or
  - (b) in relation to an estate or a personal insolvency agreement in respect of which there are 2 or more joint and several trustees—be read as a reference to all of the trustees or any one or more of the trustees.
- (5) To avoid doubt, a Federal Magistrate is taken to be a Judge of a Court having jurisdiction under this Act.

**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.

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**Place of origin of bankruptcy and insolvency matters**

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<b>Matter</b>	<b>Place of origin</b>
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
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

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- (2) For the purposes of item 6 of the table, an authority under section 188 relates to a personal insolvency agreement if a special resolution relating to the agreement 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 personal insolvency agreement.

### **5A Acting in accordance with a person's directions or instructions**

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

### **5B Associated entities: companies**

- (1) For the purposes of this Act, a company is associated with a person if the person:
- (a) is a company officer of the company or otherwise is concerned, or takes part, in the company's management; or
  - (b) is able to control, or to influence materially, the company's activities or internal affairs; or
  - (c) is a member of the company; or
  - (d) is in a position to cast, or to control the casting of, a vote at a general meeting of the company; or
  - (e) has power to dispose of, or to exercise control over the disposal of, a share in the company; or

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- (f) is financially interested in the company's success or failure or apparent success or failure; or
  - (g) is owed a debt by the company; or
  - (h) is employed, or is engaged under a contract for services, by the company; or
  - (j) acts as agent for the company in any transaction or dealing; or
  - (k) gives professional advice to the company.
- (2) For the purposes of this Act, a company is also associated with a person if the company:
- (a) holds property jointly with the person; or
  - (b) is dealing with the person's property as an agent for the person; or
  - (c) is a trustee of a trust under which the person is capable of benefiting; or
  - (d) acquires or disposes of property as a result of dealing with the person.
- (3) The circumstances set out in subsections (1) and (2) are the only circumstances in which a company is associated with a person for the purposes of this Act.

**5C Associated entities: natural persons**

- (1) For the purposes of this Act, a natural person (in this section called the *associate*) is associated with another person if the other person:
- (a) holds property jointly with the associate; or
  - (b) is a trustee of a trust under which the associate is capable of benefiting; or
  - (ba) can benefit under a trust of which the associate is a trustee; or
  - (c) is employed, or is engaged under a contract for services, by the associate; or
  - (d) acts as agent for the associate in any transaction or dealing; or
  - (da) is a principal for whom the associate acts as an agent; or
  - (e) is an attorney of the associate under a power of attorney; or
  - (f) has appointed the associate as the other person's attorney under a power of attorney; or
  - (g) gives professional advice to the associate; or



- (h) is given professional advice by the associate.
- (2) A natural person (the *associate*) is also associated with another person if the associate has acquired or disposed of property as a result of dealing with the other person.
- (3) The circumstances set out in subsections (1) and (2) are the only circumstances in which a natural person is associated with another person for the purposes of this Act.

**5D Associated entities: partnerships**

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

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

**5E Associated entities: trusts**

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

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

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- (g) is a creditor of the trustee of the trust;
- (h) is employed, or is engaged under a contract for services, by the trustee of the trust;
- (j) acts as agent for the trustee of the trust in any transaction or dealing; or
- (k) gives professional advice to the trustee of the trust.

**5F Controlling an entity in relation to a matter**

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

**5G Financial affairs of a company**

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

- (a) the company's promotion, formation, membership, control, operations and state of affairs;
- (b) the management and proceedings of the company;
- (c) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the company, or to or in relation to the company or its business or property, at a time when:
  - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the company;
  - (ia) the company is under administration within the meaning of the *Corporations Act 2001*;
  - (ib) a deed of company arrangement that the company executed under Part 5.3A of that Act has not yet terminated;
  - (ii) the company is under official management;
  - (iii) a compromise or arrangement made between the company and another person or other persons is being administered; or
  - (iv) the company is being wound up;and, without limiting the generality of the foregoing, any conduct of such a receiver or such a receiver and manager, of an administrator (within the meaning of that Act) of the company, of an administrator of such a deed, of any person appointed as the official manager or deputy official manager of the company, of any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the company;
- (d) the ownership of shares in, and debentures of, the company;
- (e) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the company or to dispose of, or to exercise control over the disposal of, such shares;
- (f) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, or debentures of, the company; and
- (g) matters concerned with ascertaining the persons with whom the company is or has been associated.

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**5H Financial affairs of a natural person**

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

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

**5J Financial affairs of a partnership**

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

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

- (d) matters concerned with ascertaining the persons with whom the partnership is or has been associated.

### **5K Financial affairs of a trust**

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

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

### **6 Meaning of intent to defraud creditors**

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

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**6A Statement of affairs for purposes other than Part XI**

- (1) This section has effect for the purposes of the following provisions of this Act, namely, subsections 54(1) and (2), paragraphs 55(2)(b), 56B(3)(a) and (b), 56F(1)(a) and (b), 57(2)(a) and (b) and sections 185D and Part X.
- (2) A reference in a provision of this Act referred to in subsection (1) to a statement of affairs is a reference to a statement that:
  - (a) is in an approved form; and
  - (b) includes a statement identifying any creditor who is a related entity of the debtor or bankrupt; and
  - (c) contains a declaration that, so far as the debtor or bankrupt is aware, the particulars set out in the statement are correct.
- (3) If the trustee has reasonable grounds to suspect that:
  - (a) any particulars set out in a statement of affairs that was filed by a person are false or misleading in a material respect; or
  - (b) any material particulars have been omitted from that statement;the trustee may, by written notice given to the person, require the person, within a specified period of not less than 14 days, to provide such information or to produce such books as are specified in the notice for the purpose of enabling the trustee to decide whether the particulars set out in the statement are correct.
- (4) For the purposes of the application of subsection (3) to a statement of affairs that is required to be given under Part X, a reference in that subsection to the *trustee* is a reference to whichever of the following is applicable:
  - (a) the controlling trustee within the meaning of that Part;
  - (b) the trustee of the personal insolvency agreement concerned.

**6B Provision of statement of affairs under Part XI and statement of administration of estate of deceased person**

- (2) A reference in paragraph 246(1)(a) or subsection 247(1) to a statement of a deceased person's affairs and of administration of the deceased person's estate is a reference to a statement, in an approved form, of those affairs and of that administration.

- (3) If the trustee administering the estate of a deceased person under Part XI has reasonable grounds to suspect that:
- (a) any particulars set out in a statement of affairs that was filed by a person under subsection 246(1) or 247(1) are false or misleading in a material respect; or
  - (b) any material particulars have been omitted from that statement;
- the trustee may give the person a written notice requiring the person to provide specified information or books within a specified period of at least 14 days to enable the trustee to decide whether the particulars set out in the statement are correct.

### **6C Interpretive provisions relating to proceeds of crime orders**

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

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

#### *Satisfaction of pecuniary penalty orders*

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

#### *When applications for proceeds of crime orders are finally determined*

- (3) For the purposes of this Act, an application for a proceeds of crime order is taken to be finally determined when:
- (a) the application is withdrawn; or

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- (b) if the application is successful—the resulting proceeds of crime order comes into force; or
- (c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.



## **Part IB—Application of Act**

### **7 Application of Act**

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

### **7A Application of the *Criminal Code***

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

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

### **8 Act to bind the Crown**

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

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**9 Laws of States and Territories not affected by Act**

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

## **Part II—Administration**

### **Division 1—General**

#### **10 Delegation by Minister or Secretary**

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

#### **11 Inspector-General in Bankruptcy**

- (1) For the purposes of this Act, there shall be an Inspector-General in Bankruptcy.
- (2) The Inspector-General has:
  - (a) the general administration of this Act; and

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

**12 Functions of Inspector-General**

- (1) The Inspector-General:
  - (a) shall make such inquiries and investigations as the Minister directs; and
  - (b) may make such inquiries and investigations as the Inspector-General thinks fit with respect to the administration of, or the conduct of a trustee (including a controlling trustee) in relation to:
    - (i) a bankruptcy; or
    - (ii) a composition or scheme of arrangement under Division 6 of Part IV; or
    - (iii) a personal insolvency agreement; or
    - (iv) an administration under Part XI; or
    - (v) property in relation to which a direction has been given under subsection 50(1); or
    - (vi) property in relation to which the trustee is the controlling trustee under an authority given under section 188; and
  - (ba) may make such inquiries and investigations as the Inspector-General thinks fit with respect to so much of the conduct and examinable affairs of:
    - (i) a bankrupt; or
    - (ii) a bankrupt or debtor under a composition or scheme of arrangement under Division 6 of Part IV; or
    - (ia) a debtor under a debt agreement proposal or debt agreement under Part IX; or
    - (ib) a debtor whose property is subject to control under Division 2 of Part X; or

- (iii) a debtor under a personal insolvency agreement; as is relevant to the bankruptcy, composition, scheme or agreement, as the case may be; and
  - (bb) may make such inquiries and investigations as the Inspector-General thinks fit with respect to any conduct of an administrator that relates to a debt agreement; and
  - (c) shall from time to time obtain from Official Receivers and other officers and from registered trustees reports as to the operation of this Act; and
  - (d) must give the Minister, after the end of each financial year, a report on the operation of this Act during that financial year for presentation by the Minister to the Parliament.
- (1A) Where the Inspector-General requests a registered trustee, for the purposes of subsection (1), to provide a report as to the operation of this Act, the registered trustee shall forthwith provide the report requested.
- (1BA) The Inspector-General may make an inquiry or investigation under paragraph (1)(b) or (ba) at any time, whether before or after the end of the bankruptcy, composition, scheme or agreement or administration concerned.
- (1B) Where the Inspector-General makes an inquiry or investigation referred to in paragraph (1)(b) or (ba), the Inspector-General may give a copy of the report of the results of the inquiry or investigation to any person the Inspector-General thinks fit.
- (1C) Without limiting the generality of paragraphs (1)(a) and (b), the Inspector-General may make inquiries and investigations under those paragraphs at the request of:
- (a) if the Inspector-General is satisfied that the request relates to an application, or proposed application, for a confiscation order—the Director of Public Prosecutions; or
  - (b) if the Inspector-General is satisfied that the request relates to an application, or proposed application, for an interstate confiscation order—a person who is entitled, under a corresponding law, to apply for an order of that kind.
- (2) For the purposes of discharging his or her functions under this Act, the Inspector-General may:

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- (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 personal insolvency agreement, scheme of arrangement or composition; and
  - (c) at any time investigate the books of a trustee.
- (4) The Inspector-General:
- (a) is entitled to attend any meeting of creditors held under this Act; and
  - (b) subject to section 64ZA, is entitled to participate in any such meeting as the Inspector-General thinks fit.

**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.

**15 Official Receivers**

- (1) There shall be for each District an Official Receiver and such officers to assist the Official Receiver in the performance of his or her functions under this Act as are necessary.
- (3) Each Official Receiver has such powers and functions as are conferred or imposed on an Official Receiver by this Act.
- (4) An Official Receiver may by signed instrument delegate to an authorised employee all or any of the powers and functions of 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.

## **16 Appointment of Inspector-General and Official Receivers**

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

## **17 Acting Inspector-General and Acting Official Receivers**

- (1) The Minister may appoint a person to act as Inspector-General:
  - (a) during a vacancy in the office of Inspector-General; or
  - (b) during any period, or during all periods, when the Inspector-General is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office.
- (2) The Inspector-General may appoint a person to act as Official Receiver:
  - (a) during a vacancy in the office of Official Receiver; or
  - (b) during any period, or during all periods, when the Official Receiver is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office.
- (7) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his or her appointment had not arisen, that there is a defect or irregularity in or in connection with his or her appointment, that the appointment had ceased to have effect or that the occasion for him or her to act had not arisen or had ceased.

## **17B Arrangements for services of State and Northern Territory Magistrates**

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

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**18 The Official Trustee in Bankruptcy**

- (1) The corporation sole known as the Official Trustee in Bankruptcy, that existed immediately before this subsection commenced, continues in existence as a body corporate with the same name.
- (2) The body corporate continued in existence by force of subsection (1):
  - (a) has perpetual succession;
  - (b) may acquire, hold and dispose of real and personal property; and
  - (c) may sue and be sued in its corporate name.
- (4) The Official Trustee shall have such seals as the Minister directs by writing under his or her hand.
- (5) The designs of the seals of the Official Trustee shall be as determined by the Minister by writing under his or her hand.
- (7) All courts (whether exercising federal jurisdiction or not), and all persons acting judicially, shall take judicial notice of the mark of such a seal affixed on a document and shall, in the absence of proof to the contrary, presume that it was duly affixed.
- (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.
- (8A) All acts and things done in the name of, or on behalf of, the Official Trustee by any Official Receiver, shall be deemed to have been done by the Official Trustee.
- (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.
- (9) Where, under a provision of this Act, the exercise of a power or the performance of a function by the Official Trustee is dependent upon the opinion, belief or state of mind of the Official Trustee in relation to a matter:
- (a) the power may be exercised or the function performed by a person who may exercise the power or perform the function under subsection (8) or (8B), in the name of, or on behalf of, the Official Trustee upon the opinion, belief or state of mind in relation to that matter of the person exercising the power or performing the function; and
  - (b) any act or thing done in accordance with this subsection shall be deemed to have been done by the Official Trustee.
- (10) Where the Official Trustee is one of the trustees of a personal insolvency agreement, composition or scheme of arrangement, a power the exercise of which, or a function the performance of which, is dependent upon the opinion, belief or state of mind of those trustees in relation to a matter may be exercised or performed by those trustees as if the opinion, belief or state of mind in relation to that matter of:
- (a) an Official Receiver who; or
  - (b) another person who with the authority of an Official Receiver;
- acts in the name of, or on behalf of, the Official Trustee in the exercise of the power or the performance of the function were the opinion, belief or state of mind in relation to the matter of the Official Trustee.
- (11) A reference in a law of the Commonwealth to the Official Receiver of the estate of a bankrupt shall, in relation to the vesting, holding or disposal of property, be read as including a reference to the Official Trustee.
- (12) A reference in a law of the Commonwealth to the Official Receiver in Bankruptcy shall be read as including a reference to the Official Trustee.

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**18AA *Commonwealth Authorities and Companies Act 1997* does not apply to Official Trustee**

The Official Trustee is not a Commonwealth authority for the purposes of the *Commonwealth Authorities and Companies Act 1997*.

**18A Liability of the Official Trustee**

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

- (4) Where the Commonwealth makes a payment in accordance with the indemnity referred to in subsection (2), the Commonwealth has the same right to reimbursement in respect of the payment (including reimbursement under another indemnity given to the Official Trustee) as the Official Trustee would have if the Official Trustee had made the payment.

### **19 Duties etc. of trustee**

- (1) The duties of the trustee of the estate of a bankrupt include the following:
- (a) notifying the bankrupt's creditors of the bankruptcy;
  - (b) determining whether the estate includes property that 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 the Inspector-General or to relevant law enforcement authorities any evidence of an offence by the bankrupt against this Act;
  - (j) administering the estate as efficiently as possible by avoiding unnecessary expense;
  - (k) exercising powers and performing functions in a commercially sound way.
- (2) Where a person who became a bankrupt on a creditor's petition is unable to prepare a proper statement of affairs, the trustee may employ, at the expense of the estate, a qualified person to assist in the preparation of the statement.

**19AA Power of investigation of bankrupt's affairs**

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

**19A Liability of Inspector-General, Official Receivers etc.**

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

## **Division 2—Common Investment Fund**

### **20A Interpretation**

In this Division, unless the contrary intention appears:

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

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

### **20B The Common Investment Fund**

- (1) The Official Trustee shall open and maintain an account to be known as the Common Investment Fund.
- (2) All moneys (other than moneys to which subsection (8) applies) received by the Official Trustee after the commencement of this section shall be paid into the Common Fund.
- (3) All moneys (other than moneys to which subsection (8) applies) held by the Official Trustee at the commencement of this section, including moneys that, at that time, are held on deposit with a bank under subsection 172(1), and all investments made under that subsection and held by the Official Trustee at that time, shall form part of the Common Fund.
- (4) The Official Trustee shall open and maintain, with an ADI or ADIs, such accounts for the purposes of the Common Fund as are necessary for the purposes of the Common Fund.
- (5) The Official Trustee shall ensure that at all times at least one account referred to in subsection (4) is maintained for each District, or, if the Official Trustee thinks fit, for any 2 or more Districts having the same Official Receiver.
- (6) The payment of moneys into an account referred to in subsection (4) shall be deemed to be the payment of those moneys into the Common Fund.
- (7) Any payment that the Official Trustee is authorized, required or permitted, by or under a provision of this Act, to make out of

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moneys standing to the credit of the estate of a bankrupt or a deceased debtor shall be made out of moneys in the Common Fund.

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

**20D Investment of money in Common Fund**

- (1) The moneys in the Common Fund not immediately required for the purposes of this Act may be invested by the Official Trustee:
- (a) in public securities; or
  - (b) in a loan the repayment of which is guaranteed by the Commonwealth, a State or a Territory; or
  - (c) in a loan to a municipal corporation or other local governing body in Australia; or
  - (d) in a loan to, or on deposit with, an ADI; or
  - (e) in bank bills accepted or endorsed by an ADI.
- (4) The Official Trustee:
- (a) shall endeavour to ensure that the moneys in the Common Fund lodged in accounts at call with an ADI or ADIs are, as far as practicable, at all times sufficient to meet the payments that under this Act are to be made out of moneys in the Common Fund; and
  - (b) will ensure that moneys in the Common Fund that, in the opinion of the Official Trustee, are not required to be kept in accounts at call with an ADI or ADIs in accordance with paragraph (a) are, as far as practicable, invested in accordance with subsection (1).
- (6) Interest derived from the investment of moneys in the Common Fund is not subject to taxation under a law of the Commonwealth, a State or a Territory of the Commonwealth.
- (7) The Common Fund is not subject to taxation under a law of the Commonwealth, or to taxation under a law of a State or Territory of the Commonwealth to which the Commonwealth is not subject, and the Official Trustee is not otherwise subject to taxation under

such a law in respect of anything done in the exercise of powers conferred on it by subsection (1).

- (8) In this section, *public securities* means:
- (a) bonds, debentures, stock and other securities issued under an Act;
  - (b) bonds, debentures, stock and other securities issued by:
    - (i) a State;
    - (ii) a Territory;
    - (iii) a municipal corporation or other local governing body; or
    - (iv) a public authority constituted by or under a law of a State or Territory of the Commonwealth;
  - (c) securities issued in respect of a loan to a body (whether incorporated or not) whose principal business is the supply and distribution, by a system of reticulation, in Australia or in a Territory of the Commonwealth, of water, gas or electricity; and
  - (d) other securities specified in the regulations as public securities for the purposes of this section;
- but does not include:
- (e) securities referred to in paragraph (a) or (b) that are issued in respect of a loan raised outside Australia and the Territories of the Commonwealth unless the securities are public securities for the purposes of the *Income Tax Assessment Act 1936*; or
  - (f) securities issued after 12 April 1976 by an ADI.

## **20E Borrowing for the Common Fund**

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

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the Official Trustee may apply to the Minister for Finance to borrow from the Commonwealth under this section moneys not exceeding such amount as is specified in the instrument.

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

**20F Moneys in Common Fund not held on account of particular estates etc.**

- (1) No moneys in the Common Fund shall be held, or be deemed for any purpose to be held, on account of any particular estate or fund.
- (2) Investments made from moneys in the Common Fund shall not be made, and shall not be deemed for any purpose to be made, on account of any particular estate or fund.
- (3) Any capital appreciation or depreciation in the value of investments made from moneys in the Common Fund shall not increase or decrease the amount payable under this Act in respect of any estate or fund.
- (4) The making of a capital profit or capital loss on the realization of investments made from moneys in the Common Fund shall not increase or decrease the amount payable under this Act in respect of any estate or fund.
- (5) Interest derived from the investment of moneys in the Common Fund shall not increase the amount payable under this Act in respect of any estate or fund.
- (6) The Official Trustee shall cause accounts to be kept showing the amount in the Common Fund from time to time standing to the



credit of each estate or fund in respect of which moneys have been paid into the Common Fund.

- (7) Moneys received or held by the Official Trustee as trustee of any estate or fund do not cease to be moneys in hand for the purposes of this Act by reason only that those moneys have been paid into or become part of the Common Fund.

- (8) In this section:

*estate* means the estate of a bankrupt or of a deceased debtor.

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

### **20G Common Investment Fund Equalization Account**

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

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

- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

### **20H Credits to and debits from the Equalization Account**

- (1) Interest derived from the investment of money in the Common Fund must be paid to the Commonwealth.
- (2) An amount equal to the amount of any capital profit made upon the realization of an investment made from money in the Common Fund must be paid out of the Common Fund to the Commonwealth.
- (3) Whenever a payment is made to the Commonwealth under subsection (1) or (2), an equal amount must be credited to the Equalization Account.
- (4) An amount equal to:
- (a) the amount of any capital loss incurred upon the realization of an investment made from money in the Common Fund; or
  - (b) each amount of interest that:
    - (i) forms part of the estate of a bankrupt or of a deceased debtor by virtue of subsection 20J(2) or (3); or

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- (ii) forms part of a fund referred to in paragraph 20J(1)(b) by virtue of subsection 20J(2) or (3A); or
  - (iii) is payable to a person by virtue of subsection 20J(4);
- is to be debited from the Equalization Account and paid into the Common Fund.
- (5) The Official Trustee must, at such times as it considers appropriate and, in any event, at least once every 6 months, determine whether any amounts standing to the credit of the Equalization Account are not required for the purposes of subsection (4). If the Official Trustee determines that any amounts are not so required, it may direct that the amounts not so required, or any part of those amounts, are to be debited from the Equalization Account.
  - (6) Whenever an amount required by subsection (4) to be debited from the Equalization Account exceeds the amount standing to the credit of the Equalization Account, an amount equal to the excess must be credited to the Equalization Account.

**20J Interest on moneys in Common Fund payable only in certain circumstances**

- (1) Where the Official Trustee is:
  - (a) the trustee of the estate of a bankrupt or of a deceased debtor; or
  - (b) the trustee of a fund of moneys held or received by the Official Trustee in respect of a particular debtor or bankrupt by reason of being:
    - (i) the trustee of a composition, or of a scheme of arrangement, accepted under Division 6 of Part IV; or
    - (ii) the trustee of a personal insolvency agreement;

the estate or the fund is not entitled, except as provided by subsections (2), (3) and (3A), to interest on moneys held by the Official Trustee as trustee of the estate or fund, as the case may be.
- (2) Where moneys have been held, or are likely to be held, for a prescribed reason, or for one prescribed reason and then for another prescribed reason, by the Official Trustee as the trustee of the estate of a bankrupt or of a deceased debtor, or as trustee of a fund referred to in paragraph (1)(b), for not less than one year longer than those moneys would have been held, or would be likely to be held, by the Official Trustee but for that reason or those

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reasons, the Inspector-General may direct, by writing under his or her hand, that interest on those moneys, at the rate prescribed by the regulations for the purposes of this section and in respect of such period as he or she determines, shall form part of that estate or fund, as the case may be.

- (3) Where, on or after the date of commencement of this section (in the subsection referred to as the *commencing date*), the Official Trustee receives an amount by way of interest on moneys (other than moneys of the kind referred to in paragraph (1)(b)), or on investments, that form part of the Common Fund by virtue of subsection 20B(3):
- (a) if the interest accrued in respect of a period that ended before the commencing date—the amount of the interest forms part of the estate in respect of which those moneys or investments were held immediately before the commencing date; or
  - (b) if the interest accrued in respect of a period that commenced before, but ended on or after, the commencing date—an amount that bears to the amount of that interest the same proportion as the number of days in the part of the period in respect of which the interest accrued that occurred before the commencing date bears to the number of days in that period forms part of the estate in respect of which those moneys or investments were held immediately before the commencing date.
- (3A) Where, on or after the date of commencement of this subsection (in this subsection referred to as the *commencing day*), the Official Trustee receives an amount by way of interest on moneys held or received by the Official Trustee by reason of being trustee of a fund referred to in paragraph (1)(b) (in this subsection referred to as the *appropriate fund*), being moneys that form part of the Common Fund:
- (a) if the interest accrued in respect of a period that ended before the commencing date—the amount of the interest forms part of the appropriate fund; or
  - (b) if the interest accrued in respect of a period that commenced before, but ended on or after, the commencing day—an amount that bears to the amount of that interest the same proportion as the number of days in the part of the period in respect of which the interest accrued that occurred before the

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commencing day bears to the number of days in that period forms part of the appropriate fund.

- (4) Where it is established that:
- (a) moneys held by the Official Trustee as the trustee of the estate of a bankrupt or of a deceased debtor do not form part of the estate; or
  - (b) moneys held by the Official Trustee as part of a fund referred to in paragraph (1)(b) do not form part of the fund;
- interest on those moneys is payable to the person to whom those moneys are payable, out of the Common Fund, at the rate prescribed by the regulations for the purposes of this section and in respect of the period during which those moneys are held by the Official Trustee.
- (5) For the purposes of subsection (2), moneys shall be taken to have been held, or to be likely to be held, by the Official Trustee for a prescribed reason if the moneys have been held, or are likely to be held, as the case may be, by the Official Trustee:
- (a) by reason of the institution or defending of legal proceedings in good faith;
  - (b) by reason that a person has, or has had, under consideration, in good faith, the institution or defending of legal proceedings; or
  - (c) for any other reason declared by the regulations to be a prescribed reason for the purposes of this section.

## **Part III—Courts**

### **Division 2—Jurisdiction and powers of courts in bankruptcy**

#### **27 Bankruptcy courts**

- (1) The Federal Court and the Federal Magistrates Court have concurrent jurisdiction in bankruptcy, and that jurisdiction is exclusive of the jurisdiction of all courts other than:
  - (a) the jurisdiction of the High Court under section 75 of the Constitution; or
  - (b) the jurisdiction of the Family Court under section 35 or 35A of this Act.

#### **29 Courts to help each other**

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

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- (a) the United Kingdom, Canada and New Zealand;
- (b) a country prescribed by the regulations for the purposes of this subsection; and
- (c) a colony, overseas territory or protectorate of a country specified in paragraph (a) or of a country so prescribed.

**30 General powers of Courts in bankruptcy**

- (1) The Court:
  - (a) has full power to decide all questions, whether of law or of fact, in any case of bankruptcy or any matter under Part IX, X or XI coming within the cognizance of the Court; and
  - (b) may make such orders (including declaratory orders and orders granting injunctions or other equitable remedies) as the Court considers necessary for the purposes of carrying out or giving effect to this Act in any such case or matter.
- (2) The Court may direct such inquiries to be made and accounts to be taken for the purposes of any proceeding before the Court as the Court considers necessary and may, when directing an account to be taken, or subsequently, give special directions as to the manner in which the account is to be taken or vouched.
- (3) If in a proceeding before the Federal Court under this Act a question of fact arises that a party desires to have tried before a jury, the Federal Court may, if it thinks fit, direct the trial of that question to be had before a jury, and the trial may be had accordingly in the same manner as if it were the trial of an issue of fact in an action.
- (5) Where:
  - (a) a bankrupt, a debtor or any other person has failed to comply with an order or direction of a Registrar, or with a direction or requirement of an Official Receiver or trustee, under this Act; or
  - (b) a trustee has failed to comply with an order, direction or requirement of a Registrar, or with a requirement or request of the Inspector-General, under this Act;the Court may, on the application of the Registrar, Official Receiver, trustee or Inspector-General, as the case requires:

- (c) order the person who has failed to comply with the order, direction, requirement or request, as the case may be, to comply with it; or
  - (d) if it thinks fit, make an immediate order for the committal to prison of that person.
- (6) The power conferred on the Court by subsection (5) is in addition to, and not in substitution for, any other right or remedy in respect of the failure to comply with the order, direction, requirement or request, as the case may be.

### **31 Exercise of jurisdiction**

- (1) In exercising jurisdiction under this Act, the Court shall hear and determine the following matters in open Court:
- (a) creditors' petitions;
  - (b) examinations under this Act;
  - (c) proceedings in connection with the consideration of an annulment of a bankruptcy under section 153B;
  - (d) applications under:
    - (i) section 222 (as applied by section 76B); or
    - (ii) section 222C (as applied by section 76B);for an order setting aside or terminating a composition or scheme of arrangement under Division 6 of Part IV;
  - (e) applications to set aside or avoid a charge, charging order, settlement, disposition, conveyance, transfer security or payment;
  - (ea) applications under section 139A;
  - (f) applications to declare for or against the title of the trustee to any property;
  - (g) applications for the committal of a person to prison or for the release from prison of a person committed to prison;
  - (i) applications for the trial of questions of fact with a jury and the trial of those questions;
  - (j) applications under Part X:
    - (i) for an order setting aside or terminating a personal insolvency agreement; or
    - (ii) for a sequestration order against the estate of a debtor;
  - (ja) applications for an order of annulment of the administration of the estate of a deceased person under Part XI; and

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- (k) summary trials under Part XIV.
- (2) All other matters under this Act may, in the discretion of the Court, be heard in open Court or in Chambers.

**32 Costs**

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

**33 Adjournment, amendment of process and extension and abridgment of times**

- (1) The Court may:
  - (a) upon such terms as it thinks fit, at any time adjourn any proceeding before it, either to a fixed date or generally;
  - (b) at any time allow the amendment of any written process, proceeding or notice under this Act; or
  - (c) extend before its expiration or, if this Act does not expressly provide to the contrary, after its expiration, any time limited by this Act, or any time fixed by the Court or the Registrar under this Act (other than the time fixed for compliance with the requirements of a bankruptcy notice), for doing an act or thing or abridge any such time.

**33A Alteration of filing date for statement of affairs**

- (1) This section applies to a statement of affairs that was filed for the purposes of section 54, 55, 56B, 56F or 57 by a bankrupt, or by a person who later became a bankrupt.
- (2) If the Court is satisfied that the person believed, on reasonable grounds, that the statement had already been filed at a time before it was actually filed, the Court may order that the statement is to be treated as having been filed at a time before it was actually filed.
- (3) The Court cannot make an order that would result in the person being discharged from bankruptcy earlier than 30 days after the order is made.



- (4) In this section:

*filed* includes presented, lodged or given.

### **34 Orders and commissions for examination of witnesses**

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

- (a) order the examination upon oath of a person before an officer of the Court or other person, at any place within Australia; or
- (b) order that a commission issue to a person either within or beyond Australia authorizing him or her to take the testimony of a person upon oath;

and may:

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

### **34A Standard of proof**

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

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

- (1) If, at a particular time:
  - (a) a party to a marriage is a bankrupt; and
  - (b) the trustee of the bankrupt's estate is:
    - (i) a party to property settlement proceedings in relation to either or both of the parties to the marriage; or

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- (ii) an applicant under section 79A of the *Family Law Act 1975* for the variation or setting aside of an order made under section 79 of that Act in property settlement proceedings in relation to either or both of the parties to the marriage; or
- (iii) a party to spousal maintenance proceedings in relation to the maintenance of a party to the marriage;

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

- (2) Subsection (1) does not limit the Family Court's jurisdiction under section 35A.
- (3) In this section:

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

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

### 35A Transfer of proceedings to Family Court

- (1) Subject to subsection (2), where a proceeding is pending in the Federal Court, the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.
- (2) A proceeding that is pending in the Federal Court at the commencement of this section shall not be transferred to the Family Court unless the parties to the proceeding consent to the transfer.
- (2A) If a proceeding is pending in the Federal Magistrates Court, the Federal Magistrates Court may, on the application of a party to the proceeding or on its own initiative, transfer the proceeding to the Family Court.
- (3) Subject to subsection (4), where a proceeding is transferred to the Family Court:
  - (a) the Family Court has jurisdiction to hear and determine the proceeding;

- (b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether by virtue of paragraph (a) or otherwise):
  - (i) that are associated with matters arising in the proceeding; or
  - (ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding;
- (c) the Family Court may, in and in relation to the proceeding:
  - (i) grant such remedies;
  - (ii) make orders of such kinds; and
  - (iii) issue, and direct the issue of, writs of such kinds; as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding;
- (d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court;
- (e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge, and do not otherwise lie; and
- (f) subject to paragraphs (a) to (e) (inclusive), this Act, the *Federal Court of Australia Act 1976*, the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:
  - (i) a reference to the Federal Court (other than in the expression “the Court or a Judge”) included a reference to the Family Court;
  - (ii) a reference to a Judge of the Federal Court (other than in the expression “the Court or a Judge”) included a reference to a Family Court Judge;
  - (iii) a reference to the expression “the Court or a Judge” when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers;
  - (iv) a reference to a Registrar included a reference to a Registrar of the Family Court; and
  - (v) any other necessary changes were made.

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- (4) Where any difficulty arises in the application of paragraphs (3)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.
- (5) An appeal does not lie from a decision of the Federal Court or the Federal Magistrates Court in relation to the transfer of a proceeding under this Act to the Family Court.

**35B Family Court of Western Australia**

- (1) Sections 27, 35 and 35A apply to the Family Court of Western Australia in a corresponding way to the way in which they apply to the Family Court of Australia.
- (2) Paragraph 35A(3)(f) has effect, in relation to a proceeding transferred to the Family Court of Western Australia, as if:
  - (a) each reference in subparagraph 35A(3)(f)(ii) or (iii) to a Family Court Judge were a reference to a judge of the Family Court of Western Australia; and
  - (b) the reference in subparagraph 35A(3)(f)(iv) to a Registrar of the Family Court were a reference to a registrar of the Family Court of Western Australia.

**36 Enforcement of orders etc.**

- (1) An order of the Court made, or a warrant issued, under this Act may be enforced throughout Australia by a constable.
- (2) A warrant for the arrest or detention of a person for the purpose of giving effect to an order of committal or a sentence of imprisonment made or imposed by the Court under this Act may be issued under the seal of the Court.
- (3) Where the Court commits a person to prison under this Act, the committal may be to such prison as the Court thinks fit.

**37 Power of Court to rescind orders etc.**

- (1) Subject to subsection (2), the Court may rescind, vary or discharge an order made by it under this Act or may suspend the operation of such an order.

- (2) The Court does not have power to rescind or discharge, or to suspend the operation of:
- (a) a sequestration order; or
  - (b) an order for the administration of the estate of a deceased person under Part XI.

## **Part IV—Proceedings in connexion with bankruptcy**

### **Division 1—Acts of bankruptcy**

#### **40 Acts of bankruptcy**

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

- (da) if the debtor presents to the Official Receiver a declaration under section 54A;
- (e) if, at a meeting of any of his or her creditors:
  - (i) he or she consents to present a debtor's petition under this Act and does not, within 7 days from the date on which he or she so consented, present the petition; or
  - (ii) he or she consents to sign an authority under section 188 and does not, within 7 days from the date on which he or she so consented, sign such an authority and inform the chairman of the meeting, in writing, of the name of the person in whose favour the authority has been signed;
- (f) if, at a meeting of any of his or her creditors, he or she admits that he or she is in insolvent circumstances and, having been requested by a resolution of a majority of the creditors present at the meeting either in person or by attorney to bring his or her affairs under the provisions of this Act, he or she does not, within 7 days from the date of the meeting, either:
  - (i) present a debtor's petition; or
  - (ii) sign an authority under section 188 and inform the chair of the meeting, in writing, of the name of the person in whose favour the authority has been signed;
- (g) if a creditor who has obtained against the debtor a final judgment or final order, being a judgment or order the execution of which has not been stayed, has served on the debtor in Australia or, by leave of the Court, elsewhere, a bankruptcy notice under this Act and the debtor does not:
  - (i) where the notice was served in Australia—within the time specified in the notice; or
  - (ii) where the notice was served elsewhere—within the time fixed for the purpose by the order giving leave to effect the service;comply with the requirements of the notice or satisfy the Court that he or she has a counter-claim, set-off or cross demand equal to or exceeding the amount of the judgment debt or sum payable under the final order, as the case may be, being a counter-claim, set-off or cross demand that he or she could not have set up in the action or proceeding in which the judgment or order was obtained;

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- (h) if he or she gives notice to any of his or her creditors that he or she has suspended, or that he or she is about to suspend, payment of his or her debts;
- (ha) if the debtor gives the Official Receiver a debt agreement proposal;
- (hb) if a debt agreement proposal given by the debtor to the Official Receiver is accepted by the debtor's creditors;
- (hc) if the debtor breaches a debt agreement;
- (hd) if a debt agreement to which the debtor was a party (as a debtor) is terminated under section 185P, 185Q or 185QA;
  - (i) if he or she signs an authority under section 188;
  - (j) if a meeting of his or her creditors is called in pursuance of such an authority;
  - (k) if, without sufficient cause, he or she fails to attend a meeting of his or her creditors called in pursuance of such an authority;
  - (l) if, having been required by a special resolution of a meeting of his or her creditors so called to execute a personal insolvency agreement or to present a debtor's petition, he or she fails, without sufficient cause:
    - (i) to comply with the requirements of this Act as to the execution of the agreement by him or her; or
    - (ii) to present a debtor's petition within the time specified in the resolution;as the case may be;
  - (m) if a personal insolvency agreement executed by him or her under Part X is:
    - (i) set aside by the Court; or
    - (ii) terminated;
  - (n) if a composition or scheme of arrangement accepted by the debtor's creditors under Division 6 of Part IV is:
    - (i) set aside by the Court; or
    - (ii) terminated;
  - (o) if the debtor becomes insolvent as a result of one or more transfers of property in accordance with a financial agreement (within the meaning of the *Family Law Act 1975*) to which the debtor is a party.



- (2) In calculating for the purposes of subparagraph (1)(d)(i) the period for which property has been held by the sheriff, any time between the date on which an interpleader summons in respect of the property is taken out and the date on which the proceedings on the summons are finally disposed of, settled or discontinued shall not be taken into account.
- (3) For the purposes of paragraph (1)(g):
- (a) where leave is given by a court to enforce an award made on a submission to arbitration, being an award under which money is payable by a debtor to another person:
    - (i) the award shall be deemed to be a final order obtained by that person against the debtor; and
    - (ii) the arbitration proceedings shall be deemed to be the proceeding in which that final order was obtained;
  - (b) a judgment or order that is enforceable as, or in the same manner as, a final judgment obtained in an action shall be deemed to be a final judgment so obtained and the proceedings in which, or in consequence of which, the judgment or order was obtained shall be deemed to be the action in which it was obtained;
  - (d) a person who is for the time being entitled to enforce a final judgment or final order for the payment of money shall be deemed to be a creditor who has obtained a final judgment or final order;
  - (e) a judgment or order for the payment of money made by the Court in the exercise of jurisdiction conferred on it by this Act shall be deemed to be a judgment or order the execution of which has not been stayed notwithstanding that it may not be enforceable at law by execution; and
  - (f) an order made after the commencement of this paragraph under the *Family Law Act 1975* for the payment by a person of arrears of maintenance for another person shall be deemed to be a final order against the first-mentioned person obtained by the other person.
- (4) The act of bankruptcy specified in paragraph (1)(j) shall be deemed to be committed on the day on which the notices calling the meeting are delivered or sent to the creditors or, if they are not all delivered or sent on the one day, on the day on which the last of the notices is so delivered or sent.

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- (5) The act of bankruptcy specified in paragraph (1)(l) shall be deemed to be committed on the day after the day on which the period within which the agreement is required to be executed by the debtor or the period within which the petition is required to be presented, as the case may be, expires.
- (6) The act of bankruptcy specified in paragraph (1)(m) shall be deemed to be committed on the day on which the agreement is set aside or terminated, as the case may be.
- (7) The act of bankruptcy specified in paragraph (1)(n) shall be deemed to be committed on the day on which the composition or scheme of arrangement is set aside or terminated.
- (7A) For the purposes of paragraph (1)(o):
  - (a) *transfer of property* includes a payment of money; and
  - (b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person.
- (8) This section applies, so far as it is capable of application, in relation to acts and things done or occurring, and omissions and failures to do acts or things occurring, before, or partly before and partly after, the commencement of this Act, as well as to acts and things done or occurring, and omissions and failures to do acts and things occurring, after the commencement of this Act.

**41 Bankruptcy notices**

- (1) An Official Receiver may issue a bankruptcy notice on the application of a creditor who has obtained against a debtor:
  - (a) a final judgment or final order that:
    - (i) is of the kind described in paragraph 40(1)(g); and
    - (ii) is for an amount of at least \$2,000; or
  - (b) 2 or more final judgments or final orders that:
    - (i) are of the kind described in paragraph 40(1)(g); and
    - (ii) taken together are for an amount of at least \$2,000.
- (2) The notice must be in accordance with the form prescribed by the regulations.
- (3) A bankruptcy notice shall not be issued in relation to a debtor:

- (a) except on the application of a creditor who has obtained against the debtor a final judgment or final order within the meaning of paragraph 40(1)(g) or a person who, by virtue of paragraph 40(3)(d), is to be deemed to be such a creditor;
  - (b) if, at the time of the application for the issue of the bankruptcy notice, execution of a judgment or order to which it relates has been stayed; or
  - (c) in respect of a judgment or order for the payment of money if:
    - (i) a period of more than 6 years has elapsed since the judgment was given or the order was made; or
    - (ii) the operation of the judgment or order is suspended under section 37.
- (5) A bankruptcy notice is not invalidated by reason only that the sum specified in the notice as the amount due to the creditor exceeds the amount in fact due, unless the debtor, within the time allowed for payment, gives notice to the creditor that he or she disputes the validity of the notice on the ground of the misstatement.
- (6) Where the amount specified in a bankruptcy notice exceeds the amount in fact due and the debtor does not give notice to the creditor in accordance with subsection (5), he or she shall be deemed to have complied with the notice if, within the time allowed for payment, he or she takes such action as would have constituted compliance with the notice if the amount due had been correctly specified in it.
- (6A) Where, before the expiration of the time fixed for compliance with the requirements of a bankruptcy notice:
- (a) proceedings to set aside a judgment or order in respect of which the bankruptcy notice was issued have been instituted by the debtor; or
  - (b) an application has been made to the Court to set aside the bankruptcy notice;
- the Court may, subject to subsection (6C), extend the time for compliance with the bankruptcy notice.
- (6C) Where:
- (a) a debtor applies to the Court for an extension of the time for complying with a bankruptcy notice on the ground that proceedings to set aside a judgment or order in respect of

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- which the bankruptcy notice was issued have been instituted by the debtor; and
- (b) the Court is of the opinion that the proceedings to set aside the judgment or order:
- (i) have not been instituted *bona fide*; or
  - (ii) are not being prosecuted with due diligence;
- the Court shall not extend the time for compliance with the bankruptcy notice.
- (7) Where, before the expiration of the time fixed for compliance with the requirements of a bankruptcy notice, the debtor has applied to the Court for an order setting aside the bankruptcy notice on the ground that the debtor has such a counter-claim, set-off or cross demand as is referred to in paragraph 40(1)(g), and the Court has not, before the expiration of that time, determined whether it is satisfied that the debtor has such a counter-claim, set-off or cross demand, that time shall be deemed to have been extended, immediately before its expiration, until and including the day on which the Court determines whether it is so satisfied.

**42 Payment etc. of debt to Commonwealth or State after service of bankruptcy notice**

- (1) Where a bankruptcy notice under this Act is served on a debtor by the Commonwealth or a State, it is a sufficient compliance with the notice if, within the time allowed by the notice, the debtor pays the amount required to be paid by the notice to, or secures it or compounds it to the satisfaction of:
- (a) the Secretary to the Attorney-General's Department, or the Crown Solicitor of the State, as the case may be; or
  - (b) if an agent of the Commonwealth, or of the State, as the case may be, is specified in the notice for the purpose, the agent so specified.
- (2) A statement that the debtor may comply with the notice in the manner referred to in subsection (1) may be included in a bankruptcy notice issued on the application of the Commonwealth or a State.

## **Division 2—Creditors' petitions**

### **43 Jurisdiction to make sequestration orders**

- (1) Subject to this Act, where:
  - (a) a debtor has committed an act of bankruptcy; and
  - (b) at the time when the act of bankruptcy was committed, the debtor:
    - (i) was personally present or ordinarily resident in Australia;
    - (ii) had a dwelling-house or place of business in Australia;
    - (iii) was carrying on business in Australia, either personally or by means of an agent or manager; or
    - (iv) was a member of a firm or partnership carrying on business in Australia by means of a partner or partners or of an agent or manager;

the Court may, on a petition presented by a creditor, make a sequestration order against the estate of the debtor.
- (2) Upon the making of a sequestration order against the estate of a debtor, the debtor becomes a bankrupt, and continues to be a bankrupt until:
  - (a) he or she is discharged by force of subsection 149(1); or
  - (b) his or her bankruptcy is annulled by force of subsection 74(5) or 153A(1) or under section 153B.

### **44 Conditions on which creditor may petition**

- (1) A creditor's petition shall not be presented against a debtor unless:
  - (a) there is owing by the debtor to the petitioning creditor a debt that amounts to \$2,000 or 2 or more debts that amount in the aggregate to \$2,000, or, where 2 or more creditors join in the petition, there is owing by the debtor to the several petitioning creditors debts that amount in the aggregate to \$2,000;
  - (b) that debt, or each of those debts, as the case may be:
    - (i) is a liquidated sum due at law or in equity or partly at law and partly in equity; and

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- (ii) is payable either immediately or at a certain future time;  
and
  - (c) the act of bankruptcy on which the petition is founded was committed within 6 months before the presentation of the petition.
- (2) Subject to subsection (3), a secured creditor shall, for the purposes of paragraph (1)(a), be deemed to be a creditor only to the extent, if any, by which the amount of the debt owing to him or her exceeds the value of his or her security.
  - (3) A secured creditor may present, or join in presenting, a creditor's petition as if he or she were an unsecured creditor if he or she includes in the petition a statement that he or she is willing to surrender his or her security for the benefit of creditors generally in the event of a sequestration order being made against the debtor.
  - (4) Where a petitioning creditor is a secured creditor, he or she shall set out in the petition particulars of his or her security.
  - (5) Where a secured creditor has presented, or joined in presenting, a creditor's petition as if he or she were an unsecured creditor, he or she shall, upon request in writing by the trustee within 3 months after the making of a sequestration order, surrender his or her security to the trustee for the benefit of the creditors generally.
  - (6) A secured creditor to whom subsection (5) applies who fails to surrender his or her security when requested to do so by the trustee in accordance with that subsection is guilty of contempt of court.

**45 Creditor's petition against partnership**

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

#### **46 Petition against 2 or more joint debtors**

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

#### **47 Requirements as to creditor's petition**

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

#### **49 Change of petitioners** [*see* Table B]

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

#### **50 Taking control of debtor's property before sequestration**

[*see* Table B]

- (1) At any time after a bankruptcy notice is issued, or a creditor's petition is presented, in relation to a debtor, but before the debtor becomes a bankrupt, the Court may:
  - (a) direct the Official Trustee or a specified registered trustee to take control of the debtor's property; and
  - (b) make any other orders in relation to the property.
- (1A) The Court may give a direction or make an order only if:
  - (a) a creditor has applied for the Court to make a direction; and

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



### **51 Costs of prosecuting creditor's petition**

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

### **52 Proceedings and order on creditor's petition**

- (1) At the hearing of a creditor's petition, the Court shall require proof of:
  - (a) the matters stated in the petition (for which purpose the Court may accept the affidavit verifying the petition as sufficient);
  - (b) service of the petition; and
  - (c) the fact that the debt or debts on which the petitioning creditor relies is or are still owing;and, if it is satisfied with the proof of those matters, may make a sequestration order against the estate of the debtor.
- (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.
- (2) If the Court is not satisfied with the proof of any of those matters, or is satisfied by the debtor:
  - (a) that he or she is able to pay his or her debts; or
  - (b) that for other sufficient cause a sequestration order ought not to be made;it may dismiss the petition.
- (3) The Court may, if it thinks fit, upon such terms and conditions as it thinks proper, stay all proceedings under a sequestration order for a period not exceeding 21 days.
- (4) A creditor's petition lapses at the expiration of:
  - (a) subject to paragraph (b), the period of 12 months commencing on the date of presentation of the petition; or
  - (b) if the Court makes an order under subsection (5) in relation to the petition—the period fixed by the order;unless, before the expiration of whichever of those periods is applicable, a sequestration order is made on the petition or the petition is dismissed or withdrawn.

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

**53 Consolidation of proceedings**

- (1) Where 2 or more members of a partnership or 2 or more joint debtors have become bankrupts, the Court may consolidate the proceedings upon such terms as it thinks fit.
- (2) Where the Court makes an order under subsection (1), section 110 applies in the administration under this Act of all of the estates to which the order relates.
- (3) Where the Court makes an order under subsection (1) in relation to the estates of 2 or more bankrupts, the Court may, in the order:
- (a) declare a specified date to be, for the purpose of the application of the provisions of Division 3 of Part VI in the administration of the joint estate, the date on which all the petitions relevant to the administration of those estates shall be deemed to have been presented;
  - (b) declare a specified date to be, for that purpose, the date of the bankruptcy in respect of each of those estates; and
  - (c) declare a specified time to be, for that purpose, the time that is the commencement of the bankruptcy in respect of all those estates;
- and, if the Court does so, those estates shall be administered accordingly.

**54 Bankrupt's statement of affairs**

- (1) Where a sequestration order is made, the person against whose estate it is made shall, within 14 days from the day on which he or she is notified of the bankruptcy:
- (a) make out and file with the Official Receiver for the District in which the sequestration order was made a statement of his or her affairs; and

(b) furnish a copy of the statement to the trustee.

Penalty: 5 penalty units.

- (2) Where a sequestration order is made against 2 or more joint debtors (whether partners or not), each of those persons shall (in addition to complying with subsection (1) in relation to his or her affairs), within 14 days from the day on which he or she is notified of the bankruptcy, and either on his or her own account or jointly with another or others of those debtors:
- (a) make out and file in the office of the Official Receiver for the District in which the sequestration order was made a statement of the joint affairs of those persons; and
  - (b) furnish a copy of the statement to the trustee.

Penalty: 5 penalty units.

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

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

- (4) A person who states in writing that he or she is a creditor of a bankrupt against whom a sequestration order has been made, or a creditor of 2 or more bankrupts against whom the one sequestration order has been made, may without fee, and any other person may on payment of the fee determined by the Minister by legislative instrument, inspect, personally or by an agent, the statement of affairs filed by the bankrupt or the statements of affairs filed by the bankrupts, as the case may be, and may obtain a copy of, or take extracts from, the statement or statements.
- (5) A bankrupt against whom a sequestration order has been made may, without fee and either personally or by an agent:
- (a) inspect the bankrupt's statement of affairs; or
  - (b) obtain a copy of, or take extracts from, the bankrupt's statement of affairs.
- (6) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person (other than the bankrupt or an agent of the bankrupt).

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

## **Division 2A—Declaration of intention to present debtor's petition**

### **54A Presentation of declaration**

Subject to section 54B, a debtor may present to the Official Receiver a declaration, in the approved form, of the debtor's intention to present a debtor's petition.

### **54B When debtor disqualified from presenting declaration**

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

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

### **54C Acceptance or rejection of declaration**

Subject to section 54D, where a debtor presents a declaration under section 54A, the Official Receiver shall:

- (a) if it appears to the Official Receiver that the debtor is entitled to present a declaration under section 54A and that the declaration presented is in accordance with the approved form:
  - (i) accept the declaration and endorse it accordingly; and
  - (ii) forthwith sign a copy of the declaration; or

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(b) in any other case—reject the declaration.

**54D Official Receiver to give information to debtor**

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

**54E Enforcement suspended during stay period**

- (1) Where, during the stay period in relation to a declaration of intention presented by a debtor, a copy of the declaration signed by the Official Receiver who accepted it is produced to a creditor to whom the debtor owes a frozen debt, subsection (2) has effect throughout the remainder of that period.
- (2) It is not competent for the creditor:
  - (a) to apply for the issue of enforcement process in respect of the debt; or
  - (b) to enforce a remedy against the debtor's person or property in respect of the debt.
- (3) Nothing in this section prevents a creditor from commencing a legal proceeding in respect of a debt, or from taking a fresh step in such a proceeding otherwise than in connection with enforcing a judgment.

**54F Duties of sheriff**

- (1) Where, during the stay period in relation to a declaration of intention presented by a debtor, a copy of the declaration signed by the Official Receiver who accepted it is produced to a sheriff, subsections (2) and (3) have effect throughout the remainder of that period.
- (2) The sheriff shall refrain from taking action, or further action, to execute, or to sell property under, enforcement process issued in respect of a frozen debt owed by the debtor.

- (3) The sheriff shall refrain from paying to a person proceeds of enforcement process issued in respect of a frozen debt owed by the debtor.
- (4) A contravention of this section does not affect a person's title to property that was purchased in good faith under a sale under enforcement process issued in respect of a debt.
- (5) Where:
  - (a) under this section, a sheriff refrains from taking action, or further action, to sell real property under enforcement process issued in respect of a debt;
  - (b) the debtor becomes a bankrupt; and
  - (c) the property vests in the trustee of the bankrupt's estate;the costs of executing the enforcement process are a first charge on the property.

#### **54G Duty of court registrar**

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

#### **54H Duties of person entitled to deduct money owing to declared debtor**

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

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

**54J Extension of time where this Division prevents the doing of an act**

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

**54K Section 33 not to apply to this Division**

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

**54L Secured creditor's rights under security not affected**

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



## Division 3—Debtors' petitions

### 55 Debtor's petition

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

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debtor) that the debtor is unwilling to pay one or more debts to a particular creditor or creditors, or is unwilling to pay creditors in general;

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

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

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

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

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

Example 1: When Anna presents a debtor's petition against herself, there is 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 this section or is directed by the Court to reject it.

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

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

- (b) upon the Official Receiver endorsing the petition, the debtor who presented the petition becomes a bankrupt by force of this section and by virtue of presentation of the petition.
- (5) If a registered trustee is the trustee of the estate of a debtor who becomes a bankrupt under this section, the Official Receiver must:
  - (a) notify the trustee of the bankruptcy; and
  - (b) give the trustee a copy of the statement of affairs that accompanied the debtor's petition.
- (5A) A debtor who is a party (as debtor) to a debt agreement must not present a debtor's petition unless the Court gives the debtor permission to do so.
- (6) A debtor who has executed a personal insolvency agreement is not, except with the leave of the Court, entitled to present a petition against himself or herself unless:
  - (a) the agreement has been set aside; or
  - (b) the agreement has been terminated; or
  - (c) all the obligations that the agreement created have been discharged.
- (6A) A debtor in relation to whom a stay under a proclaimed law applies is not, except with the leave of the Court, entitled to present a petition against himself or herself.
- (7) Where a petition is presented by a debtor against himself or herself in contravention of subsection (5A), (6) or (6A), the debtor does not become a bankrupt by virtue of its presentation.
- (8) A person who becomes a bankrupt by force of this section continues to be a bankrupt until:
  - (a) he or she is discharged by force of subsection 149(1); or
  - (b) his or her bankruptcy is annulled by force of subsection 74(5) or 153A(1) or under section 153B.
- (9) A person who states in writing that he or she is a creditor of a bankrupt who has become a bankrupt by force of this section may without fee, and any other person may on payment of the fee determined by the Minister by legislative instrument, inspect, personally or by an agent, the statement of affairs that accompanied the petition presented by the bankrupt, and may obtain a copy of, or take extracts from, the statement.

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- (10) A bankrupt who has become a bankrupt by force of this section may, without fee and either personally or by an agent:
  - (a) inspect the bankrupt's statement of affairs; and
  - (b) obtain a copy of, or make extracts from, the bankrupt's statement of affairs.
- (11) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person other than the bankrupt (or an agent of the bankrupt).
- (12) The Official Receiver may refuse to allow a person access under this section to particular information in a bankrupt's statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.

**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 personal insolvency agreement must not join in presenting a petition against the partnership unless:
  - (a) the agreement has been set aside; or
  - (b) the agreement has been terminated; or
  - (c) all the obligations that the agreement created have been discharged; or
  - (d) the Court gives permission for the member to join in presenting a petition against the partnership.
- (6) A member of a partnership in relation to whom a stay under a proclaimed law applies must not join in presenting a petition

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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;

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- (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
  - (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.

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**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.

Penalty: 5 penalty units.

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

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

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

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

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

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

**56G Inspection of statements of affairs of partners and partnerships**

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

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

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



- (aa) the person is a member of the partnership who became a bankrupt as a result of the petition; or
  - (b) the person is an agent of a person described in paragraph (a) or (aa).
- (3) A person who has become a bankrupt by force of section 56E may, without fee and either personally or by an agent:
- (a) inspect any statement of affairs that accompanied the petition; and
  - (b) obtain a copy of, or make extracts from, any statement of affairs that accompanied the petition.
- (4) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person (other than a member of the partnership who became a bankrupt as a result of the petition or an agent of such a member).
- (5) The Official Receiver may refuse to allow a person access under this section to particular information in a statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.

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

- (1) Where joint debtors are not in partnership with one another, the debtors, or any 2 or more of the debtors, may present to the Official Receiver a petition jointly against themselves.
- (2) A petition under this section shall be in accordance with the approved form and shall be accompanied by:
- (a) a statement of affairs of each of the petitioning debtors;
  - (b) a statement of their joint affairs; and
  - (c) a copy of each of those statements.
- (2A) The Official Receiver must reject a debtor's petition unless, at the time when the petition is presented, each petitioning debtor:
- (a) was personally present or ordinarily resident in Australia; or
  - (b) had a dwelling-house or place of business in Australia; or
  - (c) was carrying on business in Australia, either personally or by means of an agent or manager; or

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- (d) was a member of a firm or partnership carrying on business in Australia by means of a partner or partners or of an agent or manager.
- (3) The Official Receiver may reject a debtor's petition if:
- (a) the petition does not comply substantially with the approved form; or
  - (b) the petition is not accompanied by all the statements of affairs required by subsection (2); or
  - (c) the Official Receiver thinks that any of the statements of affairs accompanying the petition is inadequate.
- (3AA) The Official Receiver may reject a debtor's petition (the *current petition*) if the following conditions are satisfied for at least one of the petitioning debtors:
- (a) it appears from the information in the statement of affairs (and any additional information supplied by the debtor) that, if the debtor did not become a bankrupt, the debtor would be likely (either immediately or within a reasonable time) to be able to pay all the debts specified in the debtor's statement of affairs;
  - (b) at least one of the following applies:
    - (i) it appears from the information in the statement of affairs (and any additional information supplied by the debtor) that the debtor is unwilling to pay one or more debts to a particular creditor or creditors, or is unwilling to pay creditors in general;
    - (ii) before the current petition was presented, the debtor previously became a bankrupt on a debtor's petition at least 3 times, or at least once in the period of 5 years before presentation of the current petition.
- (3AB) The Official Receiver is not required to consider in each case whether there is a discretion to reject under subsection (3AA).
- (3AC) An application may be made to the Administrative Appeals Tribunal for the review of a decision by the Official Receiver to reject a petition under subsection (3AA).
- (3A) Before accepting a debtor's petition against joint debtors, the Official Receiver must give each petitioning debtor the information prescribed by the regulations.

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

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

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

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

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

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

- (4) The Official Receiver must accept a debtor's petition, unless the Official Receiver rejects it under subsection (3) or is directed by the Court to reject it.
- (5) Where the Official Receiver accepts a petition presented under this section:
  - (a) he or she shall endorse the petition accordingly; and
  - (b) upon the Official Receiver endorsing the petition, each of the petitioning debtors becomes a bankrupt by force of this section and by virtue of presentation of the petition.
- (6) If a registered trustee is the trustee of the estate of a person who becomes a bankrupt under this section, the Official Receiver must:
  - (a) notify the trustee of the bankruptcy; and
  - (b) give the trustee a copy of each statement of affairs that accompanied the debtor's petition.

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- (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.
- (7) A debtor who has executed a personal insolvency agreement is not entitled to join in presenting a petition under this section unless:
  - (a) the agreement has been set aside; or
  - (b) the agreement has been terminated; or
  - (c) all the obligations that the agreement created have been discharged; or
  - (d) the Court grants leave for the debtor to join in presenting a petition under this section.
- (8) A debtor in relation to whom a stay under a proclaimed law applies is not, except with the leave of the Court, entitled to join in presenting a petition under this section.
- (9) Where a petition is presented in contravention of subsection (6A), (7) or (8), the presentation of the petition does not have any effect.
- (10) A person who becomes a bankrupt by force of this section continues to be a bankrupt until:
  - (a) he or she is discharged by force of subsection 149(1); or
  - (b) his or her bankruptcy is annulled by force of subsection 74(5) or 153A(1) or under section 153B.
- (11) A person who states in writing that he or she is a creditor of a bankrupt who has become a bankrupt by virtue of the presentation of a debtor's petition against joint debtors, or a creditor of joint debtors some or all of whom have become bankrupts by force of this section, may without fee, and any other person may on payment of the fee determined by the Minister by legislative instrument, inspect, personally or by an agent, any statement of affairs that accompanied the petition presented by the joint debtors, and may obtain a copy of, or take extracts from, any such statement of affairs.
- (12) A bankrupt who has become a bankrupt by force of this section may, without fee and either personally or by an agent:
  - (a) inspect any statement of affairs that accompanied the petition; and

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- (b) obtain a copy of, or make extracts from, any statement of affairs that accompanied the petition.
- (13) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the information is not made available under this section to any person (other than a petitioning debtor or an agent of a petitioning debtor).
- (14) The Official Receiver may refuse to allow a person access under this section to particular information in a statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.

**57A Time at which person becomes bankrupt on debtor's petition**

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

## **Division 4—Effect of bankruptcy on property and proceedings**

### **58 Vesting of property upon bankruptcy—general rule**

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

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

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

- (a) become subject to a restraining order; and
  - (b) be taken into account in making a pecuniary penalty order; and
  - (c) become subject to a charge to secure the payment of an amount under a pecuniary penalty order, if it is subject to a restraining order; and
  - (d) be dealt with by the Official Trustee, if it is subject to a restraining order and a court has directed the Official Trustee to pay the Commonwealth an amount under a pecuniary penalty order out of property subject to the restraining order.
- (2) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered and enables the trustee of the estate of a bankrupt to be registered as the owner of any such property that is part of the property of the bankrupt, that property, notwithstanding that it vests in equity in the trustee by virtue of this section, does not so vest at law until the requirements of that law have been complied with.
- (3) Except as provided by this Act, after a debtor has become a bankrupt, it is not competent for a creditor:

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- (a) to enforce any remedy against the person or the property of the bankrupt in respect of a provable debt; or
  - (b) except with the leave of the Court and on such terms as the Court thinks fit, to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.
- (4) After a debtor has become a bankrupt, distress for rent shall not be levied or proceeded with against the property of the bankrupt, whether or not the bankrupt is a tenant of the landlord by whom the distress is sought to be levied.
- (5) Nothing in this section affects the right of a secured creditor to realize or otherwise deal with his or her security.
- (5A) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a bankrupt, or against any property of a bankrupt that is not vested in the trustee of the bankrupt, in respect of any liability of the bankrupt under:
- (a) a maintenance agreement; or
  - (b) a maintenance order;
- whether entered into or made, as the case may be, before or after the commencement of this subsection.
- (6) In this section, *after-acquired property*, in relation to a bankrupt, means property that is acquired by, or devolves on, the bankrupt on or after the date of the bankruptcy, being property that is divisible amongst the creditors of the bankrupt.

**58A Vesting of property upon bankruptcy—effect of orders in force under the proceeds of crime law**

*If a restraining order or forfeiture order is in force*

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

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*If a pecuniary penalty order is in force*

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

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

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

- (3) If circumstances arise as a result of which this section no longer prevents subsection 58(1) applying to property of the bankrupt, the Director of Public Prosecutions must, as soon as practicable, give the trustee written notice of the existence of the circumstances.

**59 Second or subsequent bankruptcy**

- (1) Where a person who is a bankrupt again becomes a bankrupt:
- (a) the property of the bankrupt:
    - (i) that was acquired by, or devolved on, the bankrupt on or after the date of the earlier bankruptcy; and
    - (ii) that had not been distributed amongst the creditors in the earlier bankruptcy before the date on which the person became a bankrupt on the later occasion;shall (subject to any disposition of that property made by the trustee in the earlier bankruptcy without knowledge of the presentation of the petition on, or by virtue of the presentation of which, the person became bankrupt on the later occasion and subject also to section 126) vest forthwith in the trustee in the later bankruptcy;
  - (b) property:
    - (i) that is acquired by, or devolves on, the bankrupt on or after the date of the later bankruptcy; and
    - (ii) that is divisible amongst the creditors in the later bankruptcy;vests in the trustee in the later bankruptcy as soon as it is acquired by, or devolves on, the bankrupt;
  - (c) the trustee in the earlier bankruptcy:



- (i) shall be deemed to be a creditor in the later bankruptcy in respect of any unsatisfied balance of his or her expenses or remuneration in the earlier bankruptcy, the liabilities incurred by him or her in administering the estate in the earlier bankruptcy and the debts proved in the earlier bankruptcy (whether or not those debts are entitled to priority, or are postponed, in the earlier bankruptcy);
  - (ii) shall rank equally with the ordinary unsecured creditors in the later bankruptcy; and
  - (iii) may, where he or she has lodged a proof of debt in the later bankruptcy, amend that proof of debt, without the consent of the trustee in the later bankruptcy, for the purpose of adding:
    - (A) his or her expenses in the earlier bankruptcy that have, or his or her remuneration in the earlier bankruptcy that has, accrued after the proof of debt was lodged;
    - (B) liabilities incurred by him or her in administering the estate in the earlier bankruptcy after the proof of debt was lodged; or
    - (C) debts proved in the earlier bankruptcy after the proof of debt was lodged;or, with the consent of the trustee in the later bankruptcy, for any other purpose;
  - (d) a charge or charging order that, by virtue of subsection 118(9), is void as against the trustee in the earlier bankruptcy continues to be void as against that trustee; and
  - (e) a transaction that, by virtue of section 120, 121 or 122, is void as against the trustee in the earlier bankruptcy continues to be void as against that trustee.
- (2) Where the trustee of the estate of a bankrupt receives notice of the presentation of a creditor's petition against the bankrupt, the trustee shall hold the after-acquired property of the bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the petition has been dealt with by the Court or has lapsed.
- (3) Where the trustee of the estate of a bankrupt receives notice that a debtor's petition against the bankrupt has been referred to the

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Court, the trustee shall hold the after-acquired property of the bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the Court has dealt with the petition.

- (4) Where the trustee of the estate of a bankrupt is holding after-acquired property of the bankrupt, or the proceeds of any such property, in pursuance of subsection (2) or (3) and the bankrupt again becomes a bankrupt, the trustee shall:
  - (a) in a case where the trustee is also the trustee in the later bankruptcy—hold all such property, and the proceeds of such property, as the trustee in the later bankruptcy; or
  - (b) in any other case—deliver all such property, and pay the proceeds of such property, to the trustee in the later bankruptcy.
- (5) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, and enables the trustee of the estate of a bankrupt to be registered as the owner of any such property that is part of the property of the bankrupt, that property, notwithstanding that it vests in equity in the trustee by virtue of subsection (1), does not vest in the trustee at law until the requirements of that law have been complied with.
- (6) In subsections (2), (3) and (4), *after-acquired property*, in relation to a bankrupt, means such of the property that was acquired by, or devolved on, the bankrupt on or after the date of the bankruptcy, being property divisible amongst the creditors of the bankrupt, as has not been distributed amongst the creditors in the bankruptcy.

**59A Orders under Part VIII of the *Family Law Act 1975***

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

**60 Stay of legal proceedings**

- (1) The Court may, at any time after the presentation of a petition, upon such terms and conditions as it thinks fit:
  - (a) discharge an order made, whether before or after the commencement of this subsection, against the person or property of the debtor under any law relating to the imprisonment of fraudulent debtors and, in a case where the

debtor is imprisoned or otherwise held in custody under such a law, discharge the debtor out of custody; or

(b) stay any legal process, whether civil or criminal and whether instituted before or after the commencement of this subsection, against the person or property of the debtor:

(i) in respect of the non-payment of a provable debt or of a pecuniary penalty payable in consequence of the non-payment of a provable debt; or

(ii) in consequence of his or her refusal or failure to comply with an order of a court, whether made in civil or criminal proceedings, for the payment of a provable debt;

and, in a case where the debtor is imprisoned or otherwise held in custody in consequence of the non-payment of a provable debt or of a pecuniary penalty referred to in subparagraph (i) or in consequence of his or her refusal or failure to comply with an order referred to in subparagraph (ii), discharge the debtor out of custody.

(2) An action commenced by a person who subsequently becomes a bankrupt is, upon his or her becoming a bankrupt, stayed until the trustee makes election, in writing, to prosecute or discontinue the action.

(3) If the trustee does not make such an election within 28 days after notice of the action is served upon him or her by a defendant or other party to the action, he or she shall be deemed to have abandoned the action.

(4) Notwithstanding anything contained in this section, a bankrupt may continue, in his or her own name, an action commenced by him or her before he or she became a bankrupt in respect of:

(a) any personal injury or wrong done to the bankrupt, his or her spouse or a member of his or her family; or

(b) the death of his or her spouse or of a member of his or her family.

(4A) Notwithstanding paragraph (1)(b), this section does not empower the Court to stay any proceedings under a proceeds of crime law.

(5) In this section, *action* means any civil proceeding, whether at law or in equity.

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**61 Actions by bankrupt partner's trustee**

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

**62 Actions on joint contracts**

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

**63 Death of bankrupt**

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

## **Division 5—Meetings of creditors**

### **Subdivision A—Preliminary**

#### **63A Definitions** [see Table B]

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

**bankrupt**, in relation to a meeting of the creditors of 2 or more bankrupts, means each bankrupt.

**creditors and their representatives**, in relation to a meeting, means:

- (a) the creditors who are entitled to vote at the meeting and are participating in person or by telephone in the meeting; and
- (b) the persons participating in person or by telephone in the meeting as proxies or attorneys of any other creditors who are entitled to vote at the meeting.

**joint bankruptcy** means:

- (a) a bankruptcy that occurs as the result of a sequestration order made under section 52, being an order made on a petition presented under section 46; or
- (b) a bankruptcy that occurs by force of section 56E or 57; or
- (c) bankruptcies in respect of which an order under section 53 has been made; or
- (d) bankruptcies that occur under section 55 where:
  - (i) the date of each bankruptcy is the same; and
  - (ii) immediately before the bankruptcies occurred, the bankrupts were joint debtors or partners who owned property jointly.

**meeting** means a meeting of the creditors of a bankrupt or a meeting of the creditors of any one or more of the bankrupts who were made bankrupt in a joint bankruptcy.

**minutes secretary**, in relation to a meeting, means a person appointed under section 64L to record the minutes of the meeting.

**President**, in relation to a meeting, means the person elected under section 64P to preside at the meeting.

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*working day*, in relation to a proposed meeting, means a day other than a Saturday, a Sunday or a public holiday in the place where the meeting is proposed to be held.

- (2) A reference in this Division to a person participating in person in a meeting is a reference to a person being physically present at the meeting.

**63B Trustee's representative** [see Table B]

- (1) The trustee of a bankrupt may, by signed writing, appoint a person to represent the trustee at a meeting.
- (2) If the trustee is not personally present at a meeting, then, unless the contrary intention appears, a reference in this Division to the trustee, in respect of matters occurring at that meeting, is a reference to a person so appointed to represent the trustee at that meeting.

**Subdivision B—Convening of meetings**

**64 Trustee to convene meetings** [see Table B]

- (1) The trustee must convene a meeting of the creditors of a bankrupt:
- (a) whenever the creditors so direct by resolution; and
  - (b) whenever so requested in writing by at least one-fourth in value of the creditors; and
  - (c) whenever so requested in writing by less than one-fourth in value of the creditors, being a creditor who has, or creditors who together have, lodged with the trustee sufficient security for the cost of holding the meeting.
- (2) The trustee may convene at any time a meeting of the creditors of a bankrupt.
- (3) When convening a meeting, the trustee must consider whether the proposed time and place is convenient for the creditors.

**64A Persons to whom notice of meeting to be given** [see Table B]

- (1) If:
- (a) the bankrupt has told the trustee, or the trustee has otherwise found out, that a person is a creditor of the bankrupt; and

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- (b) the trustee is aware of one or more of the following:
- (i) the address of a place of business of the person;
  - (ii) the address of a place of residence of the person or, in the case of a company, the address of its registered office;
  - (iii) an address to which notices may be sent to the person;
  - (iv) a document exchange number to which notices may be sent to the person;
  - (v) a facsimile transmission number to which notices may be sent to the person;
  - (vi) an e-mail address to which notices may be sent to the person;

the trustee must give notice to the person of any meeting of the bankrupt's creditors.

- (2) Notice of a meeting must be given in a manner specified in the regulations.

**64B Certain matters to be included in notice of meeting** [*see* Table B]

- (1) The notice must set out the full name and the address of a place of residence of the bankrupt.
- (2) If the meeting is the first meeting of the bankrupt's creditors, the notice must set out any trade or business name under which the bankrupt carried on business.
- (3) The notice must set out the time, date and place at which the meeting is to be held.
- (4) The notice must set out the agenda for the meeting and must state that additional matters may be added to the agenda with the leave of the meeting.
- (5) The notice must state that a creditor, or a proxy or attorney of a creditor, may make a statement at the meeting at the appropriate time during the proceedings.

**64C If telephone conference facilities are available**

If telephone conference facilities are expected to be available at the place where the meeting is to be held and the trustee considers that,

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having regard to all the circumstances, it will be appropriate to use those facilities, the notice must:

- (a) set out the relevant telephone number; and
- (b) tell the creditors that a creditor, or the proxy or attorney of a creditor, who wishes to participate in the meeting by telephone must give to the trustee, not later than the second-last working day before the day on which the meeting is to be held, a written statement setting out:
  - (i) the name of the creditor and of the proxy or attorney (if any); and
  - (ii) an address to which notices to the creditor, proxy or attorney may be sent; and
  - (iii) a telephone number at which the creditor, proxy or attorney may be contacted; and
  - (iv) any facsimile transmission number to which notices to the creditor, proxy or attorney may be sent; and
- (c) also tell the creditors that a creditor, or the proxy or attorney of a creditor, who participates in the meeting by telephone must pay any costs incurred by the creditor, proxy or attorney in so participating and is not entitled to be reimbursed those costs out of the bankrupt's estate.

**64D Statement by creditor as to amount of debt** [*see* Table B]

The notice must state that each creditor must give to the trustee at or before the meeting a written statement setting out:

- (a) the amount in respect of which the creditor claims that the bankrupt is indebted to the creditor; and
- (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
- (b) if the meeting is the first meeting of the bankrupt's creditors:
  - (i) whether the creditor holds a security in respect of the debt and, if so, the value of the security as estimated by the creditor and the amount of the creditor's debt after deducting that value; and
  - (ii) brief particulars of the transaction and circumstances that gave rise to the debt.



**64E Notice about voting by proxy** [*see* Table B]

- (1) The notice must have attached to it a form for use in appointing a proxy.
- (2) The notice must tell the creditors that, where a creditor wishes to appoint a person to represent the creditor at the meeting as the creditor's proxy, the creditor must complete the form of appointment of proxy and either:
  - (a) arrange for the proxy to give the completed form to the trustee at the meeting; or
  - (b) send the completed form with the statement given by the creditor to the trustee in accordance with section 64D.

**64F Notice about appointment of attorney**

The notice must tell the creditors that, where a creditor wishes to be represented at the meeting by an attorney, the creditor must arrange for the power of attorney to be produced to the trustee at or before the meeting.

**64G Agenda to be set out in notice of meeting** [*see* Table B]

The agenda to be set out in a notice of meeting in accordance with subsection 64B(4) is to comprise the following items:

- (a) opening of the meeting and introduction of the trustee and the bankrupt;
- (b) appointment of a minutes secretary;
- (c) announcement of appointment of proxies and attorneys and circulation of instruments appointing proxies and copies of powers of attorney for inspection by the persons present;
- (d) determination whether a quorum exists;
- (e) election of a person to preside at the remainder of the meeting;
- (f) proposal of a motion "that the meeting is being held at a time, date and place that are convenient to the majority of creditors";
- (g) if the meeting is the first meeting—tabling of the bankrupt's statement of affairs;
- (h) statements by the trustee and by creditors and their representatives;

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- (i) questions to the trustee and to the bankrupt;
- (j) President's summary of matters raised in statements and questions;
- (k) proposal of other motions (if any);
- (l) if the trustee is a registered trustee who does not wish to be remunerated as prescribed by the regulations—if the meeting is the first meeting, approval of the remuneration proposed by the trustee, or, if the meeting is a subsequent meeting, a statement by the trustee of the amount of remuneration drawn before the meeting was held;
- (m) appointment of committee of inspection (if required);
- (n) any other business;
- (o) fixing of time, date and place for another meeting;
- (p) closure of meeting.

**Subdivision C—Procedure before opening of meeting**

**64H Creditors, or proxies or attorneys, participating by telephone**

- (1) If a trustee has considered it appropriate that telephone conference facilities may be used for a meeting of creditors pursuant to section 64C and if a creditor, or the proxy or attorney of the creditor, who wishes to participate by telephone in the meeting has satisfied the requirements of paragraph 64C(b), in so far as they are applicable, the trustee must take all reasonable steps to ensure that the creditor, or the proxy or attorney of the creditor, is contacted on the telephone number provided by that person before the start of the meeting, and if such a person is so contacted the trustee must take all reasonable steps to ensure that that person can hear the proceedings, and can be heard, by means of those facilities, so that that person can participate in the meeting.
- (2) A creditor who, or whose proxy or attorney, so participates in the meeting by telephone is taken, for all purposes of this Act, to be present personally at the meeting.

**64J Preparation of attendance record** [*see* Table B]

- (1) The trustee must prepare an attendance record in accordance with subsection (2) for the purposes of the meeting and must keep the record in his or her possession after the conclusion of the meeting.

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- (2) The attendance record must include 5 columns and must indicate that particulars of creditors are to be entered as follows:
  - (a) the name of each creditor participating in person or by telephone, or represented by a proxy or attorney participating in person or by telephone, is to be entered in the first column;
  - (b) if a creditor is so represented by a proxy or attorney, the name of the proxy or attorney is to be entered in the second column opposite to the name of the creditor in the first column;
  - (c) in respect of each creditor whose name is entered in the first column:
    - (i) the value of the creditor's debt is to be entered in the third column; and
    - (ii) if the debt is secured in whole or in part:
      - (A) the nature, and the value as estimated by the creditor, of the security is to be entered in the fourth column; and
      - (B) the balance of the creditor's debt after deducting that value is to be entered in the fifth column.
- (3) The attendance record must also include provision for recording whether the bankrupt is present and the names of any other persons present who are not creditors or proxies or attorneys of creditors, including provision for recording the capacity in which those other persons are present.

### **Subdivision D—Procedure at meetings**

#### **64K Opening of meeting** [*see* Table B]

- (1) The trustee is to preside at the meeting until a person is appointed to preside under section 64P.
- (2) The trustee must open the meeting and introduce himself or herself and, if the bankrupt is present, introduce the bankrupt.
- (3) If the bankrupt is not present, the trustee must announce that fact and, if the trustee is aware of any reason why the bankrupt is not present, must state that reason.

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- (4) The trustee must circulate the attendance record prepared in accordance with section 64J among the creditors, and creditors' proxies and attorneys, participating in person and must ask them to enter in that record the relevant particulars, as required by the attendance record, of:
  - (a) the creditors who, or whose proxies and attorneys, are so participating in person; and
  - (b) those proxies and attorneys; and
  - (c) the debts of those creditors.
- (5) The trustee must enter in the attendance record the relevant particulars, as required by the attendance record, of:
  - (a) creditors who, or whose proxies or attorneys, are participating in the meeting by telephone; and
  - (b) those proxies and attorneys; and
  - (c) the debts of those creditors.
- (6) The trustee must state in the attendance record whether or not the bankrupt is present and, if the bankrupt is not present and the trustee is aware of any reason why the bankrupt is not present, must set out that reason.

**64L Appointment of minutes secretary** [*see* Table B]

- (1) The trustee must then:
  - (a) invite the creditors and their representatives to propose a motion appointing a person to record the minutes of the meeting; or
  - (b) if no such motion is passed—appoint a person to record those minutes.
- (2) Anyone participating in person in the meeting, whether or not a creditor or a proxy or attorney of a creditor, and including the trustee but not including the bankrupt, is eligible for appointment as the minutes secretary.
- (3) If a person appointed to record the minutes of a meeting subsequently refuses, or is unable, to record, or to continue to record, those minutes, subsections (1) and (2) apply for the purpose of appointing another person to record the minutes.

**64M Announcement of proxies and attorneys**

- (1) The trustee must then announce:
  - (a) the names of the creditors who are not participating in person or by telephone but whose proxies or attorneys are participating in person or by telephone; and
  - (b) the names of the proxies and attorneys.

Note: Under subsection 64ZB(3), a proxy or attorney may be allowed to vote even though the appointing instrument is lodged after the announcement.

- (2) The trustee must then circulate the instruments appointing proxies, and the powers of attorney or copies of the powers of attorney, for inspection by persons present at the meeting.

**64N Quorum** [*see* Table B]

- (1) The trustee must then determine whether a quorum is present.
  - (2) A quorum is constituted by:
    - (a) the presence in person of the trustee (or the trustee's representative); and
    - (b) a creditor, or a proxy or attorney of a creditor, participating in person or by telephone.
- Note: A meeting requires at least 2 persons. Therefore the person covered by paragraph (2)(a) cannot also be the proxy or attorney of the creditor covered by paragraph (2)(b).
- (3) If a quorum is not present within 30 minutes after the time fixed for the meeting, the meeting is adjourned to a time, date and place fixed by the trustee.
  - (4) The date of the adjourned meeting must be not earlier than 7 days nor later than 14 days from the date of the original meeting.
  - (5) The time and place of the adjourned meeting need not be the same as the time and place of the original meeting.
  - (6) The following provisions of this Division apply to any meeting at which a quorum is present within 30 minutes after the time fixed for that meeting.
  - (7) To remove any doubt, but without limiting by implication the application of subsection 63B(2) to other references in this

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Division to the trustee, the reference in subparagraph (2)(a)(ii) of this section to the presence in person of the trustee includes a reference to the presence in person of a person appointed under subsection 63B(1) to represent the trustee.

**64P Election of person to preside at meeting** [*see* Table B]

- (1) The trustee must:
  - (a) invite the creditors and their representatives to nominate a person for election to preside at the meeting; or
  - (b) if no person is so nominated—nominate a person for election to preside at the meeting.
- (2) Anyone participating in person in the meeting, whether or not a creditor or a proxy or attorney of a creditor, and including the trustee but not including the bankrupt, is eligible to be nominated for appointment, and may be elected, to preside at the meeting.
- (3) If only one person is nominated, that person is taken to be elected to preside at the meeting.
- (4) If 2 or more persons are nominated, an election is to be held to determine which of the persons nominated is to preside at the meeting and the person who receives the greatest number of votes (whether or not a majority of the votes cast) is taken to be elected to preside at the meeting.
- (5) Subject to subsection (6), voting at the election is to be on the voices.
- (6) If the trustee is unable to determine which of the persons nominated received the greatest number of the votes on the voices, the trustee must ask each creditor, and each proxy or attorney, participating in person or by telephone to state for which nominee the creditor, proxy or attorney is casting a vote or whether the creditor, proxy or attorney is abstaining from casting a vote.
- (7) If 2 or more persons each receive the greatest number of votes, the trustee must decide by lot which of those persons is to be chosen to preside at the meeting, and the person so chosen is taken to be elected to preside at the meeting.
- (8) A person elected under this section to preside at the meeting is to preside at all times after he or she is elected.

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- (9) If a person so elected subsequently refuses, or is unable, to preside, or to continue to preside, at the meeting, the preceding provisions of this section apply for the purpose of electing another person to preside at the meeting.

**64Q Whether holding of meeting is convenient to majority of creditors** [*see* Table B]

- (1) As soon as the President is elected, he or she must invite the creditors and their representatives to propose a motion that the meeting is being held at a time, date and place that are convenient to a majority of creditors.
- (2) If no such motion is proposed, or such a motion is proposed but is not passed, the meeting is adjourned to such time, date and place as the meeting resolves.

**64R Tabling of bankrupt's statement of affairs** [*see* Table B]

- (1) If the meeting is the first meeting, the President must then request the trustee to lay the bankrupt's statement of affairs before the meeting and the trustee must comply with the request.
- (2) If any of the creditors and their representatives requests that a creditor be given a copy of the statement of affairs, the trustee must comply with the request as soon as reasonably practicable.

**64S Statements and questions** [*see* Table B]

- (1) The President must then invite the trustee and the creditors and their representatives to make statements to the meeting.
- (2) After the statements (if any) have been made, the President must invite the creditors and their representatives to ask questions of the trustee and, if the bankrupt is present, of the bankrupt.
- (3) After the statements (if any) have been made and the questions (if any) have been asked, the President may, if he or she wishes to do so, summarise the matters raised in any such statements and in any questions asked of, and answers given by, the trustee and the bankrupt.

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**64T Motions** [*see* Table B]

The President must then invite the creditors and their representatives to propose any relevant motions.

**64U Remuneration of registered trustee** [*see* Table B]

- (1) If the meeting is the first meeting of the bankrupt's creditors and the trustee is a registered trustee, the President must then ask the trustee to state the basis on which the trustee wishes to be remunerated.
- (2) If the trustee states that he or she wishes to be remunerated as prescribed by the regulations, the minutes secretary is to record that statement in the minutes of the meeting.
- (3) If the trustee states a different basis for the fixing of his or her remuneration, the following provisions of this section have effect.
- (4) The President must invite the creditors and their representatives to propose a motion that the trustee be remunerated in accordance with the statement and, if no such motion is proposed, the trustee may propose such a motion.
- (5) A statement to be made by the trustee as mentioned in subsection (3) must:
  - (a) if the trustee proposes to charge on a time-cost basis:
    - (i) if there is only one rate at which the remuneration is to be calculated—state that rate; or
    - (ii) otherwise—state the respective rates at which the remuneration of the trustee and the other persons who will be assisting, or will be likely to assist, the trustee in the performance of his or her duties are to be calculated; or
  - (b) if the trustee proposes to charge on the basis of a commission upon money received by the trustee—state the rate of that commission;and must also state the periods at which the trustee proposes to withdraw funds from the bankrupt's estate in respect of the trustee's remuneration.

- (5A) The statement under subsection (3) must also include:



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- (a) an estimate of the total amount of the trustee's remuneration;  
and
  - (b) an explanation of the likely impact of that remuneration on  
the dividends (if any) to creditors.
- (6) Any of the creditors and their representatives may ask the trustee questions about the proposed remuneration of the trustee and, if such a question is asked, the trustee must answer it.
- (7) Any of the creditors and their representatives may move an amendment to a motion proposed in accordance with subsection (4) so as to change in any way the basis on which the trustee is to charge or the periods at which the trustee may withdraw funds in respect of his or her remuneration or to refer the fixing of the trustee's remuneration to a committee of inspection.
- (8) If the meeting is not the first meeting of the bankrupt's creditors and the trustee is a registered trustee, the President must request the trustee to lay before the meeting a statement of the amount of remuneration drawn by the trustee from the funds of the bankrupt's estate before the meeting was held and the trustee must comply with the request.

**64V Appointment of committee of inspection** [*see* Table B]

The President must then tell the creditors and their representatives that, if they wish to appoint a committee of inspection, a motion for the appointment of such a committee may be proposed and must explain to them the effect of section 70.

**64W Other business** [*see* Table B]

If no motion is proposed for the appointment of a committee of inspection, or a motion for the appointment of such a committee has been passed or defeated, the President must then invite the creditors and their representatives to raise any other matters relevant to the bankruptcy.

**64X Next meeting** [*see* Table B]

- (1) The President must then invite the creditors and their representatives to propose a motion fixing a time, date and place for another meeting.

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- (2) The passing of a resolution fixing a time, date and place for another meeting does not prevent the trustee from convening any other meeting before or after the date so fixed.

**Subdivision E—Miscellaneous**

**64Y Adjournment of meeting** [*see* Table B]

- (1) If, at any time during a meeting, the meeting is adjourned, or a resolution is passed for the adjournment of the meeting:
  - (a) the adjourned meeting is taken to be a continuation of the original meeting; and
  - (b) without limiting the application of paragraph (a):
    - (i) the persons who carried out the duties of President and minutes secretary at the original meeting are to continue to do so at the adjourned meeting; and
    - (ii) any matters required to be dealt with at the original meeting that were not so dealt with are to be dealt with at the adjourned meeting.
- (2) The trustee must give notice of the time, date and place of the adjourned meeting to each creditor in accordance with subsection 64A(2).

**64Z Duties of minutes secretary** [*see* Table B]

- (1) It is the duty of the minutes secretary of a meeting to take minutes in accordance with this section recording the business transacted at the meeting.
- (2) The minutes may, but need not, record full particulars of statements made, questions asked and answers given at the meeting but must contain sufficient particulars to show that the meeting dealt with all matters that are required by this Division to be dealt with.
- (3) Without limiting the generality of subsection (2), the minutes must record:
  - (a) the name, and the address of a place of residence or business, of the minutes secretary or, if there were different minutes secretaries at different times during the meeting, of each minutes secretary; and

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- (b) the votes cast for each nominee at an election of a person to preside at the meeting (other than an election at which voting took place on the voices); and
  - (c) the name, and the address of a place of residence or business, of the President or, if there were different Presidents at different times during the meeting, of each President.
- (4) The minutes must record the precise words of each motion proposed at the meeting and of any amendment proposed to such a motion.
- (5) If a resolution or a special resolution is passed at the meeting:
  - (a) the minutes secretary must prepare a certificate recording the precise words of the resolution or special resolution; and
  - (b) the President and the minutes secretary must each sign the certificate; and
  - (c) the minutes secretary must give the certificate:
    - (i) to the trustee; or
    - (ii) in the case of a resolution passed under section 181 removing the trustee—to the trustee appointed in place of the trustee removed and to the Official Receiver; and
  - (d) the trustee to whom the certificate is given must keep it and allow the bankrupt, a creditor or an authorised employee to inspect it at any reasonable time.
- (6) If a motion is passed or defeated on the voices, the minutes must record that fact and, if a person who voted against a motion that was passed on the voices asks that the person's dissent be recorded in the minutes, that dissent must be so recorded.
- (7) The minutes must record the value of each creditor's debt and the total value of the debts of all the creditors.
- (8) If a poll is taken on a motion, the minutes must record:
  - (a) the number and names of the creditors (if any) who voted in favour of the motion and the total value of their debts; and
  - (b) the number and names of the creditors (if any) who voted against the motion and the total value of their debts; and
  - (c) the number and names of the creditors (if any) who abstained from voting on the motion and the total value of their debts.

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- (9) A reference in this section to the value of a creditor's debt is, if the creditor is a secured creditor, a reference to the value of that debt after deducting the value of the security as estimated by the creditor in the statement given by the creditor to the trustee under section 64D.
- (10) The minutes must be dated, and be signed by the President and the minutes secretary, not later than 14 days after the date of the meeting.

**64ZA Entitlement to vote** [*see* Table B]

- (1) This section applies to voting:
  - (a) at an election under section 64P of a person to preside at a meeting; and
  - (b) on any motion proposed at a meeting or an amendment proposed to such a motion.
- (2) In this section:

*creditor* means a creditor who, or whose proxy or attorney, participates in the meeting in person or by telephone.
- (3) A person other than a creditor is not entitled to vote.
- (4) Subject to subsections (5) and (6), each creditor is entitled to vote and has one vote.
- (5) If a creditor is a secured creditor, the creditor is not entitled to vote unless the debt, or the total amount of the debts, owed to the creditor exceeds the amount estimated by the creditor in the statement given to the trustee under section 64D to be the value of the security.
- (6) A creditor who has failed to give to the trustee a statement in accordance with section 64D is not entitled to vote.
- (7) A creditor is not disqualified from voting merely because the creditor is the President or the minutes secretary.
- (8) The trustee may determine any question that arises as to the entitlement of a person to vote.
- (9) If the trustee needs a period in which to determine a question referred to in subsection (8), the meeting is to be adjourned to such

time, date and place as the meeting resolves, being a date not later than 14 days after the date of the original meeting, for the purpose of enabling the trustee to determine the question.

**64ZB Manner of voting** [*see* Table B]

- (1) A creditor who participates in a meeting in person or by telephone may cast the creditor's vote personally and not otherwise.
- (2) Subject to subsections (3) and (5), the vote of a creditor who is not participating in a meeting in person or by telephone may be cast by a proxy duly appointed by the creditor, or by an attorney duly authorised by the creditor under a power of attorney, being a proxy or attorney participating in the meeting in person or by telephone, and the casting of a creditor's vote by such a proxy or attorney is taken to constitute the casting of a vote by the creditor.
- (3) A person claiming to be the proxy of a creditor is not entitled to vote as proxy unless the instrument of appointment has been lodged with the President (or with the trustee, before the President was elected), either before or after the announcement is made under section 64M about the appointment of proxies and attorneys.
- (3A) If an instrument of appointment of a proxy is lodged with the President in substitution for another instrument with an earlier date, then the later instrument commences to have effect (from the time it is lodged with the President) in substitution for the earlier instrument.
- (4) A creditor's proxy or attorney is not disqualified from casting the creditor's vote merely because the proxy or attorney is the trustee, the President or the minutes secretary.
- (5) If the trustee or an associate of the trustee is a creditor's proxy or attorney, the trustee or associate may not cast the creditor's vote on a motion relating to the trustee's remuneration unless the instrument appointing the proxy or the power of attorney, as the case may be, expressly authorises the trustee or associate to cast the creditor's vote on such a motion.
- (6) For the purposes of subsection (5), a person is an associate of the trustee if the person is:
  - (a) a partner of the trustee; or

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- (b) an employee of the trustee; or
  - (c) a solicitor for the trustee, for a partnership in which the trustee is a partner, or for a person or partnership that employs the trustee.
- (7) A motion proposed at a meeting is to be resolved:
- (a) subject to paragraph (b)—on the voices; or
  - (b) if:
    - (i) the President is unable to determine the result of the voting on the voices; or
    - (ii) any of the creditors and their representatives requests a poll, whether the request is made before the motion is put to the vote on the voices or after the President announces the result of the vote on the voices; or
    - (iii) the motion relates to a matter in respect of which this Act requires the passing of a resolution or special resolution;
- by a poll taken:
- (iv) by a show of hands or written votes of creditors, or proxies or attorneys, participating in person; and
  - (v) by statements made by telephone to the President by creditors, or proxies or attorneys, participating by telephone.
- (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.

**64ZBA Creditors' resolution without meeting**

- (1) The trustee may at any time put a proposal to the creditors by giving a notice under this section.
- (2) The notice must:
  - (a) contain a single proposal; and

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- (b) include a statement of the reasons for the proposal and the likely impact it will have on creditors (if it is passed); and
  - (c) be given to each creditor who would be entitled under section 64A to receive notice of a meeting of creditors; and
  - (d) invite the creditor to either:
    - (i) vote Yes or No on the proposal; or
    - (ii) object to the proposal being resolved without a meeting of creditors; and
  - (e) specify a time by which replies must be received by the trustee (in order to be taken into account).
- (3) If, within the time specified in the notice:
- (a) at least 1 creditor votes in writing; and
  - (b) no other creditor objects in writing to the proposal being resolved without a meeting of creditors;
- then the following provisions have effect:
- (c) if the proposal requires a special resolution and there is a Yes vote by a majority in number, and at least 75% in value, of those who voted within the required time—the proposal is taken to have been passed by a special resolution of creditors at a meeting;
  - (d) if the proposal does not require a special resolution and there is a Yes vote by a majority in value of those who voted within the required time—the proposal is taken to have been passed by a resolution of creditors at a meeting;
  - (e) in any other case—the proposal is taken not to have been passed.
- (4) A certificate signed by the trustee stating any matter relating to a proposal under this section is prima facie evidence of the matter.

**64ZC Appointment of proxies** [*see* Table B]

- (1) An instrument appointing a proxy must set out:
- (a) the full name, and the address of a place of residence or business, of the creditor; and
  - (b) the full name, and the address of a place of residence or business, of the person appointed as proxy.

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- (2) An instrument appointing a proxy may appoint more than one person as proxy but:
  - (a) if the first person named in the instrument as a proxy is participating in person or by telephone in the meeting, only that person may cast the creditor's vote; and
  - (b) any other person named in the instrument as a proxy may cast the creditor's vote if, and only if, that person is participating in person or by telephone in the meeting and no person named in the instrument as a proxy before the name of that person is participating in person or by telephone in the meeting.
- (3) An instrument appointing a proxy must set out the bankrupt's name and must state whether the appointment relates to a particular meeting or to all meetings.
- (4) An instrument appointing a proxy may authorise the proxy to cast the creditor's vote at a meeting to which the proxy relates on all matters arising at the meeting or may authorise the proxy to cast the creditor's vote at that meeting only on matters specified in the instrument.
- (5) An instrument appointing a proxy may direct the proxy as to the manner in which the proxy is to vote on a particular matter or matters that may arise at the meeting or on a particular motion or motions that may be proposed at the meeting.
- (6) If an instrument appointing a proxy purports to appoint the bankrupt as a proxy, the purported appointment does not have any effect but, if the instrument also appoints another person as a proxy, the appointment of the other person is not affected and the instrument has effect as if the purported appointment of the bankrupt were not included.

**64ZD Provisions relating to motions and amendments of motions**

- (1) Subject to the right of the trustee to propose a motion relating to the trustee's remuneration under subsection 64U(4), the only persons who may propose motions, or amendments of motions, at a meeting are the creditors and their representatives.
- (2) A motion or amendment does not need to be seconded.



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- (3) If a motion is proposed, the person presiding at the meeting must allow a reasonable time for debate on the motion and on any amendment proposed to the motion.
- (4) After a reasonable time for debate has elapsed, the person presiding must:
  - (a) if no amendment has been proposed—put the motion to a vote; or
  - (b) if an amendment or amendments have been proposed, put the amendment or amendments to a vote; and
    - (i) if the amendment or amendments are defeated—put the original motion to a vote; or
    - (ii) if an amendment or amendments are passed—put the original motion as amended to a vote.
- (5) If a question arises as to the terms of a motion or amendment that is being put to a vote, the person presiding must read the motion or amendment to the meeting.

**64ZE Joint bankruptcies** [*see* Table B]

- (1) At a meeting of the creditors in a joint bankruptcy, the trustee must explain to the creditors and their representatives the likely effect of section 110 with respect to the distribution of dividends.
- (2) At a meeting of the creditors in a bankruptcy to which section 141 applies, the trustee must explain to the creditors and their representatives the likely effect of section 141 with respect to the distribution of dividends.

**64ZF Substantial compliance to be sufficient**

A meeting, or anything done at a meeting, is not invalid because a requirement of this Subdivision has not been strictly complied with if the requirement has been substantially complied with.

## **Division 5A—Committee of inspection**

### **70 Committee of inspection**

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

**71 Vacation of office etc.**

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

**72 Member of committee not to purchase part of estate**

- (1) A member of the committee of inspection shall not, while acting as such a member, except by leave of the Court, either directly or indirectly, become purchaser of any part of the property of the bankrupt.
- (2) Where a member of the committee of inspection is a person authorized by a creditor to act for the creditor in relation to the bankruptcy, the creditor shall not, while that person is acting as a member of the committee, except by leave of the Court, either

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directly or indirectly, become purchaser of any part of the property of the bankrupt.

- (3) A purchase made in contravention of this section may be set aside by the Court on the application of a creditor.

## **Division 6—Composition or arrangement with creditors**

### **73 Composition or arrangement** [see Table B]

- (1) Where a bankrupt desires to make a proposal to his or her creditors for:
  - (a) a composition in satisfaction of his or her debts; or
  - (b) a scheme of arrangement of his or her affairs;he or she may lodge with the trustee a proposal in writing signed by him or her setting out the terms of the proposed composition or scheme of arrangement and particulars of any sureties or securities forming part of the proposal.
- (1A) The trustee must, within 2 working days after receiving the proposal, give a copy of the proposal to the Official Receiver for the District in which the bankrupt resides.
- (1B) For the purposes of subsection (1A), a **working day** is a day that is not a Saturday, Sunday or public holiday in the District in which the bankrupt resides.
- (2) The trustee shall call a meeting of creditors and shall send to each creditor before the meeting a copy of the proposal accompanied by a report on it.
  - (2A) The report must indicate whether the proposal would benefit the bankrupt's creditors generally.
  - (2AA) The report must name each creditor who was identified as a related entity of the bankrupt in the bankrupt's statement of affairs.
  - (2B) The trustee may refuse to call the meeting if the proposal does not make adequate provision for payment to the trustee of accrued fees that:
    - (a) are owing to the trustee (at the time the proposal is lodged) in respect of the administration of the bankrupt's estate, but are not able to be taken out of the bankrupt's estate; and
    - (b) have been approved by the creditors before the proposal is considered.

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- (3) The bankrupt may, at the meeting, amend the terms of his or her proposal, but not in a way that reduces any provision for payment to the trustee of fees referred to in subsection (2B).
- (4) The creditors may, by special resolution, accept the proposal.
- (5) A creditor who has proved his or her debt may assent to or dissent from the proposal by written notice to that effect delivered to the trustee before the meeting or sent by post to the trustee and received by him or her before the meeting, and in that case the creditor shall, for the purposes of this Division, be deemed to have been present at the meeting and to have voted according to his or her assent or dissent.

**73A Trustee may require surety for cost of meeting**

- (1) Before calling a meeting under section 73, the trustee may require the bankrupt to lodge with the trustee an amount that is sufficient to cover:
  - (a) the estimated costs that will be incurred by the trustee in arranging and holding the meeting; and
  - (b) the estimated fee that will (if approved by the creditors) be payable to the trustee in respect of the meeting.
- (2) If the amount lodged by the bankrupt is more than the actual costs and fee, then the trustee must refund the excess to the bankrupt.

**73B Declaration of relationships by proposed trustee of composition or scheme of arrangement**

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

- (b) give a copy of the declaration to the trustee of the bankrupt's estate; and
  - (c) keep a copy of the declaration.
- (4) The trustee of the bankrupt's estate must give a copy of the declaration to each of the creditors at the same time as the trustee gives a copy of the subsection 73(2) report to each creditor.

### **73C Statement of affairs and declarations of relationships to be tabled at meeting**

#### *Scope*

- (1) This section applies to a meeting that is called under section 73.

#### *Bankrupt's statement of affairs*

- (2) The trustee must table at the meeting a copy of the bankrupt's statement of affairs.
- (3) If:
- (a) the bankrupt had been required, immediately before the start of the meeting, to prepare a statement of affairs; and
  - (b) that statement would have differed in one or more material respects from the statement a copy of which was tabled under subsection (2);

the bankrupt must table at the meeting a written statement identifying those differences.

#### *Proposed trustee's declaration*

- (4) If the proposal provides that a person (the ***proposed trustee***) other than the trustee of the bankrupt's estate is to become the trustee of the composition or scheme of arrangement, the trustee of the bankrupt's estate must table at the meeting a copy of the declaration made by the proposed trustee under subsection 73B(2).
- (5) If:
- (a) the proposal provides that a person (the ***proposed trustee***) other than the trustee of the bankrupt's estate is to become the trustee of the composition or scheme of arrangement; and

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- (b) assuming that the proposed trustee had been required, immediately before the start of the meeting, to make a declaration stating whether the bankrupt is a related entity of:
  - (i) the proposed trustee; or
  - (ii) a related entity of the proposed trustee;that declaration would have differed in one or more material respects from the declaration made by the proposed trustee under subsection 73B(2);  
the proposed trustee must table at the meeting a written statement identifying those differences.

**74 Annulment of bankruptcy** [*see* Table B]

- (5) Upon the passing of a special resolution at a meeting of creditors of a bankrupt under subsection 73(4), the bankruptcy is annulled, by force of this subsection, on the date on which the special resolution was passed.
- (5A) The trustee must, as soon as practicable after that date, give the Official Receiver a written notice setting out the name and the bankruptcy number of the former bankrupt and the date of the annulment.
- (6) Where a bankruptcy is annulled under this section, all sales and dispositions of property and payments duly made, and all acts done, by the trustee or any person acting under the authority of the trustee or the Court before the annulment shall be deemed to have been validly made or done but, subject to subsection (7), the property of the bankrupt still vested in the trustee vests in such person as the Court appoints or, in default of such an appointment, reverts to the bankrupt for all his or her estate or interest in it, on such terms and subject to such conditions (if any) as the Court orders.
- (7) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, any such property vested in the trustee at the time of the annulment of the bankruptcy, notwithstanding that it vests in equity in such person as the Court appoints or in the bankrupt, as the case may be, does not vest in that person or the bankrupt at law until the requirements of that law have been complied with.



### **74A Variation of composition or scheme of arrangement**

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

#### *Variation by special resolution of creditors*

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

#### *Variation proposal by trustee*

- (3) The trustee may, in writing, propose a variation of the composition or scheme. The trustee cannot propose a variation without the written consent of the debtor.
- (4) The trustee must give notice of the proposed variation to all the creditors who would be entitled under section 64A (as that section applies in accordance with section 76A) to receive notice of a meeting of creditors.
- (5) The notice must:
- (a) include a statement of the reasons for the variation and the likely impact it will have on creditors (if it takes effect); and
  - (b) specify a proposed date of effect for the variation (at least 14 days after the notice is given); and
  - (c) state that any creditor may, by written notice to the trustee at least 2 days before the specified date, object to the variation taking effect without there being a meeting of creditors.
- (6) If no creditor lodges a written notice of objection with the trustee at least 2 days before the specified date, then the proposed variation takes effect on the date specified in the notice.
- (7) A certificate signed by the trustee stating any matter relating to a proposed variation under this section is prima facie evidence of the matter.

### **75 Effect of composition or scheme of arrangement** [see Table B]

- (1) Subject to this section, a composition or scheme of arrangement accepted in accordance with this Division is binding on all the

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creditors of the bankrupt so far as relates to provable debts due to them from the bankrupt.

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

**76 Application of Part VIII to trustee of a composition or arrangement**

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

**76A Meetings of creditors**

Division 5 of Part IV applies, so far as it is capable of applying and with such modifications (if any) as are prescribed by the regulations, to meetings of creditors under this Division.

**76B Setting aside and termination of a composition or scheme of arrangement**

Sections 222 to 222D, 224 and 224A apply, with such modifications (if any) as are prescribed by the regulations, in

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relation to a composition or scheme of arrangement under this Division as if:

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

## **Part V—Control over person and property of debtors and bankrupts**

### **Division 1—General**

#### **77 Duties of bankrupt as to discovery etc. of property**

- (1) A bankrupt shall, unless excused by the trustee or prevented by illness or other sufficient cause:
  - (a) forthwith after becoming a bankrupt, give to the trustee:
    - (i) all books (including books of an associated entity of the bankrupt) that are in the possession of the bankrupt and relate to any of his or her examinable affairs; and
    - (ii) the bankrupt's passport, if any; and
  - (b) attend the trustee whenever the trustee reasonably requires; and
  - (ba) give such information about any of the bankrupt's conduct and examinable affairs as the trustee requires; and
  - (bb) as soon as practicable after becoming a bankrupt, advise the trustee of any material change that occurred between the time the bankrupt lodged his or her statement of affairs and the time the bankrupt became a bankrupt; and
  - (bc) if a material change occurred later, advise the trustee of that change as soon as practicable after the change occurs; and
  - (c) attend a meeting of creditors whenever the trustee requires; and
  - (d) at each meeting of creditors at which the bankrupt is present, give such information about any of the bankrupt's conduct and examinable affairs as the meeting requires; and
  - (e) execute such instruments and generally do all such acts and things in relation to his or her property and its realization as are required by this Act or by the trustee or as are ordered by the Court upon the application of the trustee; and
  - (f) disclose to the trustee, as soon as practicable, property that is acquired by him or her, or devolves on him or her, before his or her discharge, being property divisible amongst his or her creditors; and

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

(2) In this section:

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

### **77AA Access by Official Receiver and others to premises**

- (1) The Official Receiver, or an officer authorised in writing by the Official Receiver to exercise powers under this section, is entitled at all reasonable times to full and free access to all premises and books for any purpose of this Act, and for that purpose:
- (a) may make copies of, or take extracts from, books; and
  - (b) may remove from premises any books that the Official Receiver or officer reasonably considers may be relevant to the examinable affairs of:
    - (i) a bankrupt whose affairs are being administered under Part IV; or
    - (ii) a person who is a party (as debtor) to a debt agreement; or
    - (iii) a debtor whose affairs are being administered under Part X; or
    - (iv) a deceased debtor whose affairs are being administered under Part XI or are subject to a debt agreement.
- (1A) A registered trustee may accompany and assist the Official Receiver or an officer exercising powers under subsection (1) 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:

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- (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.
- (2) An officer is not entitled to enter or remain in or on any premises under this section if, on being requested by the occupier of the premises for proof of authority, the officer does not produce the officer's authority under subsection (1).
- (3) The occupier of any premises entered or proposed to be entered by the Official Receiver, or by an officer, under subsection (1) must provide the Official Receiver or officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: \$3,000.

**77A Access by trustee to books of associated entity**

- (1) Where a trustee is conducting under section 19AA an investigation relating to a person (in this section called the *bankrupt*), subsections (2) and (3) of this section apply.
- (2) For the purposes of the investigation, the a trustee may by writing require a person to produce:

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

**77C Power of Official Receiver to obtain information and evidence**

- (1) The Official Receiver may, by written notice given to a person, require the person to do one or both of the following:
- (a) give the Official Receiver information the Official Receiver requires for the purposes of the performance of the functions of the Official Receiver or a trustee under this Act;
  - (b) attend before the Official Receiver, or an officer authorised in writing by the Official Receiver to exercise powers under this paragraph, and do one or both of the following:

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- (i) give evidence relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act;
- (ii) produce all books in the person's possession relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act.

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

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

**77D Allowances and expenses in respect of attendance**

- (1) Subject to this section, a person who attends before the Official Receiver, or before an authorised officer, under subsection 77C(1) is entitled:
  - (a) to be paid by the Official Receiver an allowance of \$20 in respect of each day or part of a day on which the person so attends; and
  - (b) to be reimbursed by the Official Receiver any reasonable expenses incurred by the person for transport, meals and accommodation in connection with the person's attendance.



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- (2) A person who is or has been a bankrupt is not entitled to be paid an allowance, or reimbursed any expenses, in respect of the attendance of that person to give evidence or produce books relating to his or her bankruptcy.
- (3) A person is not entitled to be reimbursed any expenses unless the person produces to the Official Receiver sufficient documentary evidence to establish that the person incurred those expenses.
- (4) This section has effect subject to section 304A.

**77E Advance on account of allowances and expenses**

- (1) If a person who is required by a notice under subsection 77C(1) to attend before the Official Receiver or an authorised officer is entitled under subsection 77D(1) to be paid an allowance and to be reimbursed expenses in respect of the attendance, the Official Receiver must, before the person begins to travel for the purpose of so attending, offer to the person, on account of the allowance and reimbursement of expenses, an advance determined under this section.
- (2) If the Official Receiver is satisfied that it will be necessary for the person to travel by aircraft from the person's principal place of residence to the place at which the person is required to attend, the advance is to be an amount equal to the sum of \$20 and the ordinary one-way economy class airfare from the airport nearest to that principal place of residence to the airport nearest to the place at which the person is required to attend.
- (3) If the person will be travelling by private motor vehicle, the advance is to be the sum of \$20 and whichever is the lesser of the following amounts:
  - (a) an amount prescribed by the regulations;
  - (b) if there is an airport open to civilian passenger traffic that is within a radius of 100 kilometres from the person's principal place of residence—the ordinary one-way economy class airfare from that airport to the airport nearest to the place at which the person is required to attend.
- (4) If the person will be travelling otherwise than as mentioned in subsections (2) and (3), the advance is to be:

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- (a) if the distance between the person's principal place of residence and the place at which the person is required to attend exceeds 50 kilometres—\$10 plus such additional amount (if any) as is prescribed by the regulations; or
  - (b) in any other case—\$10.
- (5) The regulations may prescribe different amounts in respect of different distances and different means of travel.
- (6) This section has effect subject to section 304A.

**77F Allowances and expenses to be paid out of bankrupt's estate**  
[see Table B]

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

**78 Arrest of debtor or bankrupt**

- (1) Where it is made to appear to the Court:
- (a) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has absconded, or is about to abscond, with a view to avoiding payment of his or her debts or to preventing or delaying proceedings against him or her under this Act;
  - (b) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has concealed or removed, or is about to conceal or remove, any of his or her property with a view to preventing or delaying possession of it being taken under this Act in the event of his or her becoming a bankrupt;
  - (c) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has destroyed, concealed or removed, or is about to destroy, conceal or remove, books (including books of an associated entity of the debtor) relating to any of the debtor's examinable affairs;

(d) that a bankrupt has concealed, or, without the permission of the trustee, has removed, any of the property of the bankrupt; or

(f) that a bankrupt has, without good cause shown, neglected or failed to comply with an order of the Court or with any other obligation under this Act;

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

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

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

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

Penalty: Imprisonment for 6 months.

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

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

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

### **81 Discovery of bankrupt's property etc.** [see Table B]

- (1) Where a person (in this section called the *relevant person*) becomes a bankrupt, the Court or a Registrar may at any time

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(whether before or after the end of the bankruptcy), on the application of:

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

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

(1A) A summons to a person by the Court or the Registrar under subsection (1) shall require the person to attend:

- (a) at a specified place and at a specified time on a specified day, being a place, time and day that are reasonable in the circumstances; and
- (b) before the Court or the Registrar or, if the Court or the Registrar thinks fit, a magistrate;

to be examined on oath under this section about the relevant person and the relevant person's examinable affairs.

(1B) A summons to a person under subsection (1) may require the person to produce at the examination books (including books of an associated entity of the relevant person) that:

- (a) are in the possession of the first-mentioned person; and
- (b) relate to the relevant person or to any of the relevant person's examinable affairs.

(1C) Before summoning a person on an application under subsection (1) by a creditor, the Court or the Registrar, as the case requires, may impose on the applicant such terms as to costs as it, or he or she, thinks fit.

(2) An examination under this section shall be held in public.

(3) The Court, the Registrar or a magistrate may at any time adjourn the examination of a person under this section either to a fixed date or generally, or conclude the examination.

(4) The Registrar or a magistrate may at any time adjourn the examination of a person under this section for further hearing before the Court.

(5) Where the examination is adjourned by the Registrar or a magistrate for further hearing before the Court, the Registrar or the

magistrate, as the case may be, may submit to the Court such report with respect to the examination as he or she thinks fit.

- (6) Where the examination is adjourned for further hearing before the Court, the Court may:
  - (a) continue the examination;
  - (b) at any time direct that the examination be continued before the Registrar or a magistrate; or
  - (c) make such other order as it thinks proper in the circumstances.
- (7) A person summoned to attend before the Court, the Registrar or a magistrate for examination under this section is entitled to be represented, on his or her examination, by counsel or a solicitor, who may re-examine him or her after his or her examination.
- (8) Where a person is summoned for examination under this section, a creditor, the trustee or the Official Receiver may take part in the examination and, for that purpose, may be represented by counsel or a solicitor or by an agent authorized in writing for the purpose.
- (9) Without limiting the generality of subsection (8), where the Official Trustee is the trustee, the Official Trustee may, for the purpose of taking part in the examination, be represented by the Official Receiver.
- (10) The Court, the Registrar or the magistrate may put, or allow to be put, to a person being examined under this section such questions about the relevant person or any of the relevant person's examinable affairs as the Court, the Registrar or the magistrate, as the case may be, thinks appropriate.
- (10A) Notwithstanding subsection (10), where a person is being examined under this section after the end of the bankruptcy, a question about a matter or thing arising or occurring after the end of the bankruptcy shall not be put, or allowed to be put, at the examination unless the question is about a matter or thing connected with the administration of the relevant person's estate.
- (11) A person being examined under this section shall answer all questions that the Court, the Registrar or the magistrate puts or allows to be put to him or her.

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- (11AA) Subject to any contrary direction by the Court, the Registrar or the magistrate, the relevant person is not excused from answering a question merely because to do so might tend to incriminate the relevant person.
- (11A) The Court, the Registrar or the magistrate may direct a person who is being examined under this section to produce at the examination specified books, or specified classes of books, that are in the possession of the person and are relevant to matters about which the person is being, or is to be, examined.
- (11B) Without limiting the generality of subsection (11A), a direction under that subsection may relate to books of an associated entity of the relevant person.
- (12) Where a person admits on examination under this section that he or she is indebted to the relevant person, then, the Court, the Registrar or the magistrate, as the case may be, may, on the application of the trustee or a creditor, order the person to pay to the trustee, at or by such time and in such manner as the Court, the Registrar or the magistrate, as the case may be, thinks fit, the whole or a part of the amount in which the person admits he or she is indebted to the relevant person.
- (13) Where a person admits on examination under this section that there is in the possession of the person property of the relevant person that is divisible among creditors, the Court, the Registrar or the magistrate, as the case requires, may, on the application of the trustee or a creditor, order the first-mentioned person to deliver the property to the trustee within a specified period, in a specified manner and on specified terms.
- (14) The Court, the Registrar or the magistrate, as the case may be, may direct that the costs of a person, other than the relevant person, examined under this section shall be paid out of the estate of the relevant person.
- (15) The Court, the Registrar or the magistrate, as the case may be, may cause such notes of the examination of a person under this section to be taken down in writing as the Court, the Registrar or the magistrate, as the case may be, thinks proper, and the person examined shall sign the notes.

- (17) Notes taken down and signed by a person in pursuance of subsection (15), and the transcript of the evidence given at the examination of a person under this section:
- (a) may be used in evidence in any proceedings under this Act whether or not the person is a party to the proceeding; and
  - (b) shall be open to inspection by the person, the relevant person, the trustee or a person who states in writing that he or she is a creditor without fee and by any other person on payment of the fee prescribed by the regulations.

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## Division 2—Offshore information notices

### 81A Issue of notices

(1) If the Official Receiver has reason to believe that:

(a) information relevant to the examinable affairs of a bankrupt is:

(i) known (whether exclusively or otherwise) by a person outside Australia; or

(ii) recorded (whether exclusively or otherwise) in a book outside Australia; or

(b) books relevant to the examinable affairs of a bankrupt are outside Australia (whether or not copies are in Australia or, if the books are copies of other books, whether or not those other books are in Australia);

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

(c) to give to the Official Receiver, within the period and in the manner set out in that notice, any such information; or

(d) to produce to the Official Receiver, within the period and in the manner set out in that notice, any such books; or

(e) to make copies of any such books and to produce to the Official Receiver, within the period and in the manner set out in that notice, those copies.

(2) The period set out in the offshore information notice must end 90 days after the date on which the notice is given.

### 81B Extension of period of notice

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

(2) If:

(a) an application under subsection (1) is made before the end of the period set out in the offshore information notice; and



- (b) at the end of the period, the Official Receiver has not notified the person of the decision of the Official Receiver on the application;
- the following provisions have effect:
- (c) the Official Receiver is taken to have extended the period under subsection (1) to the end of the day on which the decision of the Official Receiver is notified to the person to whom the offshore information notice was given;
  - (d) if the Official Receiver decides to extend the period—the extended period must end after the day referred to in paragraph (c).
- (3) A reference in this Division (other than subsection (1) of this section) to the period set out in the offshore information notice is a reference to the period as extended under that subsection.

### **81C Variation of notices**

- (1) If:
- (a) an offshore information notice (in this subsection called the *first notice*) was given to a person; and
  - (b) during the period set out in the first notice (including a period set out by virtue of one or more previous applications of this subsection), another offshore information notice (in this subsection called the *subsequent notice*) is given to the person; and
  - (c) the subsequent notice is expressed to be by way of variation of the first notice;
- the following provisions have effect:
- (d) the request, or each of the requests, set out in the subsequent notice is taken, for the purposes of section 81G, to have been set out in the first notice;
  - (e) if the period set out in the first notice would, apart from this subsection, end before the end of the period set out in the subsequent notice—the period set out in the first notice is taken to have been extended under subsection 81B(1) to the end of the period set out in the subsequent notice.
- (2) The Official Receiver, by written notice given to the person to whom the offshore information notice was given, may vary the offshore information notice by:

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- (a) reducing its scope; or
  - (b) correcting a clerical error or obvious mistake;
- and, if the Official Receiver does so, a reference in this Division to the offshore information notice is taken to be a reference to that notice as so varied.

**81D Withdrawal of notices**

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

**81E Notices may be included in same document**

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

**81F Relationship between this Division and section 77C**

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

## **Division 3—Failure to comply with certain notices**

### **81G Effect of non-compliance with notice**

(1) In this section:

*relevant proceeding* means a proceeding:

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

## Part VI—Administration of property

### Division 1—Proof of debts

#### 82 Debts provable in bankruptcy [see Table B]

- (1) Subject to this Division, all debts and liabilities, present or future, certain or contingent, to which a bankrupt was subject at the date of the bankruptcy, or to which he or she may become subject before his or her discharge by reason of an obligation incurred before the date of the bankruptcy, are provable in his or her bankruptcy.
- (1A) Without limiting subsection (1), debts referred to in that subsection include a debt consisting of all or part of a sum that became payable by the bankrupt under a maintenance agreement or maintenance order before the date of the bankruptcy.
- (2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust are not provable in bankruptcy.
- (3) Penalties or fines imposed by a court in respect of an offence against a law, whether a law of the Commonwealth or not, are not provable in bankruptcy.
- (3AA) An amount payable under an order made under section 1317G of the *Corporations Act 2001* is not provable in bankruptcy.
- (3AB) A debt incurred under Part 4-1 of the *Higher Education Support Act 2003* is not provable in bankruptcy.
- (3A) An amount payable under an order made under a proceeds of crime law is not provable in bankruptcy.
- (3B) A debt is not provable in a bankruptcy in so far as the debt consists of interest accruing, in respect of a period commencing on or after the date of the bankruptcy, on a debt that is provable in the bankruptcy.
- (4) The trustee shall make an estimate of the value of a debt or liability provable in the bankruptcy which, by reason of its being subject to

a contingency, or for any other reason, does not bear a certain value.

- (5) A person aggrieved by an estimate so made may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.
- (6) If the Court finds that the value of the debt or liability cannot be fairly estimated, the debt or liability shall be deemed not to be provable in the bankruptcy.
- (7) If the Court finds that the value of the debt or liability can be fairly estimated, the Court shall assess the value in such manner as it thinks proper.
- (8) In this section, *liability* includes:
  - (a) compensation for work or labour done;
  - (b) an obligation or possible obligation to pay money or money's worth on the breach of an express or implied covenant, contract, agreement or undertaking, whether or not the breach occurs, is likely to occur or is capable of occurring, before the discharge of the bankrupt; and
  - (c) an express or implied engagement, agreement or undertaking, to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is:
    - (i) in respect of amount—fixed or unliquidated;
    - (ii) in respect of time—present or future, or certain or dependent on a contingency; or
    - (iii) in respect of the manner of valuation—capable of being ascertained by fixed rules or only as matter of opinion.

### **83 Debt not to be considered proved until admitted**

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

### **84 Manner of proving debts**

- (1) Subject to this Division, a creditor who desires to prove a debt in a bankruptcy shall lodge, or cause to be lodged, with the trustee a proof of debt in accordance with this section.

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- (2) A proof of debt:
  - (a) shall set out particulars of the debt;
  - (b) shall be in accordance with the approved form;
  - (c) shall specify the vouchers, if any, by which the debt can be substantiated; and
  - (d) shall state whether or not the creditor is a secured creditor.
- (3) Where the trustee is of the opinion that it is desirable that all the matters, or some of the matters, contained in a proof of debt lodged with him or her by a creditor should be verified by statutory declaration, the trustee may serve on the creditor a written notice informing the creditor that he or she is of that opinion and that, unless the creditor lodges with the trustee a statutory declaration verifying the matters contained in the proof of the debt or such of those matters as the trustee specifies in the notice, the trustee will administer the estate as if the proof of debt had not been lodged.
- (4) A statutory declaration verifying matters in a proof of debt lodged by a creditor may be made by:
  - (a) the creditor; or
  - (b) a person whose own knowledge includes the facts set out in the statutory declaration and the proof of debt, and who is authorised by the creditor to make the declaration.
- (5) Where the trustee serves a notice on a creditor under subsection (3) in respect of a proof of debt, the proof of debt shall, for the purposes of this Act (other than section 263), be deemed not to have been lodged with the trustee unless and until the creditor has lodged with the trustee a statutory declaration verifying the matters in the proof of debt or such of those matters as are specified in the notice, as the case requires.
- (6) A proof of debt under this section, or a statutory declaration referred to in subsection (3), sent to the trustee by post as certified mail (postage being prepaid) shall be deemed to have been lodged with the trustee and shall be deemed to have been so lodged at the time at which it would have been delivered in the ordinary course of post unless it is shown that the trustee did not receive it at that time.

## **85 Proof by employees**

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

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- (3) A proof of debt lodged in pursuance of this section has the same effect as if separate proofs of debt had been lodged by each of the creditors to whom it relates.

**86 Mutual credit and set-off**

- (1) Subject to this section, where there have been mutual credits, mutual debts or other mutual dealings between a person who has become a bankrupt and a person claiming to prove a debt in the bankruptcy:
- (a) an account shall be taken of what is due from the one party to the other in respect of those mutual dealings;
  - (b) the sum due from the one party shall be set off against any sum due from the other party; and
  - (c) only the balance of the account may be claimed in the bankruptcy, or is payable to the trustee in the bankruptcy, as the case may be.
- (2) A person is not entitled under this section to claim the benefit of a set-off if, at the time of giving credit to the person who has become a bankrupt or at the time of receiving credit from that person, he or she had notice of an available act of bankruptcy committed by that person.

**87 Deduction of discounts** [*see* Table B]

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

**88 Apportionment to principal and interest of payments made before bankruptcy** [*see* Table B]

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



**89 Apportionment where security realized before or after  
bankruptcy**

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

**90 Proof of debt by secured creditor**

- (1) A secured creditor is entitled to prove the whole or a part of his or her secured debt in the debtor's bankruptcy in accordance with the succeeding provisions of this Division, and not otherwise.
- (2) A secured creditor who surrenders his or her security to the trustee for the benefit of creditors generally may prove for the whole of his or her debt.
- (3) A secured creditor who realizes his or her security may prove for any balance due to him or her after deducting the net amount realized, unless the trustee is not satisfied that the realization has been effected in good faith and in a proper manner.
- (4) A secured creditor who has not realized or surrendered his or her security may:
  - (a) estimate its value; and
  - (b) prove for the balance due to him or her after deducting the value so estimated.

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- (5) A secured creditor to whom subsection (4) applies shall state particulars of his or her security, and the value at which he or she estimates it, in his or her proof of debt.

**91 Redemption of security by trustee etc.**

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

## **92 Amendment of valuation**

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

## **93 Repayment of excess**

- (1) Where a creditor who has amended a proof of debt under section 92 has received, by way of dividend, any amount in excess of the amount to which he or she would have been entitled under the amended proof of debt, he or she shall forthwith repay the amount of the excess to the trustee.
- (2) Where a creditor who has so amended a proof of debt has received, by way of dividend, less than the amount to which he or she would have been entitled under the amended proof of debt, he or she is entitled to be paid, out of moneys for the time being available for distribution as dividend, the amount of the deficiency before those moneys are applied in the payment of future dividends, but is not entitled to affect the distribution of a dividend declared before the amendment of the proof of debt.

## **94 Subsequent realization of security**

Where a secured creditor who has lodged a proof of debt in respect of the balance due after deducting the estimated value of his or her security subsequently realizes his or her security, or it is realized under section 91, the net amount realized shall be substituted for the estimated value of the security and section 93 applies as if the

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proof of debt had been amended accordingly by the creditor under section 92.

**95 Proof in respect of distinct contracts** [*see* Table B]

Where a person was, at the time when he or she became a bankrupt, liable in respect of distinct contracts as a member of 2 or more distinct firms, or as a sole contractor and also as a member of a firm, the fact that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also a member of the firm, does not prevent proof in respect of the contracts against the estates respectively liable on the contracts.

**96 Proof in respect of proportionate part of periodical payment**

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

**97 Production of bills of exchange and promissory notes**

Where a creditor seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security on which the bankrupt is liable, the proof of debt shall not, subject to any order of the Court to the contrary, be admitted, unless the bill, note, instrument or security is produced to the trustee.

**98 Amendment of proof of debt**

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

**100 Costs of proving debts etc.**

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

**101 Inspection of proofs by creditors etc.**

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

**102 Admission or rejection of proofs**

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

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- (4) Where the trustee considers that a proof of debt has been wrongly rejected in whole, he or she may:
  - (a) revoke the decision to reject the proof of debt; and
  - (b) admit the proof of debt in whole or admit the proof of debt in part and reject it in part.
- (5) Where the trustee revokes a decision to admit a proof of debt and rejects it in whole or amends such a decision by reducing the amount of the admitted debt:
  - (a) he or she shall inform the creditor by whom it was lodged, in writing, of his or her grounds for the revocation or amendment; and
  - (b) the creditor shall forthwith repay to the trustee any amount received by way of dividend in respect of the proof of debt or any amount received by way of dividend in excess of the amount that the creditor would have been entitled to receive if his or her debt had been originally admitted for the reduced amount, as the case requires.
- (6) Where the trustee revokes a decision to reject a proof of debt in whole, or amends a decision to admit a proof of debt in part by increasing the amount of the admitted debt, the creditor by whom it was lodged is entitled to be paid, out of available money for the time being in the hands of the trustee, the dividends or additional amounts of dividend, as the case may be, that the creditor would have been entitled to receive if the debt had been originally admitted in whole or for the increased amount, as the case may be, before the available money is applied in the payment of a further dividend, but the creditor is not entitled to disturb the distribution of any dividends declared before the trustee revoked or so amended the decision.

**103 Debts to be rounded down to nearest dollar**

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

**104 Appeal against decision of trustee in respect of proof** [*see* Table B]

- (1) A creditor, or the bankrupt, may apply to the Court for review of a decision of the trustee under subsection 102(1), (3) or (4) in respect of a proof of debt.

- (2) The Court may, upon the application, confirm, reverse or vary the decision of the trustee.
- (3) Subject to the power of the Court to extend the time, an application under this section to review a decision shall not be heard by the Court unless it was made within 21 days from the date on which the decision was made.

### **105 Costs of appeal**

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

### **106 Trustee may administer oaths etc.**

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

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

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

## Division 2—Order of payment of debts

### Subdivision A—General

#### 108 Debts proved to rank equally except as otherwise provided

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

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

#### 109 Priority payments *[see Table B]*

- (1) Subject to this Act, the trustee must, before applying the proceeds of the property of the bankrupt in making any other payments, apply those proceeds in the following order:
  - (a) first, in the order prescribed by the regulations, in payment of the taxed costs of the petitioning creditor and the costs, charges and expenses of the administration of the bankruptcy, including the remuneration and expenses of the trustee and the costs of any audit carried out under section 175;
  - (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);
  - (c) third, in the case of a bankruptcy that occurs within 2 months after a personal insolvency agreement executed by the bankrupt, or a composition or scheme of arrangement accepted by the bankrupt's creditors, has (including at a time before the commencement of this paragraph) been set aside or terminated, in payment of liabilities, commitments, expenses or remuneration referred to in section 114;



- (d) fourth, in the case of the estate of a deceased debtor whose estate is being administered under Part XI, in payment of proper funeral and testamentary expenses;
- (e) fifth, in payment of amounts (including amounts payable by way of allowance or reimbursement under a contract of employment or under an award or agreement, regulating conditions of employment, or the Australian Fair Pay and Conditions Standard (within the meaning given by the *Workplace Relations Act 1996*), but not including amounts in respect of long service leave, extended leave, annual leave, recreation leave or sick leave), not exceeding in the case of any one employee \$1,500 or such greater amount as is prescribed by the regulations for the purposes of this paragraph, due to or in respect of any employee of the bankrupt, whether remunerated by salary, wages, commission or otherwise, in respect of services rendered to or for the bankrupt before the date of the bankruptcy;
- (f) sixth, in payment of all amounts due in respect of compensation payable under any law of the Commonwealth or of a State or Territory relating to workers compensation, being compensation the liability for which accrued before the date of the bankruptcy;
- (g) seventh, in payment of all amounts due to or in respect of any employee of the bankrupt, whether remunerated by salary, wages, commission or otherwise, in respect of long service leave, extended leave, annual leave, recreation leave or sick leave in respect of a period before the date of the bankruptcy;
- (h) eighth, in payment of any sum payable under section 113;
- (j) ninth, in payment of:
  - (i) such preferences, priorities or advantages in favour of any creditor or group of creditors as regards any other creditor or group of creditors; and
  - (ii) such costs, charges and expenses incurred in the interests of creditors before the date of the bankruptcy; as a meeting of the creditors, by special resolution, resolves.

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

- (a) section 50 of the *Child Support (Registration and Collection) Act 1988*; and

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- (b) subsections 221YHJ(3), (4) and (5) and 221YHZD(3), (4) and (5) and section 221YU of the *Income Tax Assessment Act 1936*.

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

- (1B) The reference in paragraph (1)(e) to amounts due in respect of an employee of the bankrupt includes a reference to amounts due as contributions to a fund for the purposes of making provision for, or obtaining, superannuation benefits for the employee, or for dependants of the employee.
- (1C) The reference in paragraph (1)(e) to amounts due to or in respect of any employee of the bankrupt also includes a reference to amounts due as superannuation guarantee charge (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*), or general interest charge in respect of non-payment of the superannuation guarantee charge.
- (2) Subject to subsection (3), where a payment has been made by the bankrupt of an amount referred to in paragraph (1)(e) or (g) and the payment was made out of moneys advanced by a person for the purpose of enabling the payment, or such a payment, to be made, the person by whom the moneys were advanced has the same right of priority in respect of the moneys so advanced as the person who received the payment would have had if the payment had not been made.
- (3) The right of priority conferred by subsection (2) in respect of moneys advanced for the purpose referred to in that subsection does not extend to so much of the money so advanced as exceeds the amount by which the amount in respect of which the person who received the payment would have been entitled to priority has been diminished by reason of the payment.
- (5) Paragraph (1)(f) does not apply to the extent to which the bankrupt is indemnified under a contract of insurance against the liability referred to in that paragraph.
- (6) Where, under a law of the Commonwealth or of a State or Territory that provides for workers compensation, a bankrupt is liable to make a payment to a body or fund by way of reimbursing the body or fund in respect of compensation paid or payable by the

body or out of the fund under that law, paragraph (1)(f) does not apply to the amount so payable by the bankrupt.

- (6A) Where compensation payable under a law relating to workers compensation is payable by way of periodical payments, the amount of that compensation shall, for the purposes of paragraph (1)(f), be taken to be the lump sum for which those periodical payments could, if redeemable, be redeemed under the law under which those periodical payments are made.
- (7) A special resolution shall not be deemed to have been duly passed for the purposes of paragraph (1)(j) unless the notice convening the meeting at which it was passed contained a copy of the proposed resolution.
- (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 authorised employee to inspect the minutes and record at any reasonable time.
- (8) A payment must not be made under paragraph (1)(j) until 28 days after the day on which the special resolution referred to in that paragraph was passed.
- (9) The bankrupt or a creditor may, before the expiration of the period referred to in subsection (8), apply to the Court to reverse or vary the decision of the creditors and the Court may, upon the application, make such order as it thinks proper.
- (10) Where in any bankruptcy:
- (a) property has been recovered, realized or preserved under an indemnity for costs of litigation given by a creditor or creditors; or
  - (b) expenses in relation to which a creditor has, or creditors have, indemnified a trustee have been recovered;
- the Court may, upon the application of the trustee or a creditor, make such orders as it thinks just and equitable with respect to the distribution of that property and the amount of those expenses so recovered with a view to giving the indemnifying creditor or creditors, as the case may be, an advantage over others in consideration of the risk assumed by creditor or creditors.

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- (11) Except as provided in paragraph (1)(a), the debts in each of the classes specified in subsection (1) rank equally between themselves and shall be paid in full unless the proceeds of the property of the bankrupt are insufficient to meet them, in which case they shall be paid proportionately.
- (12) In subsection (11), *debts* includes liabilities, remuneration, commitments and expenses specified in subsection (1).

**109A Debts due to employees** [*see* Table B]

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

**110 Application of estates of joint debtors** [*see* Table B]

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

**113 Apprenticeship etc. claims** [*see* Table B]

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

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**114 Payment of liabilities etc. incurred under terminated deed etc.**

[see Table B]

- (1) Where a debtor becomes a bankrupt after a personal insolvency agreement executed by him or her, or a composition or scheme of arrangement accepted by his or her creditors, has, whether before or after the commencement of this Act, been set aside or terminated:
  - (a) any unpaid liabilities incurred in good faith, and any unpaid commitments entered into in good faith, under the terminated agreement, composition or scheme of arrangement by the trustee or the debtor;
  - (b) any expenses reasonably incurred in good faith under the terminated agreement, composition or scheme of arrangement by the trustee, being expenses for which he or she has not been reimbursed; and
  - (c) such proportionate part of the unpaid remuneration of the trustee as the creditors in relation to the terminated agreement, composition or scheme of arrangement determine by resolution;are debts provable in the bankruptcy.
- (2) In this section:

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

**Subdivision B—The effect of proceeds of crime orders and applications for proceeds of crime orders**

**114A The effect of proceeds of crime orders**

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

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

### **114B The effect of applications for proceeds of crime orders**

(1) If:

- (a) an application is made under a proceeds of crime law for a restraining order or a forfeiture order; and
- (b) if the order were made, it would cover property of a bankrupt (whether the application is made before, on or after the date of the bankruptcy);

proceeds of any of the property of the bankrupt that would be covered by the order must not be applied under Subdivision A before the application is finally determined.

(2) If:

- (a) an application is made under a proceeds of crime law for a pecuniary penalty order; and
- (b) the person against whom the order would be made is, or later becomes, a bankrupt;

proceeds of any of the property of the bankrupt must not be applied under Subdivision A before the application is finally determined.

### **114C Director of Public Prosecutions must notify the trustee of certain matters**

If circumstances arise as a result of which:

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

the Director of Public Prosecutions must, as soon as practicable, give the trustee written notice of the existence of the circumstances.

## **Division 3—Property available for payment of debts**

### **115 Commencement of bankruptcy**

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

(1A) If:

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

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

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

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



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**Debtor's petition bankruptcy—time to which bankruptcy has relation back and time bankruptcy commences**

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

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- (3) A creditor's petition or a sequestration order made on a creditor's petition is not invalid by reason of the commission of an act of bankruptcy before the time when the debt on which the petition was based was incurred.

**116 Property divisible among creditors** [see Table B]

- (1) Subject to this Act:
- (a) all property that belonged to, or was vested in, a bankrupt at the commencement of the bankruptcy, or has been acquired or is acquired by him or her, or has devolved or devolves on him or her, after the commencement of the bankruptcy and before his or her discharge;

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- (b) the capacity to exercise, and to take proceedings for exercising all such powers in, over or in respect of property as might have been exercised by the bankrupt for his or her own benefit at the commencement of the bankruptcy or at any time after the commencement of the bankruptcy and before his or her discharge;
  - (c) property that is vested in the trustee of the bankrupt's estate by or under an order under section 139D or 139DA; and
  - (d) money that is paid to the trustee of the bankrupt's estate under an order under section 139E or 139EA;
- is property divisible amongst the creditors of the bankrupt.
- (2) Subsection (1) does not extend to the following property:
- (a) property held by the bankrupt in trust for another person;
  - (b) the bankrupt's household property that is:
    - (i) of a kind prescribed by the regulations; or
    - (ii) identified by a resolution passed by the creditors before the trustee realises the property;
  - (ba) personal property of the bankrupt that:
    - (i) has sentimental value for the bankrupt; and
    - (ii) is of a kind prescribed by the regulations; and
    - (iii) is identified by a special resolution passed by the creditors before the trustee realises the property;
  - (c) the bankrupt's property that is for use by the bankrupt in earning income by personal exertion and:
    - (i) does not have a total value greater than the limit prescribed by the regulations; or
    - (ii) is identified by a resolution passed by the creditors; or
    - (iii) is identified by an order made by the Court on an application by the bankrupt;
  - (ca) property used by the bankrupt primarily as a means of transport, being property whose aggregate value does not exceed the amount prescribed by the regulations or, if before the trustee realises the last-mentioned property the creditors determine by resolution a greater amount in relation to that property, that greater amount;
  - (d) subject to subsection (5):

- (i) policies of life assurance or endowment assurance in respect of the life of the bankrupt or the spouse of the bankrupt;
- (ii) the proceeds of such policies received on or after the date of the bankruptcy;
- (iii) the interest of the bankrupt in:
  - (A) a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
  - (B) an approved deposit fund (within the meaning of that Act); or
  - (C) an exempt public sector superannuation scheme (within the meaning of that Act);
- (iv) a payment to the bankrupt from such a fund received on or after the date of the bankruptcy, if the payment is not a pension within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- (iva) a payment to the bankrupt under a payment split under Part VIII B of the *Family Law Act 1975* where:
  - (A) the eligible superannuation plan involved is a fund or scheme covered by subparagraph (iii); and
  - (B) the splittable payment involved is not a pension within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- (v) the amount of money a bankrupt holds in an RSA;
- (vi) a payment to a bankrupt from an RSA received on or after the date of the bankruptcy, if the payment is not a pension or annuity within the meaning of the *Retirement Savings Accounts Act 1997*;
- (vii) a payment to the bankrupt under a payment split under Part VIII B of the *Family Law Act 1975* where:
  - (A) the eligible superannuation plan involved is an RSA; and
  - (B) the splittable payment involved is not a pension or annuity within the meaning of the *Retirement Savings Accounts Act 1997*;

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- (g) any right of the bankrupt to recover damages or compensation:
  - (i) for personal injury or wrong done to the bankrupt, the spouse of the bankrupt or a member of the family of the bankrupt; or
  - (ii) in respect of the death of the spouse of the bankrupt or a member of the family of the bankrupt;and any damages or compensation recovered by the bankrupt (whether before or after he or she became a bankrupt) in respect of such an injury or wrong or the death of such a person;
- (k) amounts paid to the bankrupt under a scheme established and operated by a State in accordance with the agreement between the Commonwealth and the States the execution of which on behalf of the Commonwealth, was approved by the *States Grants (Rural Reconstruction) Act 1971*, or in accordance with that agreement as subsequently amended, being amounts paid by way of loan as assistance for the purpose of rehabilitation;
- (m) amounts paid to the bankrupt under a scheme established and operated by a State or the Northern Territory in accordance with the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Adjustment) Act 1976*, or that agreement as subsequently amended (including that agreement as amended by the agreement between the Commonwealth, the States and the Northern Territory the execution of which, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1979*, or that last-mentioned agreement as subsequently amended), being amounts paid by way of grant or loan as assistance for the purpose of rehabilitation or household support;
- (ma) amounts paid to the bankrupt under a scheme established and operated by a State or the Northern Territory in accordance with the agreement between the Commonwealth and the States and the Northern Territory the execution of which, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1985*, or in accordance with that agreement as subsequently amended, being amounts paid by way of grant or loan as

- assistance for the purpose of rehabilitation or household support;
- (mb) amounts paid to the bankrupt under a scheme established and operated by a State or the Northern Territory in accordance with an agreement between the Commonwealth and that State or Territory whose execution, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1988*, or in accordance with that agreement as subsequently amended, being amounts paid by way of grant or loan as assistance for the purpose of rehabilitation or household support;
  - (mc) amounts paid to the bankrupt for re-establishment support under the Rural Adjustment Scheme within the meaning of the *Rural Adjustment Act 1992*;
  - (mca) amounts paid to the bankrupt as a re-establishment grant under the farm help re-establishment grant scheme within the meaning of the *Farm Household Support Act 1992*;
  - (mcb) amounts paid to the bankrupt as a dairy exit payment within the meaning of the *Farm Household Support Act 1992*;
  - (md) amounts paid to the bankrupt by the Commonwealth as compensation in relation to the loss of:
    - (i) an amount described in paragraph (k), (m), (ma), (mb), (mc), (mca) or (mcb); or
    - (ii) property purchased or acquired wholly or partly with such an amount;
  - (n) property to which, by virtue of subsection (3), this paragraph applies;
  - (p) amounts paid to the bankrupt under subsection (2C) or (4);
  - (q) any property that, under an order under Part VIII of the *Family Law Act 1975*, the trustee is required to transfer to the spouse of the bankrupt.
- (2B) Where, because of a resolution passed by the creditors, or an order made by the Court, under paragraph (2)(b), (c) or (ca), property that is vested in the trustee ceases at a particular time to be property divisible among the creditors, then, immediately after that time:
- (a) the property reverts in the bankrupt;
  - (b) the trustee is discharged from the trustee's liabilities in respect of the property; and

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(c) the bankrupt becomes subject to those liabilities.

(2C) Where:

- (a) property used by the bankrupt primarily as a means of transport is vested in the trustee; and
- (b) as at the time when the trustee realises that property:
  - (i) no other property has remained vested in the bankrupt by virtue of paragraph (2)(ca); and
  - (ii) no other property has, because of a determination by the creditors under paragraph (2)(ca), reverted in the bankrupt by virtue of subsection (2B);

the trustee shall pay to the bankrupt so much of the proceeds of realising that property as, when added to the aggregate of the amounts (if any) that the trustee has previously paid to the bankrupt under this subsection, does not exceed the prescribed amount within the meaning of paragraph (2)(ca).

(2D) In subsections (3) and (4):

***exempt loan money***, in relation to a particular time, means so much of the principal sum of a loan to the bankrupt, or to the bankrupt and another person or other persons, as was repaid, before that time, out of exempt money.

***exempt money*** means money of any of the following kinds:

- (a) an amount to which subsection (1) does not extend because of subparagraph (2)(d)(ii) or (iv);
- (b) damages or compensation of a kind referred to in paragraph (2)(g);
- (c) amounts of a kind referred to in paragraph (2)(k), (m) (ma), (mb), (mc), (mca), (mcb) or (md).

***outlay***, in relation to property, in relation to a particular time, means all of the following:

- (a) the money paid for the purchase, or used in the acquisition, of the property;
- (b) the money paid before that time in respect of the extensions, alterations and improvements, if any, of the property constructed or made since that purchase or acquisition.

***protected money***, in relation to a particular time, means:

- (a) exempt money; or
  - (b) exempt loan money in relation to that time.
- (3) Where, at any time, the whole, or substantially the whole, of the money paid for the purchase, or used in the acquisition, of particular property is protected money, paragraph (2)(n) applies to the property.
- (4) Where, as at the time when the trustee realises particular property to which paragraph (2)(n) does not apply, the outlay in relation to the property is in part protected money and in part other money, the trustee shall pay to the bankrupt so much of the proceeds of realising the property as can fairly be attributed to that protected money.
- (5) The following provisions apply in working out how subsection (1) extends to property covered by paragraph (2)(d):
- (a) if the total value of the property does not exceed the bankrupt's pension RBL (worked out under section 140ZD of the *Income Tax Assessment Act 1936*) for the year of income in which the date of the bankruptcy occurred—subsection (1) does not extend to any of that property;
  - (b) if the total value of the property exceeds that pension RBL—subsection (1) does not extend to so much of that total value as equals that pension RBL.
- (6) The regulations may set out a method for determining how one or more items of property are to be apportioned for the purposes of paragraph (5)(b). For example, if the bankrupt's pension RBL is \$800,000 and the bankrupt has 2 items of paragraph (2)(d) property each with a value of \$500,000, the regulations could provide that subsection (1):
- (a) does not extend to the first item; and
  - (b) does not extend to so much of the value of the second item as equals \$300,000.
- (7) The regulations may provide for a special method of working out the value of a specified kind of property for the purposes of subsection (5).

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- (8) The regulations may provide for the trustee of:
- (a) a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
  - (b) an approved deposit fund within the meaning of that Act;
- to issue a written evidentiary certificate about the value of the interest of the bankrupt in the fund. The regulations may provide that, in proceedings under this Act, the certificate is prima facie evidence of the value of the interest for the purposes of subsection (5).
- (8A) The regulations may provide for the provider of an RSA to issue a written evidentiary certificate about the amount of money a bankrupt holds in an RSA. The regulations may provide that, in proceedings under this Act, the certificate is prima facie evidence of the amount of money a bankrupt holds in an RSA for the purposes of subsection (5).
- (9) In subsections (5) to (8) (inclusive):
- value* includes amount.

**117 Policies of insurance against liabilities to third parties** [*see* Table B]

- (1) Where:
- (a) a bankrupt is or was insured under a contract of insurance against liabilities to third parties; and
  - (b) a liability against which he or she is or was so insured has been incurred (whether before or after he or she became a bankrupt);
- the right of the bankrupt to indemnity under the policy vests in the trustee and any amount received by the trustee from the insurer under the policy in respect of the liability shall, if the liability has not already been satisfied, be paid in full forthwith to the third party to whom it has been incurred.
- (2) Subsection (1) does not limit the rights of the third party in respect of any balance due to him or her after the payment referred to in that subsection has been made.
- (3) This section applies notwithstanding any agreement to the contrary, whether entered into before or after the commencement of this Act.



**118 Execution by creditor against property of debtor who becomes a bankrupt etc.** [*see* Table B]

- (1) Subject to subsection (2), where:
- (a) a creditor has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a debtor:
    - (i) received moneys as a result of execution having been issued by him or her, or on his or her behalf, against property of the debtor, being moneys that are the proceeds of the sale of property of the debtor that has been sold in pursuance of the process or that were seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of the process; or
    - (ii) received moneys as a result of the attachment by him or her, or on his or her behalf, of a debt due to the debtor; and
  - (b) the debtor subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition;
- the creditor shall pay to the trustee of the estate of the bankrupt the amount by which the amount of those moneys exceeds the taxed costs of the execution or attachment, as the case may be.
- (2) Subsection (1) does not apply in relation to a creditor who has received moneys as a result of execution having been issued by him or her, or on his or her behalf, against property of a debtor, or as a result of the attachment by him or her, or on his or her behalf, of a debt due to the debtor, in respect of any liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section).
- (3) Where a creditor has, in pursuance of subsection (1), paid the proceeds of the sale of property or other moneys to the trustee of the estate of a bankrupt, the creditor may prove in the bankruptcy for his or her debt as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.
- (4) Where:
- (a) a creditor has, in pursuance of subsection (1), paid to the trustee of the estate of a bankrupt the proceeds of the sale of property or other moneys that were received as a result of

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execution having been issued by him or her, or on his or her behalf, against property of the bankrupt or of the attachment by him or her, or on his or her behalf, of a debt due to the bankrupt; and

- (b) that property or debt would not have been property divisible amongst the creditors of the bankrupt if the bankrupt had become a bankrupt immediately before the execution was issued or the debt was attached, as the case may be;

the trustee shall pay those proceeds or other moneys to the bankrupt or to a person authorized by the bankrupt in writing for the purpose.

- (5) Subject to this section, where notice in writing of the presentation of a creditor's petition against a debtor is given to a creditor:
- (a) the creditor shall not take any action or further action, as the case may be, to attach a debt due to the debtor until the petition has been dealt with by the Court or has lapsed; and
- (b) if a debt due to the debtor has been attached by the creditor:
- (i) the creditor shall forthwith give a written notice of the presentation of the petition to the person liable to pay that debt; and
- (ii) the attachment of the debt is suspended until the petition has been dealt with by the Court or has lapsed.
- (6) Subject to this section, where notice in writing of the reference to the Court of a debtor's petition against a debtor is given to a creditor:
- (a) the creditor shall not take any action or further action, as the case may be, to attach a debt due to the debtor until the Court has dealt with the petition; and
- (b) if a debt due to the debtor has been attached by the creditor:
- (i) the creditor shall forthwith give a written notice of the presentation of the petition to the person liable to pay that debt; and
- (ii) the attachment of the debt is suspended until the Court has dealt with the petition.
- (7) Nothing in this section shall be taken to prevent a person liable to pay a debt to a debtor from paying the debt or a part of the debt to the debtor during the suspension, in accordance with subsection (5) or (6), of an attachment of that debt.

- (8) A creditor who contravenes, or fails to comply with, subsection (5) or (6) is guilty of contempt of court.
- (9) Subject to subsection (10), where:
- (a) a creditor has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a debtor obtained a charge or charging order against property of the debtor; and
  - (b) the debtor subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition;
- the charge or charging order, as the case may be, is void as against the trustee in the bankruptcy.
- (10) Subsections (5), (6) and (9) do not apply in relation to the attachment of a debt due to a debtor, or to a charge or charging order against property of a debtor, in respect of any liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section).
- (11) Notwithstanding anything contained in this Act, a person who purchases property in good faith:
- (a) under a sale by a sheriff in consequence of the issue of execution against property of a debtor who, after the sale, becomes a bankrupt; or
  - (b) under a sale in consequence of the enforcement by a creditor of a charge or a charging order against property of a debtor who, after the sale, becomes a bankrupt;
- acquires a good title to it as against the trustee of the estate of the bankrupt.
- (12) In this section:

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

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

**119 Duties of sheriff after receiving notice of presentation of petition etc.** [see Table B]

- (1) Subject to this section, where notice in writing of the presentation of a creditor's petition against a debtor is given to a sheriff, the sheriff:
- (a) shall refrain:
    - (i) from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and
    - (ii) from taking any action on behalf of a creditor to attach a debt due to the debtor; and
  - (b) shall not:
    - (i) pay to the creditor by whom, or on whose behalf, the process of execution was issued, or to any person on his or her behalf, the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of any such process; or
    - (ii) pay to the creditor, or to any person on his or her behalf, any moneys received as a result of the attachment of the debt due to the debtor;
- until the petition has been dealt with by the Court or has lapsed.
- (2) Subject to this section, where notice in writing of the reference to the Court of a debtor's petition against a debtor is given to a sheriff, the sheriff:
- (a) shall refrain:
    - (i) from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and
    - (ii) from taking any action on behalf of a creditor to attach a debt due to the debtor; and
  - (b) shall not:
    - (i) pay to the creditor by whom, or on whose behalf, the process of execution was issued, or to any person on his or her behalf, the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure

or sale of property of the debtor, in pursuance of any such process; or

- (ii) pay to the creditor, or to any person on his or her behalf, any moneys received as a result of the attachment of the debt due to the debtor;

until the Court has dealt with the petition.

- (3) Where notice of the presentation of a creditor's petition against a debtor has been given under subsection (1) to a sheriff or notice of the reference to the Court of a debtor's petition against a debtor has been given under subsection (2) to a sheriff, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section) may give to the sheriff a written notice setting out details of the maintenance agreement or maintenance order, and, upon the giving of the notice, subsection (1) or (2), as the case may be, ceases to apply in relation to the process of execution or attachment, as the case may be.
- (4) Subject to this section, where notice in writing of the presentation of a creditor's petition against a debtor is given to the registrar or other appropriate officer of a court:
  - (a) to which the proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or
  - (b) to which moneys have been paid in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor;any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on his or her behalf until the petition has been dealt with by the Court or has lapsed.
- (5) Subject to this section, where notice in writing of the reference to the Court of a debtor's petition against a debtor is given to the registrar or other appropriate officer of a Court:
  - (a) to which the proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a

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process of execution issued, by or on behalf of a creditor, against property of the debtor; or

- (b) to which moneys have been paid in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor;

any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on his or her behalf until the Court has dealt with the petition.

- (6) Where notice of the presentation of a creditor's petition against a debtor has been given under subsection (4) to the registrar or other appropriate officer of any court or notice of the reference to the Court of a debtor's petition against a debtor has been given under subsection (5) to the registrar or other appropriate officer of any court, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section) may give to the registrar or other officer a written notice setting out details of the maintenance agreement or maintenance order, and, upon the giving of the notice, subsection (4) or (5), as the case may be, ceases to apply in relation to the process of execution or attachment, as the case may be.
- (7) Where a sheriff, in pursuance of subsection (1) or (2), refrains from taking action to sell property of a debtor (being real property), the debtor becomes a bankrupt and the property vests in the trustee in the bankruptcy, the costs of the execution are a first charge on that property.
- (8) A failure by a sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a bankrupt in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

**119A Duties of sheriff after receiving notice of bankruptcy etc.**

[see Table B]

- (1) Where a debtor has become a bankrupt (whether on a creditor's petition or otherwise and whether before or after the commencement of this section), the trustee may give to the sheriff or to the registrar or other appropriate officer of a court, notice in writing of that fact and, upon the giving of the notice:
  - (a) the sheriff shall deliver or pay to the trustee:
    - (i) any property of the bankrupt in his or her possession under a process of execution issued by or on behalf of a creditor;
    - (ii) any proceeds of the sale of property of the bankrupt or other moneys in his or her possession, being proceeds of the sale of property sold, whether before or after the bankrupt became a bankrupt, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the bankrupt, whether before or after the bankrupt became a bankrupt, in pursuance of any such process; and
    - (iii) any moneys in his or her possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the bankrupt; or
  - (b) the registrar or other officer of the court shall pay to the trustee:
    - (i) any proceeds of the sale of property of the bankrupt or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the bankrupt became a bankrupt, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the bankrupt; and
    - (ii) any moneys in court that have been paid into court, whether before or after the bankrupt became a bankrupt, in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the bankrupt;

as the case requires.
- (2) Where property is, or the proceeds of the sale of property or other moneys are, required by subsection (1) to be delivered or paid to the trustee, the costs of the execution or attachment, as the case

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may be, are a first charge on that property or those proceeds of sale or other moneys, as the case may be.

- (3) For the purpose of giving effect to the charge referred to in subsection (2), the sheriff, registrar or other officer of a court may retain on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other moneys referred to in that subsection as he or she thinks necessary for the purpose.
- (4) Where a sheriff, registrar or other officer of a court has, in pursuance of subsection (1), delivered property or paid moneys to the trustee, the creditor who issued the process of execution or instituted the attachment proceedings, or on whose behalf the process was issued or the proceedings instituted, as the case may be, may prove in the bankruptcy for his or her debt as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.

- (5) Where:

- (a) a sheriff, registrar or other officer of a court has, in pursuance of subsection (1), delivered to the trustee property that was seized, or paid to the trustee the proceeds of the sale of property or other moneys that were received, as a result of the issue of execution against property of a bankrupt or the attachment of a debt due to a bankrupt; and
- (b) that property or debt would not have been property divisible amongst the creditors of the bankrupt if the bankrupt had become a bankrupt immediately before the execution was issued or the debt attached, as the case may be;

the trustee shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the bankrupt or to a person authorized by the bankrupt in writing for the purpose.

- (6) Where:

- (a) property has been delivered by a sheriff, or the proceeds of the sale of property or other moneys have been paid by a sheriff, registrar or other officer of a court, to the trustee of the estate of a bankrupt in pursuance of subsection (1); and
- (b) the property was in the possession of the sheriff, or the proceeds of the sale of the property or the other moneys were in the possession of the sheriff or paid into court, as the case may be, under or in pursuance of a process of execution



issued, or proceedings to attach a debt instituted, by or on behalf of a creditor in respect of a liability of the bankrupt under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this section);

the trustee shall deliver that property, or pay those proceeds or other moneys, as the case requires, to that creditor.

- (7) A failure by a sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a bankrupt in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

## 120 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.

Note: For the application of this section where consideration is given to a third party rather than the transferor, see section 121A.

### *Exemptions*

- (2) Subsection (1) does not apply to:
- (a) a payment of tax payable under a law of the Commonwealth or of a State or Territory; or
  - (b) a transfer to meet all or part of a liability under a maintenance agreement or a maintenance order; or
  - (c) a transfer of property under a debt agreement; or
  - (d) a transfer of property if the transfer is of a kind described in the regulations.
- (3) Despite subsection (1), a transfer is not void against the trustee if:
- (a) in the case of a transfer to a related entity of the transferor:

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- (i) the transfer took place more than 4 years before the commencement of the bankruptcy; and
  - (ii) the transferee proves that, at the time of the transfer, the transferor was solvent; or
- (b) in any other case:
- (i) the transfer took place more than 2 years before the commencement of the bankruptcy; and
  - (ii) the transferee proves that, at the time of the transfer, the transferor was solvent.

*Rebuttable presumption of insolvency*

- (3A) For the purposes of subsection (3), a rebuttable presumption arises that the transferor was insolvent at the time of the transfer if it is established that the transferor:
- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the transferor and as sufficiently disclose the transferor's business transactions and financial position; or
  - (b) having kept such books, accounts and records, has not preserved them.

*Refund of consideration*

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

*What is not consideration*

- (5) For the purposes of subsections (1) and (4), the following have no value as consideration:
- (a) the fact that the transferee is related to the transferor;
  - (b) if the transferee is the spouse or de facto 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;
  - (e) if the transferee is the spouse of the transferor—the transferee granting the transferor a right to live at the

transferred property, unless the grant relates to a transfer or settlement of property, or an agreement, under the *Family Law Act 1975*.

*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.

Note: For the application of this section where consideration is given to a third party rather than the transferor, see section 121A.

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*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, or could not reasonably have inferred, that the transferor's main purpose in making the transfer was the purpose described in paragraph (1)(b); and
  - (c) the transferee could not reasonably have inferred that, at the time of the transfer, the transferor was, or was about to become, insolvent.

*Rebuttable presumption of insolvency*

- (4A) For the purposes of this section, a rebuttable presumption arises that the transferor was, or was about to become, insolvent at the time of the transfer if it is established that the transferor:
- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the transferor and as sufficiently disclose the transferor's business transactions and financial position; or
  - (b) having kept such books, accounts and records, has not preserved them.

*Refund of consideration*

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

*What is not consideration*

- (6) For the purposes of subsections (4) and (5), the following have no value as consideration:
- (a) the fact that the transferee is related to the transferor;
  - (b) if the transferee is the spouse or de facto 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;
  - (e) if the transferee is the spouse of the transferor—the transferee granting the transferor a right to live at the transferred property, unless the grant relates to a transfer or settlement of property, or an agreement, under the *Family Law Act 1975*.

*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 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.

**121A Transactions where consideration given to a third party**

- (1) This section applies if:

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- (a) a person who later becomes a bankrupt (the *transferor*) transfers property to another person (the *transferee*); and
  - (b) the transferee gives some or all of the consideration for the transfer to a person (a *third party*) other than the transferor.
- (2) Sections 120 and 121 apply as if the giving of the consideration to the third party were a transfer by the transferor of the property constituting the consideration.
- (3) If the giving of the consideration to the third party is void against the trustee in the transferor's bankruptcy under section 120 or 121, the trustee has the same rights to recover the property constituting the consideration as the trustee would have if the giving of the consideration had actually been a transfer by the transferor of the property constituting the consideration.

**122 Avoidance of preferences** [*see* Table B]

- (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.

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<b>Periods during which transfers of property may be void</b>	
<b>Description of petition leading to debtor's bankruptcy</b>	<b>Period during which the transfer was made</b>
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

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**Periods during which transfers of property may be void**

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	<b>Description of petition leading to debtor's bankruptcy</b>	<b>Period during which the transfer was made</b>
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

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- (1A) Subsection (1) applies in relation to a transfer of property by the debtor in favour of a creditor:
- (a) whether or not the liability of the debtor to the creditor is his or her separate liability or is a liability with another person or other persons jointly; and
  - (b) whether or not the property transferred is the debtor's own property or is the property of the debtor and one or more other persons.
- (2) Nothing in this section affects:
- (a) the rights of a purchaser, payee or encumbrancer in the ordinary course of business who acted in good faith and who gave consideration at least as valuable as the market value of the property; or
  - (b) the rights of a person who is making title through or under a creditor of the debtor in good faith and who gave consideration at least as valuable as the market value of the property; or
  - (c) a conveyance, transfer, charge, payment or obligation of the debtor executed, made or incurred under or in pursuance of a maintenance agreement or maintenance order; or
  - (d) a transfer of property under a debt agreement.
- (3) The burden of proving the matters referred to in subsection (2) lies upon the person claiming to have the benefit of that subsection.
- (4) For the purposes of this section:
- (a) a transfer of property is taken to have been made in favour of a creditor if it is made in favour of a person in trust for the creditor; and
  - (b) a payment of tax, or of any other amount payable to the Commonwealth, or to the Commissioner of Taxation, under or because of an Act of which the Commissioner has the

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general administration, is taken to be made for consideration equal in value to the payment and in the ordinary course of business; and

- (c) a creditor shall be deemed not to be a purchaser, payee or encumbrancer in good faith if the transfer of property was made under such circumstances as to lead to the inference that the creditor knew, or had reason to suspect:
  - (i) that the debtor was unable to pay his or her debts as they became due from his or her own money; and
  - (ii) that the effect of the transfer would be to give him or her a preference, priority or advantage over other creditors.
  
- (4A) A reference in this section (other than subsection (5)) to a creditor of the debtor shall be read as including a reference to a person who would be a creditor of the debtor in relation to a contract, agreement, transaction or other dealing if the contract, agreement, transaction or other dealing were not, in whole or in part, void or unenforceable, or had not been voided in whole or in part, by or under a law of the Commonwealth or of a State or Territory of the Commonwealth.
  
- (5) If a transfer of property is set aside by the trustee in a bankruptcy as a result of this section, the creditor to whom the property was transferred may prove in the bankruptcy as if the transfer had not been made.
  
- (7) In this section:

*tax* means tax (however described) payable under a law of the Commonwealth or of a State or Territory, and includes, for example, a levy, a charge, and municipal or other rates.
  
- (8) For the purposes of this section:
  - (a) *transfer of property* includes a payment of money; and
  - (b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person; and
  - (c) the *market value* of property transferred is its market value at the time of the transfer.



**123 Protection of certain transfers of property against relation back etc.** [see Table B]

- (1) Subject to sections 118 to 122 (inclusive), nothing in this Act invalidates, in any case where a debtor becomes a bankrupt:
  - (a) a payment by the debtor to any of his or her creditors;
  - (b) a conveyance, transfer or assignment by the debtor for market value;
  - (c) a contract, dealing or other transaction by or with the debtor for market value; or
  - (d) any transaction to the extent of a present advance made by an existing creditor;if:
  - (e) the transaction took place before the day on which the debtor became a bankrupt;
  - (f) the person, other than the debtor, with whom it took place, did not, at the time of the transaction, have notice of the presentation of a petition against the debtor; and
  - (g) the transaction was in good faith and in the ordinary course of business.
- (2) The burden of proving the matters referred to in paragraphs (1)(e), (f) and (g) in relation to a transaction lies upon the person who relies on the validity of the transaction.
- (3) For the purposes of subsection (1), a transaction shall not be deemed not to have been in good faith and in the ordinary course of business by reason only that, at the time of the transaction, the person, other than the debtor, with whom it took place had notice of the commission of an act of bankruptcy by the debtor.
- (4) Nothing in this Act invalidates a payment by a debtor, on or before the date on which he or she became a bankrupt, of, or in respect of, a penalty or fine imposed on him or her by a court in respect of an offence against a law, whether a law of the Commonwealth or not.
- (6) Subject to section 121, nothing in this Act invalidates, in any case where a debtor becomes a bankrupt, a conveyance, transfer, charge, disposition, assignment, payment or obligation executed, made or incurred by the debtor, before the day on which the debtor became a bankrupt, under or in pursuance of a maintenance agreement or maintenance order.

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(7) In this section:

*payment* includes the drawing, making or indorsing of a bill of exchange, cheque or promissory note.

*transaction* includes payment, delivery, conveyance, transfer, assignment, contract or dealing.

**124 Protection of certain payments to bankrupt etc.** [*see* Table B]

- (1) Notwithstanding anything contained in this Act, a payment of money or delivery of property (including a security or a negotiable instrument) to, or in accordance with the order or direction of, a person who becomes, or has become, a bankrupt or a person claiming by assignment from him or her is a good discharge to the person paying the money or delivering the property:
- (a) if, in the case of a payment or delivery made before the day on which the first-mentioned person becomes a bankrupt—it is made in good faith and in the ordinary course of business; or
  - (b) if, in the case of a payment or delivery made on or after the day on which the first-mentioned person became a bankrupt—it is made in good faith, in the ordinary course of business and without negligence.
- (2) The burden of proving the matters referred to in subsection (1) lies upon the person who relies on the validity of the payment or delivery of property.
- (3) For the purposes of this section, a payment or delivery of property shall not be deemed not to have been made in good faith and in the ordinary course of business by reason only that, at the time of the payment or delivery, the person by whom it was made:
- (a) knew or had reason to suspect that the person to whom, or in accordance with whose order or direction, it was made was unable to pay his or her debts as they became due from his or her own money; or
  - (b) had notice of the commission of an act of bankruptcy by that person or of the presentation of a creditor's petition against that person.

**125 Certain accounts of undischarged bankrupt** [*see* Table B]

- (1) Where a prescribed organization has ascertained that a person having an account with it is an undischarged bankrupt, then, unless the prescribed organization is satisfied that the account is on behalf of some other person, it shall forthwith inform the trustee, in writing, of the existence of the account and, subject to subsection (2), shall not make any further payments out of the account, except under an order of the Court of which a copy has been served on it or in accordance with written instructions from the trustee.
- (2) If, within 1 month from the date on which the prescribed organization informed the trustee of the existence of the account, a copy of an order of the Court in respect of the account has not been served on the prescribed organization and it has not received written instructions from the trustee within that period in respect of the account, the prescribed organization is entitled to act without regard to any claim or right the trustee may have in respect of the account.
- (2A) This section does not apply in relation to an account held by a bankrupt if the account is a supervised account in relation to the bankrupt.
- (3) In this section:

**bank** means an ADI or any other bank.

**co-operative society** means:

- (a) a society registered or incorporated as a co-operative housing society under a law of a State or Territory; or
- (b) any other society whose principal business consists of borrowing moneys from its members and lending those moneys to its members and that is registered or incorporated under a law of a State or Territory relating to co-operative societies.

**prescribed organization** means a bank, a co-operative society or any other financial organization of a kind prescribed by the regulations for the purposes of this definition.

**supervised account** has the meaning given by section 139ZIB.

**126 Dealings with undischarged bankrupt in respect of after-acquired property** [see Table B]

- (1) A transaction by a bankrupt with a person dealing with him or her in good faith and for valuable consideration in respect of property acquired by the bankrupt on or after the day on which he or she became a bankrupt is, if completed before any intervention by the trustee, valid against the trustee, and any estate or interest in that property which, by virtue of this Act, is vested in the trustee shall determine and pass in such manner and to such extent as is necessary for giving effect to the transaction.
- (2) For the purposes of subsection (1), the receipt of any money, security or negotiable instrument from, or in accordance with the order or direction of, a bankrupt by his or her banker, and any payment of money or delivery of a security or negotiable instrument made to, or in accordance with the order or direction of, a bankrupt by his or her banker, shall be deemed to be a transaction by the bankrupt with that banker dealing with him or her for valuable consideration.
- (3) The lodging by the trustee of a caveat having the effect of forbidding the registration of an instrument affecting any land, or an estate or interest in any land, shall be deemed to be a sufficient intervention for the purposes of this section in relation to a transaction in respect of that land or that estate or interest in land.
- (4) In this section:

*banker* means an ADI or any other banker.

**127 Limitation of time for making claims by trustee etc.** [see Table B]

- (1) After the expiration of 20 years from the date on which a person became a bankrupt, a claim shall not be made by the trustee in the bankruptcy to any property of the bankrupt, and that property shall, subject to the rights, if any, of a person other than the trustee in respect of the property, be deemed to be vested in the bankrupt, or a person claiming through or under him or her, as the case may be.
- (2) An action under subsection 118(9) with respect to a charge or charging order shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.

- (3) An action under section 120 with respect to a transfer shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.
- (4) An action under section 121 with respect to a transfer of property may be commenced by the trustee of the estate of a bankrupt at any time.
- (5) An action under section 122 with respect to a transfer of property shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.

**128 Notice to trustee where identity of vendor etc. with bankrupt in doubt**

- (1) Where a doubt arises as to the identity with a bankrupt of a person appearing in the title to any property, an intending or actual vendor, mortgagor or lessor of the property or applicant to bring land under the provisions of any law of the Commonwealth or of a State or Territory of the Commonwealth relating to title to land, or a resuming or constructing authority under any law of the Commonwealth or of a State or Territory of the Commonwealth may give to the trustee in the bankruptcy a notice containing particulars of the property in question and of the person whose identity with the bankrupt is in question, and a statement of his or her intention to sell, mortgage or lease, or complete a sale, mortgage or lease of, the property or to bring the property under the provisions of any law of the Commonwealth or of a State or Territory of the Commonwealth relating to title to land, or to pay compensation in respect of the resumption of the property, as the case may be.
- (2) The trustee may, within 3 months after the notice was given, file with the Registrar of Titles or Registrar-General or other appropriate officer of the Commonwealth, or of the State or Territory concerned, a memorandum claiming the property in respect of which the notice was given.
- (3) If the trustee does not file a memorandum claiming the property in accordance with subsection (2), he or she is not entitled at a future time to assert his or her title to that property or to make any claim

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in respect of that property as against the vendor, mortgagor, lessor, applicant or the resuming or constructing authority, as the case may be, or a person claiming under or through the vendor, mortgagor, lessor or applicant.

- (4) The trustee may, at any time before the expiration of the period of 3 months referred to in subsection (2), withdraw a memorandum filed under that subsection.

## **Division 4—Realization of property**

### **129 Trustee to take possession of property of bankrupt**

- (1) The trustee shall forthwith take possession of all the property of the bankrupt capable of manual delivery, including all deeds, books and documents of the bankrupt.
  - (2) The Court may, on the application of the trustee, enforce possession accordingly.
  - (3) A person is not entitled, as against the trustee, to withhold possession of the books of account or any papers or documents of the bankrupt relating to the accounts or to any of the examinable affairs of the bankrupt or to claim any lien on any such papers or documents.
  - (4) If a person has in his or her possession or power any moneys or security that he or she is not by law entitled to retain as against the bankrupt or the trustee, he or she shall pay or deliver the moneys or security to the trustee.
- (4A) Where:
- (a) moneys are payable to a person under a law of the Commonwealth or of a State or Territory of the Commonwealth;
  - (b) that person is a bankrupt or the moneys are payable to the person as the legal personal representative of a person who was at the time of his or her death a bankrupt; and
  - (c) the moneys constitute property divisible amongst the creditors of the bankrupt or the deceased bankrupt, as the case may be;
- those moneys shall, upon demand by the trustee, be paid to the trustee notwithstanding any provision to the contrary in that law.
- (4B) A demand under subsection (4A) shall be in accordance with the approved form.
- (4C) A payment made in pursuance of a demand under subsection (4A) is, to the extent of the amount paid, a valid discharge to the person

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making the payment as against the bankrupt or the estate of the deceased bankrupt, as the case may be.

- (5) A person who does not pay or deliver to the trustee any moneys or security that he or she is required by subsection (4) or (4A) so to pay or deliver is guilty of contempt of court.
- (6) If the person so failing to pay or deliver any moneys or security is a corporation, both the corporation and each officer of the corporation who is responsible for the non-compliance are guilty of contempt of court.

**129AA Time limit for realising property**

- (1) This section applies only to:
  - (a) property (other than cash) that was disclosed in the bankrupt's statement of affairs; and
  - (b) after-acquired property (other than cash) that the bankrupt discloses in writing to the trustee within 14 days after the bankrupt becomes aware that the property devolved on, or was acquired by, the bankrupt.

In this subsection, *cash* includes amounts standing to the credit of a bank account or similar account.

- (2) If any such property is still vested in the trustee immediately before the revesting time, then it becomes vested in the bankrupt at the revesting time by force of this section.
- (3) Initially, the *revesting time* for property is:
  - (a) for property disclosed in the statement of affairs—the beginning of the day that is the sixth anniversary of the day on which the bankrupt is discharged from the bankruptcy; and
  - (b) for after-acquired property that is disclosed before the bankrupt is discharged from the bankruptcy—the beginning of the day that is the sixth anniversary of the day on which the bankrupt is discharged; and
  - (c) for after-acquired property that is disclosed after the bankrupt is discharged from the bankruptcy—the beginning of the day that is the sixth anniversary of the day on which the bankrupt disclosed the property to the trustee.



- (4) If the trustee, before the current re-vesting time, gives the bankrupt a written notice (an *extension notice*) stating that a later re-vesting time applies to particular property, then that later time becomes the *re-vesting time* for that property.
- (5) There is no limit on the number of extension notices that the trustee may give (either generally or in relation to particular property).
- (6) The time specified in an extension notice must be either:
  - (a) a specified time that is not more than 3 years after the current re-vesting time; or
  - (b) a time that is reckoned by reference to a specified event (for example, the death of a life tenant), but is not more than 3 years after the happening of that event.
- (7) Any property that becomes vested in the bankrupt under this section thereupon ceases to be subject to section 127.

### **129A Eligible judges**

- (1) A judge of the Court may, by writing, consent to be declared by the Minister under subsection (2).
- (2) The Minister may, by writing, declare a judge of the Court whose consent is in force under subsection (1) to be an eligible judge for the purposes of this Act.
- (3) An eligible judge has, in relation to the power to issue a warrant under section 130, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

### **130 Warrant for seizure of property connected with the bankrupt**

- (1) The trustee of a bankrupt's estate may apply to an eligible judge for the issue of a warrant under subsection (2) if the trustee has reasonable grounds for suspecting that there is on or in any premises property (in this section called *relevant property*), being:
  - (a) any of the property of the bankrupt;
  - (b) property that may be connected with, or related to, the bankrupt's examinable affairs; or
  - (c) books (including books of an associated entity of the bankrupt) relevant to any of the bankrupt's examinable affairs.

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- (2) On an application under subsection (1), the judge may issue a warrant authorising a constable, together with any other person named in the warrant:
- (a) to enter on or into the premises, using such force as is necessary for the purpose and is reasonable in the circumstances;
  - (b) to search the premises for relevant property;
  - (c) to break open, and search for relevant property, any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, on or in the premises;
  - (d) to take possession of, or secure against interference, any relevant property found on or in the premises; and
  - (e) to deliver to the trustee, or to a person authorised in writing by the trustee for the purpose, any property of which possession is taken under the warrant.
- (3) An eligible judge shall not issue a warrant under subsection (2) unless:
- (a) an affidavit has been furnished to the judge setting out the grounds on which the issue of the warrant is sought;
  - (b) the applicant for the warrant (or some other person) has given to the judge, either orally or by affidavit, such further information (if any) as the judge requires concerning the grounds on which the issue of the warrant is sought; and
  - (c) the judge is satisfied that there are reasonable grounds for issuing the warrant.
- (4) Where an eligible judge issues a warrant under subsection (2), he or she shall set out on the affidavit furnished in accordance with subsection (3):
- (a) on which of the grounds specified in the affidavit; and
  - (b) on which other grounds (if any);
- he or she has relied to justify the issue of the warrant.
- (5) A warrant under this section shall:
- (a) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (b) specify a day, not later than 7 days after the day of issue of the warrant, on which the warrant ceases to have effect.

- (6) Where, under this section, a person takes possession of property, or secures property against interference, a person is not entitled, as against the trustee, to claim a lien on the property, but such a lien is not otherwise prejudiced.
- (7) Where, under this section, a person takes possession of books, or secures books against interference, that person or any other person to whom the books are delivered under paragraph (2)(e):
  - (a) may make copies of, or take extracts from, the books;
  - (b) may require a person who was a party to the compilation of the books to explain to the best of the person's knowledge and belief any matter about the compilation of the books or to which the books relate;
  - (c) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the trustee; and
  - (d) during that period shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the first-mentioned person or the other person to inspect at all reasonable times such of those books as that person would be so entitled to inspect.
- (8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

### **132 Vesting and transfer of property**

- (1) Subject to this section, and to section 158, where a trustee is appointed by the creditors, the property of the bankrupt passes to and vests in the trustee so appointed on the day on which the appointment takes effect.
- (2) Subject to this section, the property of the bankrupt passes from trustee to trustee and vests in the trustee for the time being during his or her continuance in office or, if the Official Trustee becomes the trustee, in the Official Trustee, without any conveyance, assignment or transfer.
- (3) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, and enables the trustee to be registered as the owner of any such property that is part of the property of the bankrupt, that

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property, notwithstanding that it vests in equity in the trustee by virtue of this section, does not vest in the trustee at law until the requirements of that law have been complied with.

**133 Disclaimer of onerous property** [*see* Table B]

(1AA) Where any part of the property of the bankrupt consists of:

- (a) land of any tenure burdened with onerous covenants; or
- (b) property (including land) that is unsaleable or is not readily saleable;

subsection (1) applies.

(1AB) Where:

- (a) any part of the property of the bankrupt consists of property, being neither land nor an interest in land; and
- (b) it may reasonably be expected that the costs, charges and expenses that the trustee would incur in realising the property would exceed the proceeds of realising the property;

subsection (1) applies.

(1) Subject to this section, the trustee may, notwithstanding that he or she has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation to it and notwithstanding, in the case of property the transfer of which is required by a law of the Commonwealth or of a State or Territory of the Commonwealth to be registered, that he or she has not become the registered owner of that property, by writing signed by him or her, at any time disclaim the property.

(1A) Subject to this section, the trustee may at any time, by writing signed by him or her, disclaim any contract that forms part of the property of the bankrupt whether or not the trustee has endeavoured to assign the property or exercised any rights in relation to it.

(2) A disclaimer under subsection (1) or (1A) operates to determine forthwith the rights, interests and liabilities of the bankrupt and his or her property in or in respect of the property disclaimed, and discharges the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him or her, but does not, except so far as is necessary for the purpose of releasing the bankrupt and his or her property and the

trustee from liability, affect the rights or liabilities of any other person.

- (3) If a trustee disclaims property whose transfer must be registered under a law of the Commonwealth or of a State or Territory of the Commonwealth, the trustee must give notice of the disclaimer as soon as practicable to the officer who has the function of registering the transfer.
- (4) A trustee is not entitled to disclaim a lease without the leave of the Court unless:
  - (a) the trustee has given to the lessor and, if the bankrupt has sub-let the whole or any part of the leased property or has mortgaged the lease, to each sub-lessee or mortgagee, 28 days' written notice of his or her intention to disclaim the lease; and
  - (b) no person to whom the trustee has given such a notice has, within 28 days after it was given to the person, by written notice given to the trustee, required the trustee to apply to the Court for leave to disclaim the lease.
- (5) The Court may, in relation to an application for leave to disclaim a lease under this section:
  - (a) impose such terms as a condition of granting the leave; and
  - (b) make such orders with respect to fixtures, improvements and other matters arising out of the lease;as the Court considers just and equitable.
- (5A) A trustee is not entitled to disclaim a contract (other than an unprofitable contract) without the leave of the Court.
- (5B) The Court may, in relation to an application for leave to disclaim a contract under this section:
  - (a) impose such terms as a condition of granting the leave; and
  - (b) make such orders with respect to matters arising out of the contract;as the Court considers just and equitable.
- (6) Where:
  - (a) an application in writing has been made to the trustee by a person interested in property requiring him or her to decide whether he or she will disclaim the property or not; and

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- (b) the trustee has, for a period of 28 days after the receipt of the application, or such extended period as is allowed by the Court, declined or neglected to disclaim the property;  
the trustee is not entitled to disclaim the property under this section and, in the case of a contract, he or she shall be deemed to have adopted it.
- (7) The Court may, on the application of a person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court considers just and equitable.
- (8) Damages so payable may be proved as a debt in the bankruptcy.
- (9) The Court may, on application by a person either claiming an interest in, or being under a liability not discharged by this Act in respect of, disclaimed property, and after hearing such persons as it thinks fit, make an order, on such terms as the Court considers just and equitable, for the vesting of the property in, or delivery of the property to, a person entitled to it or a person in whom, or to whom, it seems to the Court to be just and equitable that it should be vested or delivered, or a trustee for that person.
- (10) Subject to subsection (11), where an order vesting property in a person is made under subsection (9), the property to which it relates vests forthwith in the person named in the order for that purpose without any conveyance, transfer or assignment.
- (11) Where:
- (a) the property to which such an order relates is property the transfer of which is required by a law of the Commonwealth or of a State or Territory of the Commonwealth to be registered; and
  - (b) that law enables the registration of such an order;
- the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of that law have been complied with.
- (12) A person aggrieved by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the

extent of any loss he or she has suffered by reason of the disclaimer and may prove the loss as a debt in the bankruptcy.

(13) In this section:

*mortgage* includes charge.

*mortgagee* includes the person entitled to the benefit of a charge.

### **134 Powers exercisable at discretion of trustee** [*see* Table B]

- (1) Subject to this Act, the trustee may do all or any of the following things:
- (a) sell all or any part of the property of the bankrupt;
  - (aa) accept, without terms or conditions, or subject to terms and conditions, a sum of money payable at a future time as the consideration or part of the consideration for the sale of any property of the bankrupt;
  - (ab) lease any property of the bankrupt;
  - (ac) divide among the creditors, in its existing form and according to its estimated value, property that, by reason of its peculiar nature or other special circumstances, cannot readily or advantageously be sold;
  - (b) carry on a business of the bankrupt so far as may be necessary to dispose of it or wind it up for the benefit of creditors;
  - (c) postpone the winding-up of the estate;
  - (d) prove in respect of any debt due to the bankrupt;
  - (da) mortgage or charge any of the property of the bankrupt for the purpose of raising money for the payment of the debts provable in the bankruptcy;
  - (e) compromise any debt claimed to be due to the bankrupt or any claim by the bankrupt;
  - (f) make a compromise with a creditor or a person claiming to be a creditor in respect of a debt provable, or claimed to be provable, in the bankruptcy;
  - (g) make a compromise in respect of any claim arising out of the administration of the estate of the bankrupt, whether the claim is made by or against the trustee;

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- (h) deal with property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt could deal with it if he or she were not a bankrupt;
  - (i) obtain such advice or assistance as he or she considers desirable relating to the administration of the estate or to the conduct or affairs of the bankrupt;
  - (ia) refer any dispute to arbitration;
  - (j) bring, institute or defend any action or other legal proceeding relating to the administration of the estate;
  - (k) execute powers of attorney, deeds or other instruments for the purpose of carrying the provisions of this Act into effect; and
  - (m) employ the bankrupt:
    - (i) to superintend the management of the whole, or a part, of the property of the bankrupt;
    - (ii) to carry on the bankrupt's trade or business for the benefit of the bankrupt's creditors; or
    - (iii) to assist in any other way in administering the property of the bankrupt;and, in consideration of the bankrupt's services, make such allowance to the bankrupt out of the estate as the trustee considers reasonable;
  - (ma) make such allowance out of the estate as he or she thinks just to the bankrupt, the spouse of the bankrupt or the family of the bankrupt;
  - (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.
- (1A) An allowance made to the bankrupt in pursuance of paragraph (1)(m) may be reduced by the Court upon the application of an interested person.
- (3) Subject to this Act, the trustee may use his or her own discretion in the administration of the estate.
- (4) The trustee may at any time apply to the Court for directions in respect of a matter arising in connexion with the administration of the estate.



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.

**136 Right to pay off mortgages** [see Table B]

- (1) Where any property of the bankrupt is subject to a mortgage, the trustee may, upon giving 6 months' notice in writing to the mortgagee of his or her intention to do so or upon paying 6 months' interest in lieu of notice, require the mortgagee to discharge the mortgage notwithstanding that the due time for payment of the moneys owing under the mortgage has not arrived and, upon tender of the moneys secured by the mortgage and, if appropriate, interest in lieu of notice, the mortgagee is bound to execute such documents as are necessary in consequence of the payment.
- (2) The rights conferred on the trustee by subsection (1) are in addition to any rights to pay off the whole or part of the moneys secured by the mortgage before the due time conferred on the mortgagor by the mortgage instrument or by a law of a State or Territory of the Commonwealth.

**137 Right of trustee to inspect goods held as security** [see Table B]

- (1) Where goods of a bankrupt are held by a person by way of security, the trustee may, after giving notice in writing of his or her intention to do so, inspect the goods.
- (2) Where notice has been given under subsection (1), the person holding the goods is not entitled to realize his or her security until he or she has given the trustee a reasonable opportunity of inspecting the goods and of exercising his or her right of redemption if he or she thinks fit to do so.
- (3) Nothing in this section affects the rights or title of a bona fide purchaser for value who purchased, or entered into an agreement to purchase, goods held by way of security without notice of the fact that the person from whom the goods were purchased or with whom the agreement to purchase the goods was made had received a notice under this section.

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**138 Limitation of trustee's power in respect of copyright, patents**

**etc.** [see Table B]

(1) Where:

- (a) the property of a bankrupt includes rights in respect of industrial property; and
- (b) the bankrupt is liable to pay royalties or a share of profits to a person in respect of those rights;

the trustee is not entitled:

- (c) to exercise those rights except upon condition that he or she pays to that person such sums by way of royalty or share of profits as would have been payable by the bankrupt; or
- (d) without the consent of that person or of the Court, to assign or transfer, or grant any licence or permission in respect of, those rights, except upon terms that will secure to that person payments by way of royalty or share of profits at a rate not less than that at which the bankrupt was liable to pay.

(2) In this section:

**industrial property** means:

- (a) the copyright in any work;
- (b) a patent in respect of an invention;
- (c) a registered trade mark; or
- (d) the copyright in a registered design.

**registered design** means a design registered under a law of the Commonwealth relating to industrial designs.

**registered trade mark** means a trade mark registered under a law of the Commonwealth relating to trade marks.

**139 Protection of trustee from personal liability in certain cases**

[see Table B]

(1) Where:

- (a) the trustee has seized or disposed of any goods in the possession or on the premises of a bankrupt without notice of any claim by any person in respect of those goods; and
- (b) the goods were not, at the date of the bankruptcy, the property of the bankrupt;

the trustee is not personally liable for any loss or damage arising from the seizure or disposal, or for the costs of proceedings taken in respect of the seizure or disposal, unless the court in which the claim is made is of the opinion that the trustee has been guilty of negligence in respect of the seizure or disposal.

- (2) The trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory of the Commonwealth upon or in respect of property forming part of the estate of the bankrupt, being rates, land tax or municipal or other statutory charges that fall due on or after the date of the bankruptcy, except to the extent, if any, of the rents and profits received by the trustee in respect of that property on or after the date of the bankruptcy.
- (3) Where a trustee of the estate of a bankrupt carries on a business previously carried on by the bankrupt, he or she is not personally liable for any payment in respect of long service leave or extended leave for which the bankrupt was liable or for any payment in respect of long service leave or extended leave to which a person employed by him or her in his or her capacity as trustee of the estate of the bankrupt, or the legal personal representative of such a person, becomes entitled after the date of the bankruptcy.
- (4) This section does not affect any liability of the trustee of the estate of a bankrupt other than personal liability.

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**Division 4A—Orders in relation to property of entity controlled by bankrupt or from which bankrupt derived a benefit**

**139A Trustee may apply to Court**

The trustee of a bankrupt's estate may, at any time within 6 years after the date of the bankruptcy, apply to the Court for an order under this Division in relation to an entity (in this Division called the *respondent entity*).

**139B Application to be served on respondent entity**

An applicant under section 139A:

- (a) shall serve the application on the respondent entity; and
- (b) may serve the application on any other person or entity.

**139C Who may appear at hearing**

At the hearing of an application under section 139A:

- (a) the respondent entity may; and
- (b) any other person or entity may, with the leave of the Court; appear, adduce evidence and make submissions.

**139CA Definition of *examinable period***

- (1) For the purposes of this Division, the *examinable period* is:
  - (a) in the case of an application for an order in relation to a related entity of the bankrupt—the period beginning:
    - (i) if, at a time or times during the period of 1 year beginning 5 years before the commencement of the bankruptcy, the bankrupt became insolvent—at that time, or at the first of those times, as the case may be; or
    - (ii) in any other case—4 years before the commencement of the bankruptcy;and ending on the day on which the application is made; or
  - (b) in any other case—the period beginning:

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- (i) if, at a time or times during the period of 3 years beginning 5 years before the commencement of the bankruptcy, the bankrupt became insolvent—at that time, or at the first of those times, as the case may be; or
  - (ii) in any other case—2 years before the commencement of the bankruptcy;
- and ending on the day on which the application is made.
- (2) For the purposes of subparagraphs (1)(a)(i) and (b)(i), a rebuttable presumption arises that a bankrupt became insolvent at a time during the period referred to in the relevant subparagraph if it is established that the bankrupt:
- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the transferor and as sufficiently disclose the transferor's business transactions and financial position; or
  - (b) having kept such books, accounts and records, has not preserved them.

**139D Order relating to property of entity other than a natural person**

- (1) Where, on an application under section 139A for an order in relation to a respondent entity other than a natural person, the Court is satisfied that:
- (a) the bankrupt supplied personal services to, or for or on behalf of, the respondent entity at a time or times, during the examinable period and before the end of the bankruptcy, when the bankrupt controlled the entity in relation to the supply of those services;
  - (b) either:
    - (i) the bankrupt received for those services no remuneration in money or other property; or
    - (ii) the remuneration in money or other property that the bankrupt received for those services was substantially less in amount or value than a person supplying those services in similar circumstances might reasonably be expected to have received if the person had dealt with the entity at arm's length in relation to the supply of those services;

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**Division 4A** Orders in relation to property of entity controlled by bankrupt or from which bankrupt derived a benefit

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- (c) during the examinable period, the entity acquired an estate in particular property as a direct or indirect result of, or of matters including, the supply by the bankrupt of those services;
  - (d) the bankrupt used, or derived (whether directly or indirectly) a benefit from, the property at a time or times during the examinable period when the bankrupt controlled the entity in relation to the property; and
  - (e) the entity still has an estate in the property;
- subsections (2) and (3) have effect, whether or not the bankrupt has ever had an estate in the property.
- (2) The Court may, by order, vest in the applicant:
    - (a) the entity's estate in the whole, or in a specified part, of the property; or
    - (b) a specified estate in the whole, or in a specified part, of the property, being an estate that could, by virtue of the entity's estate in the property, be so vested by or on behalf of the entity.
  - (3) The Court may make an order directing:
    - (a) the execution of an instrument;
    - (b) the production of documents of title; or
    - (c) the doing of any other act or thing;in order to give effect to an order under this section made on the application.

**139DA Order relating to property of natural person**

If, on an application under section 139A for an order in relation to a respondent entity that is a natural person, the Court is satisfied that:

- (a) during the examinable period, the entity acquired an estate in particular property as a direct or indirect result of financial contributions made by the bankrupt during that period; and
- (b) the bankrupt used, or derived (whether directly or indirectly) a benefit from, the property at a time or times during the examinable period; and
- (c) the entity still has the estate in the property;

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the Court may make an order of a kind referred to in subsections 139D(2) and (3), whether or not the bankrupt has ever had an estate in the property.

**139E Order relating to net worth of entity other than a natural person**

- (1) Where, on an application under section 139A for an order in relation to a respondent entity other than a natural person, the Court is satisfied that:
- (a) the bankrupt supplied personal services to, or for or on behalf of, the respondent entity at a time or times, during the examinable period and before the end of the bankruptcy, when the bankrupt controlled the entity in relation to the supply of those services;
  - (b) either:
    - (i) the bankrupt received for those services no remuneration in money or other property; or
    - (ii) the remuneration in money or other property that the bankrupt received for those services was substantially less in amount or value than a person supplying those services in similar circumstances might reasonably be expected to have received if the person had dealt with the entity at arm's length in relation to the supply of those services; and
  - (c) the entity's net worth at a particular time during the examinable period exceeded by a substantial amount what might reasonably be expected to have been the entity's net worth at the last-mentioned time if those services had not been supplied;
- subsection (2) has effect.
- (2) The Court may by order direct:
- (a) if the entity is a partnership—a partner or partners in the partnership; or
  - (b) in any other case—the entity;
- to pay to the applicant a specified amount not exceeding the amount referred to in paragraph (1)(c).

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**139EA Order relating to increase in value of property of natural person**

If, on an application under section 139A for an order in relation to a respondent entity that is a natural person, the Court is satisfied that:

- (a) during the examinable period, the value of the entity's interest in particular property increased as a direct or indirect result of financial contributions made by the bankrupt during that period; and
- (b) the bankrupt used, or derived (whether directly or indirectly) a benefit from, the property at a time or times during the examinable period;

the Court may, by order, direct the entity to pay to the applicant a specified amount not exceeding the amount by which the value of the entity's interest in the property increased as a result of the financial contributions made by the bankrupt.

**139F Court to take account of interests of other persons**

- (1) In considering whether or not to make under section 139D or 139DA a particular order relating to property in which the respondent entity has an estate, the Court shall take account of:
  - (a) the nature and extent of any estate that any other person or entity has in the property and any hardship that the order might cause that other person or entity; and
  - (b) the respondent entity's current net worth and any hardship the order might cause the respondent entity's creditors.
- (2) In considering whether or not to make a particular order under section 139E or 139EA, the Court shall take account of the respondent entity's current net worth and any hardship the order might cause the entity's creditors.

**139G Giving effect to orders under this Division**

- (1) Where:
  - (a) the Court makes an order under section 139D or 139DA vesting in a person an estate in property; and



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- (b) a law of the Commonwealth, of a State, or of a Territory of the Commonwealth, requires the creation, transfer or transmission of estates in that property to be registered; that estate vests in equity in the person by virtue of the order but does not so vest at law until the requirements of that law have been complied with.
- (2) Where the Court makes under section 139D or 139DA an order directing the execution of an instrument and:
- (a) a person has refused or failed to comply with the direction; or
  - (b) for any other reason, the Court thinks it necessary to exercise its powers under this subsection;
- the Court may, by order, appoint the Registrar:
- (c) to execute the instrument in the name of a person; and
  - (d) to do all acts and things necessary to give effect to the instrument.
- (3) An order by the Court under section 139E or 139EA is enforceable as if it were an order for the payment of money made by the Court when exercising jurisdiction otherwise than under this Act.

**139H Entity entitled to claim in bankruptcy**

- (1) Where, on an application under section 139A, the Court makes an order under section 139D or 139DA vesting in the applicant an estate in property, or an order under section 139E or 139EA directing the payment of a specified amount to the applicant, the respondent entity may claim for dividend in the bankruptcy in respect of the value of that property as at the making of the order, or in respect of the specified amount, as the case may be.
- (2) A claim under subsection (1) shall be postponed until all claims of the other creditors (including claims for interest on interest-bearing debts in respect of a period after the date of the bankruptcy but not including claims under subsection 120(4)) have been satisfied.

## **Division 4B—Contribution by bankrupt and recovery of property**

### **Subdivision A—Preliminary**

#### **139J Objects of Division**

The objects of this Division are:

- (a) to require a bankrupt who derives income during the bankruptcy to pay contributions towards the bankrupt's estate; and
- (b) to enable the recovery of certain money and property for the benefit of the bankrupt's estate.

### **Subdivision B—Interpretation**

#### **139K Definitions**

In this Division, unless the contrary intention appears:

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

- (a) if the bankrupt does not have any dependants at that time—the base income threshold amount; or
- (b) if the bankrupt has one dependant at that time—the base income threshold amount increased by 18%; or
- (c) if the bankrupt has 2 dependants at that time—the base income threshold amount increased by 27%; or
- (d) if the bankrupt has 3 dependants at that time—the base income threshold amount increased by 32%; or
- (e) if the bankrupt has 4 dependants at that time—the base income threshold amount increased by 34%; or
- (f) if the bankrupt has more than 4 dependants at that time—the base income threshold amount increased by 36%.

***assessment***, in relation to a contribution assessment period, means the original assessment or a subsequent assessment in respect of that period.

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

- (a) for a contribution assessment period of one year—3.5 times the amount that, at that time, is specified in column 3, item 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.

***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.

***dependant***, in relation to a bankrupt in relation to a contribution assessment period, means a person who satisfies all the following conditions:

- (a) the person resides with the bankrupt;
- (b) the person is wholly or partly dependent on the bankrupt for economic support;
- (c) the income derived (or likely to be derived) by the person during the contribution assessment period is not more than the amount prescribed by the regulations for the purposes of this paragraph.

For the purposes of this definition, ***income*** has its ordinary meaning.

***derived*** means earned, derived or received from any source, whether within or outside Australia.

***income***, in relation to a bankrupt, has the meaning given by section 139L.

***income tax*** includes Medicare levy.

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**original assessment**, in relation to a contribution assessment period, means the assessment made by the trustee under subsection 139W(1) in respect of that period.

**spouse**, in relation to a bankrupt, includes a de facto spouse of the bankrupt.

**subsequent assessment**, in relation to a contribution assessment period, means an assessment made by the trustee under subsection 139W(2) in respect of that period.

**value**, in relation to property referred to in a notice, means the market value of the property when the notice is given.

### Subdivision C—Income

#### 139L Meaning of income

(1) In this Division:

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

- (a) the following are income in relation to a bankrupt (whether or not they come within the ordinary meaning of “income”):
  - (i) an annuity or pension paid to the bankrupt from a provident, benefit, superannuation, retirement or approved deposit fund;
  - (ia) an annuity or pension paid to the bankrupt from an RSA;
  - (ii) a payment to the bankrupt in consequence of a termination of any office or employment;
  - (iii) an amount of annuity or pension received by the bankrupt under a policy of life insurance or endowment insurance;
  - (iv) an amount received by the bankrupt as a beneficiary under a trust to the extent that the amount was paid out of 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 Account established under the *Child Support (Registration and Collection) Act 1988*; or
    - (B) from another source for the maintenance of children of whom the bankrupt has custody; or
  - (iv) a payment to the bankrupt under:
    - (A) a legal aid scheme or service established under a law of the Commonwealth or of a State or Territory of the Commonwealth; or
    - (B) a legal aid scheme or service approved by the Attorney-General for the purposes of paragraph 2(4)(a) of the Federal Court of Australia Regulations; or

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- (C) any other legal aid scheme or service established to provide assistance to people on low incomes;
- (v) a payment or amount that the regulations provide is not income of the bankrupt.

*pension* includes a pension within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

- (2) For the purposes of the application of the definition of *income* in subsection (1) to Subdivision HA, a reference in that definition to a *bankrupt* includes a reference to a person who has been discharged from bankruptcy.

Note: Subdivision HA deals with the supervised account regime.

**139M Derivation of income**

- (1) Income is taken to be derived by a bankrupt for the purposes of this Division even though it is not actually received by the bankrupt because:
  - (a) an amount is deducted from it, or it is wholly or partly otherwise applied, under a law of the Commonwealth, of a State or of a Territory; or
  - (b) it is reinvested, accumulated or capitalised; or
  - (c) it is dealt with on behalf of the bankrupt or as the bankrupt directs.
- (2) A reference in this Division to the income that a bankrupt is likely to derive during a contribution assessment period includes a reference to income that the bankrupt has derived during that period.
- (3) A reference in this Division to income derived by a bankrupt during a contribution assessment period includes a reference to income so derived in respect of work done or services performed by the bankrupt before that period or work to be done or services to be performed by the bankrupt after that period.

**139N Income varied by income tax payments and refunds and child support payments**

- (1) The income that is likely to be derived, or was derived, by a bankrupt during a contribution assessment period:
  - (a) is taken to be reduced by:
    - (i) any amount that the bankrupt pays or is likely to be liable to pay, or paid or was liable to pay, as the case may be, during that period in respect of income tax (but not including any amount that is in respect of a provable debt); and
    - (iii) if the bankrupt pays or is likely to be liable to pay, or paid or was liable to pay, as the case may be, during that period an amount for the support of a child pursuant to a maintenance agreement entered into under the *Family Law Act 1975* or under a maintenance order—so much of that amount as does not exceed the maximum amount that, but for that agreement or order, the bankrupt could be, or could have been, liable to pay during that period in respect of child support under the *Child Support (Assessment) Act 1989*; and
  - (b) is taken to be increased by any amount that the bankrupt receives or is likely to receive, or received or was entitled to receive, as the case may be, during that period as a refund of income tax.
- (2) A refund is not taken into account under paragraph (1)(b) if it relates to a year of income that ended before the date of the bankruptcy.
- (3) If a refund relates to a year of income that commenced before, but ended after, the date of the bankruptcy, then it is taken into account under paragraph (1)(b) only to the extent that the refund is attributable to the part of the year of income after the date of bankruptcy. For this purpose, the refund is apportioned on a time basis.

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**Subdivision D—Liability of bankrupt to pay contributions**

**139P Liability of bankrupt to pay contribution**

- (1) Subject to section 139Q, if the income that a bankrupt is likely to derive during a contribution assessment period as assessed by the trustee under an original assessment exceeds the actual income threshold amount applicable in relation to the bankrupt when that assessment is made, the bankrupt is liable to pay to the trustee a contribution in respect of that period.
- (2) Subject to section 139Q, if the income that a bankrupt is likely to derive during a contribution assessment period as assessed by the trustee under an original assessment does not exceed the actual income threshold amount applicable in relation to the bankrupt when that assessment is made, the bankrupt is not liable to, but may if he or she so wishes, pay to the trustee a contribution in respect of that period.

**139Q Change in liability of bankrupt**

- (1) If the income that a bankrupt is likely to derive, or derived, during a contribution assessment period as assessed by the trustee under a subsequent assessment exceeds the actual income threshold amount applicable in relation to the bankrupt when the subsequent assessment is made, the bankrupt is liable to pay to the trustee a contribution in respect of that period.
- (2) The liability of the bankrupt under subsection (1) in respect of a contribution assessment period is in substitution for any liability of the bankrupt in respect of that period under subsection 139P(1) or under any previous application of subsection (1) of this section and has effect despite subsection 139P(2).
- (3) If the income that a bankrupt is likely to derive, or derived, during a contribution assessment period as assessed by the trustee under a subsequent assessment does not exceed the actual income threshold amount applicable in relation to the bankrupt when the subsequent assessment is made:
  - (a) the bankrupt is not liable to, but may if he or she so wishes, pay to the trustee a contribution in respect of that income;  
and



- (b) any liability that the bankrupt had under subsection 139P(1) or under subsection (1) of this section to pay a contribution in respect of that period is extinguished.

### **139R Liability not affected by subsequent discharge**

Any liability of a bankrupt under section 139P or 139Q is not affected by his or her discharge from bankruptcy after the making of the assessment that gave rise to the liability.

### **139S Contribution payable by bankrupt**

The contribution that a bankrupt is liable to pay in respect of a contribution assessment period is the amount worked out in accordance with the formula:

$$\frac{\text{Assessed income} - \text{Actual income threshold amount}}{2}$$

where:

*Assessed income* means the amount assessed by the trustee to be the income that the bankrupt is likely to derive, or derived, during the contribution assessment period.

*Actual income threshold amount* means the actual income threshold amount assessed by the trustee to be applicable in relation to the bankrupt when the assessment is made.

### **139T Determination of higher income threshold in cases of hardship**

- (1) If:
- (a) the trustee has made an assessment of a contribution that a bankrupt is liable to pay to the trustee for a contribution assessment period; and
  - (b) the bankrupt considers that, if required to pay that contribution, he or she will suffer hardship for a reason or reasons set out in subsection (2);
- the bankrupt may apply in writing to the trustee for the making of a determination under this section for that period.
- (2) The reasons are as follows:
- (a) the bankrupt or a dependant of the bankrupt suffers from an illness or disability that requires on-going medical attention

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- and the supply of medicines, and the bankrupt is required to meet a substantial proportion of the costs of that medical attention or those medicines from his or her income;
- (b) the bankrupt is required to make payments from his or her income to meet the cost of child day-care to enable the bankrupt to continue in employment or other work;
- (c) the bankrupt is living in rented accommodation that is not provided by:
- (i) the Commonwealth, a State or a Territory; or
  - (ii) an authority of the Commonwealth, a State or a Territory; or
  - (iii) a local government authority;
- and the bankrupt is required to pay the cost of that accommodation wholly or mainly from his or her income;
- (d) the bankrupt incurs substantial expense in travelling to and from the bankrupt's place of employment or other work, whether by public transport or otherwise;
- (e) the spouse of the bankrupt, or another person residing with the bankrupt, who ordinarily contributes to the costs of maintaining the bankrupt's household has become unable to contribute to those costs because of unemployment, illness or injury;
- (f) any other reason prescribed by the regulations.
- (3) The trustee must not make a determination under this section unless the bankrupt provides satisfactory evidence of the bankrupt's income and expenses, and any other matters on which the bankrupt relies to establish the reasons for the application.
- (4) The trustee must decide the application as soon as practicable, and in any event not later than 30 days, after the day on which the application is received.
- (5) If the trustee does not make a decision on the application within that period of 30 days, the trustee is taken to have made a decision at the end of that period refusing the application.
- (6) If the trustee is satisfied that the bankrupt will suffer hardship if required to pay the contribution, the trustee may determine that, for the purposes of the application of section 139S in relation to the bankrupt in respect of the contribution assessment period, the actual income threshold amount that was applicable in relation to

the bankrupt when the assessment was made is taken to have been increased to such amount as the trustee determines.

- (7) If the trustee is not satisfied that the bankrupt will suffer hardship if required to pay the contribution, the trustee must refuse the application.
- (8) If the trustee makes a determination under subsection (6), the trustee must make such assessment under section 139W as is necessary to give effect to the determination.
- (9) The trustee must give written notice to the bankrupt:
  - (a) setting out the trustee's decision on the application; and
  - (b) referring to the evidence or other material on which the decision was based; and
  - (c) giving the reasons for the decision.
- (10) The notice must include a statement to the effect that the bankrupt may request the Inspector-General to review the decision.
- (11) A contravention of subsection (10) in relation to a decision does not affect the validity of the decision.
- (12) The trustee's decision under this section is reviewable under Subdivision G in the same way as an assessment made by the trustee.

### **Subdivision E—Provision of information to trustee**

#### **139U Bankrupt to provide evidence of income**

- (1) A bankrupt must, as soon as practicable, and in any event not later than 21 days, after the end of a contribution assessment period, give to the trustee:
  - (a) a statement:
    - (i) setting out particulars of all the income that was derived by the bankrupt during that contribution assessment period; and
    - (ia) setting out particulars of all the income that was derived by each dependant of the bankrupt during that contribution assessment period; and

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- (ii) indicating what income (if any) the bankrupt expects to derive during the next contribution assessment period; and
  - (iii) indicating what income (if any) the bankrupt expects each dependant of the bankrupt to derive during the next contribution assessment period; and
- (b) such books evidencing the derivation of the income referred to in subparagraph (a)(i) as are in the possession of the bankrupt or the bankrupt can readily obtain.

Penalty: Imprisonment for 6 months.

- (2) The particulars that a bankrupt is required to include in a statement given to the trustee under subparagraphs (1)(a)(i) and (ia) are all the particulars that are known to the bankrupt and any particulars that the bankrupt can readily obtain.
- (3) Without limiting the generality of paragraph (1)(b), the books that a bankrupt is required to give to the trustee under that paragraph in respect of a contribution assessment period include:
- (a) if the bankrupt received from his or her employer one or more pay slips or other documents evidencing salary or wages paid to him or her by that employer during that period—that document or each of those documents; and
  - (b) any copy of a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in the possession of the bankrupt that relates in whole or in part to that period; and
  - (c) any statement provided to the bankrupt by an ADI or other financial institution that shows periodic payments made during that period to an account kept by the bankrupt (either alone or jointly with any other person) with that institution; and
  - (d) any notice of assessment issued to the bankrupt under the *Income Tax Assessment Act 1936* in respect of a year of income in which that period is included; and
  - (e) if the bankrupt is in receipt of a pension, allowance or other benefit under a law of the Commonwealth, of a State or of a Territory—any letter or other document sent or given to the bankrupt by the Department or authority that administers the legislation or scheme under which the benefit is provided.

**139V Power of trustee to require bankrupt to provide additional evidence**

If the trustee has reasonable grounds to suspect that:

- (a) any particulars set out in the statement given by the bankrupt under subsection 139U(1) are false or misleading in a material respect; or
- (b) any material particulars have been omitted from that statement;

then, for the purpose of enabling the trustee to decide whether the particulars set out in the statement are correct, the trustee, by written notice given to the bankrupt, may require the bankrupt to give to the trustee within a specified period of not less than 14 days such information or books as are specified in the notice.

**Subdivision F—Assessments of income and contribution**

**139W Assessment of bankrupt's income and contribution**

- (1) As soon as practicable after the start of each contribution assessment period in relation to a bankrupt, the trustee is to make an assessment of the income that is likely to be derived, or was derived, by the bankrupt during that period, of the actual income threshold amount that is applicable in relation to the bankrupt when the assessment is made and of the contribution (if any) that the bankrupt is liable to pay in respect of that period under section 139S.
- (2) If at any time, whether during or after a contribution assessment period, any one or more of the following paragraphs applies or apply:
  - (a) the trustee is satisfied that the income that is likely to be derived, or was derived, by the bankrupt during that period is or was greater or less than the amount of that income as assessed by the last preceding assessment in respect of that period;
  - (b) the base income threshold amount increased or decreased after the making of the last preceding assessment in respect of that period and before the end of that period;

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- (c) the trustee is satisfied that the number of the bankrupt's dependants increased or decreased after the making of the last preceding assessment and before the end of that period; the trustee is to make a fresh assessment of the income that is likely to be derived, or was derived, by the bankrupt during that period, of the actual income threshold amount that is applicable in relation to the bankrupt when the assessment is made and of the contribution (if any) that the bankrupt is liable to pay in respect of that period.
- (3) The powers of the trustee under subsection (2) may be exercised on the trustee's own initiative or at the bankrupt's request, but the trustee is not required to consider whether to exercise those powers at the bankrupt's request unless the bankrupt satisfies the trustee that there are reasonable grounds for the trustee to do so.
- (4) As soon as practicable after the making of an assessment the trustee must give to the bankrupt written notice setting out particulars of the assessment and informing the bankrupt about the possibility of a variation under section 139T.

**139WA No time limit on making assessment**

- (1) An assessment under section 139W (including a fresh assessment referred to in subsection 139W(2)) for a contribution assessment period may be made at any time, including:
- (a) a time after the end of the contribution assessment period; or
  - (b) a time after the bankrupt is discharged.
- (2) For the purpose of applying subsection (1), a reference in this Division to a bankrupt includes a reference to a former bankrupt.

**139X Basis of assessments**

- (1) In making an assessment of the income that is likely to be derived, or was derived, by a bankrupt during a contribution assessment period the trustee may have regard to any information provided by the bankrupt or any other information in the trustee's possession.
- (2) If the trustee considers that any information provided by the bankrupt is or may be incorrect, the trustee may disregard that information and may make an assessment on the basis of what the trustee considers to be the correct information.

**139Y Trustee may regard bankrupt as receiving reasonable remuneration**

- (1) If:
- (a) the bankrupt is engaging or has engaged during a contribution assessment period in employment or other work or in activities that resemble employment or other work; and
  - (b) the bankrupt does not receive or did not receive any remuneration in respect of the employment, work or activities or receives or received remuneration that is less than the remuneration (in this subsection called the *reasonable remuneration*) that:
    - (i) in the case of employment where an industrial award or agreement, or the Australian Fair Pay and Conditions Standard (within the meaning given by the *Workplace Relations Act 1996*), prescribes rates or minimum rates of salary or wages for the employment—might reasonably be expected to be or to have been received by the bankrupt in respect of the employment by virtue of that industrial award or agreement, or the Australian Fair Pay and Conditions Standard; or
    - (ii) in any other case—might reasonably be expected to be or to have been received by a person who engaged in similar employment, work or activities where there was no relationship or other connection between that person and the person for whom the employment, work or activities were carried out;

then, for the purpose of making an assessment, the trustee may determine that the bankrupt receives or received the reasonable remuneration in respect of the employment, work or activities.

- (2) If:
- (a) the bankrupt enters or entered during a contribution assessment period into any transaction that might reasonably be expected to produce or to have produced income; and
  - (b) the bankrupt does not derive or did not derive any income from the transaction or derives or derived income that is less than the income (in this subsection called the *reasonable income*) that might reasonably be expected to be or to have been derived if the transaction were or had been entered into at arm's length;

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then, for the purpose of making an assessment, the trustee may determine that the bankrupt derives or derived the reasonable income from the transaction.

**139Z If bankrupt claims not to be in receipt of income**

- (1) If a bankrupt:
  - (a) does not provide information about whether he or she is likely to derive, or derived, income or a particular class of income during a contribution assessment period; or
  - (b) claims not to be likely to derive, or not to have derived, any income or a particular class of income during a contribution assessment period;but the trustee has reasonable grounds for believing that the bankrupt is likely to derive, or derived, income, or income of that class, during that period, then, for the purpose of making an assessment, the trustee may determine that the bankrupt is likely to derive, or derived, income, or income of that class, during that period and may also determine the amount of that income.
- (2) Without limiting the matters that a trustee may take into account for the purpose of making an assessment as mentioned in subsection (1) in respect of a contribution assessment period, the trustee may have regard to any employment or other work or other income-producing activities that were engaged in by the bankrupt before that period and may determine whether the bankrupt is likely to engage, or to have engaged, in similar employment, work or other income-producing activities during that period.

**Subdivision G—Review of assessment**

**139ZA Internal review of assessment**

- (1) The Inspector-General may review a decision of a trustee to make an assessment:
  - (a) on the Inspector-General's own initiative; or
  - (b) if requested to do so by the bankrupt for reasons that appear to the Inspector-General to be sufficient to justify such a review.
- (2) The Inspector-General must review such a decision if requested to do so by the Ombudsman.



- (3) A request by the bankrupt to the Inspector-General for the review of such a decision must:
  - (a) be in writing and lodged with the Official Receiver's office not later than 60 days after the day on which the bankrupt is notified of the trustee's assessment; and
  - (b) be accompanied by:
    - (i) a copy of the notice of assessment; and
    - (ii) any documents on which the bankrupt relies in support of the request.
- (4) The Official Receiver must endorse on the request the date when it was lodged and must send the request and the accompanying documents to the Inspector-General as soon as practicable after they are received.
- (5) Within 60 days after the request is lodged, the Inspector-General must:
  - (a) decide whether to review the decision; and
  - (b) if the Inspector-General decides to review the decision—make his or her decision on the review.

#### **139ZC Inspector-General may request further information**

- (1) For the purposes of the exercise of powers under this Subdivision, the Inspector-General may:
  - (a) ask the bankrupt to provide such further information, either orally or in writing, in support of the request as the Inspector-General specifies; and
  - (b) ask the trustee to provide such information, either orally or in writing, about the decision to make the assessment and the reasons for the decision as the Inspector-General specifies.
- (2) If any information is provided orally, the Inspector-General must record it in writing.

#### **139ZD Decision on review**

On a review of a decision, the Inspector-General has all the powers of the trustee and may either:

- (a) confirm the decision; or

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- (b) set aside the decision and make a fresh assessment under subsection 139W(2).

**139ZE Inspector-General to notify bankrupt and trustee of decision**

- (1) If the Inspector-General:
  - (a) reviews a decision; or
  - (b) refuses a request by a bankrupt for a review of a decision; the Inspector-General must give written notice to the bankrupt, to the trustee and to the Official Receiver, of the Inspector-General's decision on the review or on the request, as the case may be.
- (2) The notice must:
  - (a) set out the decision; and
  - (b) refer to the evidence or other material on which the decision was based; and
  - (c) give the reasons for the decision.
- (3) In the case of a decision reviewing the trustee's decision to make an assessment, the notice must also include a statement to the effect that, if the bankrupt or the trustee, is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.
- (4) In the case of a decision refusing a request to review the trustee's decision to make an assessment, the notice to the bankrupt must also include a statement to the effect that, if the bankrupt is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for a review of the decision.
- (5) A contravention of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.
- (6) If, within 60 days after lodgment of a request by a bankrupt for the review of the trustee's decision to make an assessment, the Inspector-General has not given written notice to the bankrupt of his or her decision in accordance with subsection (1), the Inspector-General is taken to have reviewed the trustee's decision and confirmed it under paragraph 139ZD(a).

- (7) If the Inspector-General makes a fresh assessment, the Inspector-General must, as soon as practicable, give to the bankrupt written notice setting out particulars of the fresh assessment.
- (8) This Division, apart from this Subdivision, applies to an assessment made by the Inspector-General as if it had been made by the trustee under subsection 139W(2).

### **139ZF Review of assessment decisions**

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision of the Inspector-General on the review of a decision by a trustee to make an assessment; or
- (b) a decision by the Inspector-General refusing a request to review a decision by a trustee to make an assessment.

### **Subdivision H—When contribution payable**

#### **139ZG Payment of contribution**

- (1) Subject to subsection 139ZI(3), a contribution that a person is liable to pay under subsection 139P(1) or 139Q(1) is payable at such time as the trustee determines or, if the trustee permits the contribution to be paid by instalments, at such times and in such amounts as the trustee determines.
- (2) The liability of a person to pay a contribution under subsection 139P(1) or 139Q(1) is not affected by:
  - (a) the making of an application by the person to the trustee under subsection 139T(1); or
  - (b) the making by the person of a request to the Inspector-General for a review of the decision of the trustee to make the assessment that gave rise to the liability; or
  - (c) the making of an application to the Administrative Appeals Tribunal for review of the decision of the Inspector-General.
- (3) The total of any contributions or instalments that are not paid by the bankrupt is recoverable by the trustee as a debt due to the estate of the bankrupt.

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- (4) The trustee may, in connection with proceedings to recover the debt:
  - (a) sign a certificate setting out the nature and the amount of the debt; and
  - (b) file the certificate in the court in which the proceedings have been instituted.
- (5) In such proceedings, the certificate is *prima facie* evidence of the existence of the debt and the amount of the debt.

**139ZH If excess contribution paid**

- (1) If:
  - (a) a person has paid an amount in respect of the contribution that the person was assessed to be liable to pay in respect of a contribution assessment period; and
  - (b) as a result of a subsequent assessment:
    - (i) the person is not liable to pay a contribution in respect of that period; or
    - (ii) the amount referred to in paragraph (a) exceeds the amount of the contribution that the person is liable to pay in respect of that period;the person is not entitled to a refund of the amount paid or of the excess, as the case may be.
- (2) If a person has paid in respect of a contribution assessment period an amount that, because of a subsequent assessment made in respect of that period, the person was not liable to pay, the trustee is to apply that amount in or towards any contribution that the person is liable to pay in respect of a later contribution assessment period.

**139ZI Notice of determinations**

- (1) If the trustee makes a determination under section 139ZG in respect of a person, the trustee must give to the person written notice setting out particulars of the determination.
- (2) A notice given to a person under subsection (1) may be contained in a notice of assessment.

- (3) The time at which a payment is to be made by a person as a result of a determination made under section 139ZG must not be earlier than 14 days after notice in relation to the determination is given to the person under subsection (1) of this section.

### **Subdivision HA—Supervised account regime**

#### **139ZIA Objects**

The objects of this Subdivision are:

- (a) to improve the likelihood that a bankrupt will have sufficient money to pay contributions or instalments of contributions; and
- (b) to ensure that all monetary income received by the bankrupt is deposited to a single account (the *supervised account*); and
- (c) to enable the trustee to supervise withdrawals from the account.

#### **139ZIB Definitions**

In this Subdivision:

*bankrupt* includes a person who has been discharged from bankruptcy.

*bankrupt to whom the supervised account regime applies* means a bankrupt in respect of whom a determination under subsection 139ZIC(1) is in force.

*constructive income receipt arrangement* means an arrangement the effect of which is that income derived by a bankrupt is not actually received by the bankrupt because it is:

- (a) reinvested, accumulated or capitalised; or
- (b) dealt with on behalf of the bankrupt or as the bankrupt directs.

*contribution* means a contribution that a bankrupt is liable to pay under subsection 139P(1) or 139Q(1).

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

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**non-monetary income receipt arrangement** means an arrangement the effect of which is that income derived by a bankrupt is not actually received by the bankrupt in monetary form because it is derived in a non-monetary form.

**reviewable decision** means a decision of the trustee of a bankrupt's estate:

- (a) to make a subsection 139ZIC(1) determination; or
- (b) to refuse to revoke a subsection 139ZIC(1) determination; or
- (c) to specify a period in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ii); or
- (d) to refuse to specify a period in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ii); or
- (e) to specify requirements in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ix); or
- (f) to refuse to exercise the powers conferred by subsection 139ZIEA(1); or
- (g) to refuse to give a consent under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3); or
- (h) to vary a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3); or
- (i) to refuse to vary a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3); or
- (j) to revoke a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3).

**supervised account**, in relation to a bankrupt to whom the supervised account regime applies, means an account maintained by the bankrupt in accordance with a supervised account notice that is in force in relation to the bankrupt.

**supervised account notice** has the meaning given by subsection 139ZIE(1).

**withdraw**, in relation to an account, includes:

- (a) transfer out of; and
- (b) draw a cheque on; and
- (c) do any other thing that results in a debit from.

*working day*, in relation to a bankrupt, means a day that is not a Saturday, Sunday or a public holiday in the place where the bankrupt resides.

**139ZIC Trustee may determine that the supervised account regime applies to the bankrupt**

- (1) The trustee of a bankrupt's estate may, by written notice given to the bankrupt, determine that the supervised account regime applies to the bankrupt.
- (2) The trustee must not make a determination under subsection (1) in relation to the bankrupt unless, at the time the determination is made:
  - (a) the bankrupt is liable to pay a contribution; and
  - (b) either:
    - (i) if the trustee has made a determination under section 139ZG permitting the contribution to be paid by instalments—the bankrupt has not paid the whole of an instalment at or before the time when it became payable; or
    - (ii) if the trustee has made a determination under section 139ZG requiring the bankrupt to pay the contribution at a specified time—the bankrupt has not paid the whole of the contribution at or before the time when it became payable.
- (3) A notice under subsection (1) must be in the approved form.
- (4) A notice under subsection (1) must be accompanied by:
  - (a) a supervised account notice relating to the bankrupt concerned; and
  - (b) a statement setting out:
    - (i) the effect of sections 139ZIE to 139ZIT; and
    - (ii) such other information (if any) as is specified in the regulations.

**139ZID Revocation of determination**

- (1) If a determination is in force under subsection 139ZIC(1) in relation to a bankrupt, the trustee may, by written notice given to the bankrupt, revoke the determination.

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- (2) The trustee must not revoke the determination unless the trustee is satisfied, having regard to:
  - (a) the past payment record of the bankrupt; and
  - (b) any other relevant matters;that the bankrupt will pay the whole of any current or future contributions or instalments of contributions at or before the time when they become payable.
- (3) The power conferred on the trustee by subsection (1) may be exercised:
  - (a) on his or her own initiative; or
  - (b) on the application of the bankrupt.
- (4) If, following the bankrupt's application, the trustee refuses to revoke the determination, the trustee must give the bankrupt written notice of the refusal.
- (5) A notice under subsection (1) must be in the approved form.

**139ZIDA When determination ceases to be in force**

*Annulment*

- (1) If:
  - (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
  - (b) the bankruptcy is annulled;the determination ceases to be in force on the date of the annulment.

*Discharge—no liability to pay contributions*

- (2) If:
  - (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
  - (b) the bankrupt is discharged from the bankruptcy; and
  - (c) at the time of the discharge, the bankrupt is not liable to pay a contribution;the determination ceases to be in force at the time of the discharge.



*Discharge—continuing liability to pay contributions*

- (3) If:
- (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
  - (b) the bankrupt is discharged from the bankruptcy; and
  - (c) at the time of the discharge, the bankrupt is liable to pay a contribution;
- the determination ceases to be in force when the bankrupt is no longer liable to pay a contribution.

**139ZIE Bankrupt must open and maintain supervised account**

*Supervised account notice*

- (1) For the purposes of this Subdivision, a *supervised account notice* is a written notice that is issued by the trustee of a bankrupt's estate and that:
- (a) requires the bankrupt, within:
    - (i) 10 working days after the notice is given to the bankrupt; or
    - (ii) such longer period (if any) as is specified in the notice; to open an account (a *supervised account*) that complies with the following requirements:
      - (iii) the account is kept with an ADI;
      - (iv) the account is kept in Australia;
      - (v) the account is denominated in Australian currency;
      - (vi) the account is held solely in the name of the bankrupt;
      - (vii) deposits may be made to, and withdrawals may be made from, the account;
      - (viii) the account is designed not to have a debit balance;
      - (ix) such other requirements (if any) as are specified in the notice; and
  - (b) requires the bankrupt to inform the ADI, when opening the account, that the account is a supervised account; and
  - (c) requires the bankrupt, after the account is opened, to maintain the account for so long as the notice is in force.
- (2) A supervised account notice must be in the approved form.

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*Compliance with supervised account notice*

- (3) A bankrupt to whom the supervised account regime applies must comply with a supervised account notice in force in relation to the bankrupt.

*When supervised account notice ceases to be in force*

- (4) A supervised account notice relating to a bankrupt ceases to be in force if the bankrupt ceases to be a bankrupt to whom the supervised account regime applies.

Note: A supervised account notice may be revoked under subsection 139ZIEA(1).

*Trustee to be notified of account details*

- (5) A bankrupt to whom the supervised account regime applies must, within 2 working days after opening a supervised account, give a written notice to the trustee setting out the following information about the supervised account:
- (a) the name of the ADI concerned;
  - (b) the name in which the account is held;
  - (c) the account number;
  - (d) the BSB number concerned.

*Offence*

- (6) A person is guilty of an offence if:
- (a) the person is subject to a requirement under subsection (3) or (5); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

**139ZIEA New supervised account**

- (1) If a bankrupt is a bankrupt to whom the supervised account regime applies, the trustee may:
- (a) by written notice given to the bankrupt, revoke a supervised account notice relating to the bankrupt; and

- (b) issue a fresh supervised account notice relating to the bankrupt, and give the fresh notice to the bankrupt; and
  - (c) by written notice given to the bankrupt, require the bankrupt, immediately after the account is opened in accordance with the fresh notice, to transfer:
    - (i) the balance (if any) of the account maintained in accordance with the revoked notice;
- to:
- (ii) the account opened in accordance with the fresh notice.
- (2) The revocation under paragraph (1)(a) of the supervised account notice takes effect when the bankrupt opens the account in accordance with the fresh supervised account notice.
  - (3) Notices under paragraphs (1)(a) and (c) may be set out in the same document.
  - (4) The powers conferred on the trustee by subsection (1) may be exercised:
    - (a) on his or her own initiative; or
    - (b) on the application of the bankrupt.
  - (5) If, following the bankrupt's application, the trustee refuses to exercise the powers conferred by subsection (1), the trustee must give the bankrupt written notice of the refusal.

*Offence*

- (6) A person is guilty of an offence if:
  - (a) the person is subject to a requirement under paragraph (1)(c); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection:          Imprisonment  
for 6 months.

**139ZIF Bankrupt's monetary income to be deposited to supervised account**

- (1) A bankrupt to whom the supervised account regime applies must ensure that all monetary income actually received by the bankrupt

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after the opening of the supervised account is deposited to the account:

- (a) if the income is received in the form of cash or cheque—within 5 working days of its receipt; or
- (b) in any other case—upon its receipt.

*Cash refunds*

- (2) For the purposes of subsection (1), if:
  - (a) the bankrupt receives an amount of income in the form of cash; and
  - (b) before the paragraph (a) amount is deposited to the supervised account, the bankrupt uses a part of that amount to make a refund;

the amount that the bankrupt must deposit to the supervised account is the paragraph (a) amount reduced by the part used as mentioned in paragraph (b).

- (3) For the purposes of subsection (1), if:
  - (a) the bankrupt receives an amount of income in the form of cash; and
  - (b) before the paragraph (a) amount is deposited to the supervised account, the bankrupt uses the whole of that amount to make a refund;

the bankrupt is taken not to have received the paragraph (a) amount.

*Offence*

- (4) A person is guilty of an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection:                      Imprisonment for 12 months.

**139ZIG Trustee to supervise withdrawals from supervised account**

*General prohibition on withdrawals*

- (1) A bankrupt to whom the supervised account regime applies must not:
- (a) make a withdrawal from the supervised account; or
  - (b) authorise the making of a withdrawal from the supervised account.

*Exceptions*

- (2) Subsection (1) does not apply if the withdrawal is made:
- (a) in accordance with the consent of the trustee under subsection (3); or
  - (b) to pay a contribution or an instalment of a contribution; or
  - (c) to transfer an amount as required by a notice under paragraph 139ZIEA(1)(c); or
  - (d) to make a refund; or
  - (e) to reverse a credit previously made to the account where the credit arose from an error or the dishonour of a cheque; or
  - (f) to discharge any of the bankrupt's tax liabilities (within the meaning of the *Taxation Administration Act 1953*); or
  - (g) to discharge the bankrupt's liability to pay a tax (however described) imposed by or under a law of the Commonwealth, a State or a Territory; or
  - (h) to recover from the bankrupt an amount equal to an amount of tax (however described) that the ADI concerned has paid or is liable to pay in connection with the operation of the account; or
  - (i) to discharge a liability of the bankrupt to pay a fee or charge in connection with the operation of the account.

*Trustee may consent to withdrawals*

- (3) The trustee may, by written notice given to the bankrupt, consent to any of the following withdrawals from the supervised account:
- (a) a specified withdrawal;
  - (b) withdrawals included in a specified class of withdrawals;
  - (c) withdrawals up to a daily, weekly, fortnightly or monthly limit ascertained in accordance with the notice.

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- (4) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (5) The powers conferred on the trustee by subsections (3) and (4) may be exercised:
  - (a) on his or her own initiative; or
  - (b) on the application of the bankrupt.
- (6) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (3) or (4), the trustee must give the bankrupt written notice of the refusal.

*Offence*

- (7) A person is guilty of an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 12 months.

*Garnishee powers not affected*

- (8) This section does not affect the exercise of powers conferred by:
  - (a) section 139ZL of this Act; or
  - (b) section 260-5 in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (c) a similar provision in:
    - (i) any other law of the Commonwealth; or
    - (ii) a law of a State or a Territory.

**139ZIH Constructive income receipt arrangements**

*Bankrupt not to enter into new arrangements*

- (1) A bankrupt to whom the supervised account regime applies must not enter into a constructive income receipt arrangement.
- (2) Subsection (1) does not apply if the bankrupt enters into the constructive income receipt arrangement in accordance with the consent of the trustee under subsection (5).

*Bankrupt not to participate in existing arrangements*

- (3) If a bankrupt was participating in a constructive income receipt arrangement immediately before becoming a bankrupt to whom the supervised account regime applies, the bankrupt must, as soon as practicable after becoming such a bankrupt, cease to participate in the arrangement.
- (4) Subsection (3) does not apply if the bankrupt continues to participate in the constructive income receipt arrangement in accordance with the consent of the trustee under subsection (5).

*Consent*

- (5) The trustee may, by written notice given to the bankrupt:
  - (a) consent to the bankrupt entering into:
    - (i) a specified constructive income receipt arrangement; or
    - (ii) constructive income receipt arrangements included in a specified class of constructive income receipt arrangements; or
  - (b) consent to the bankrupt continuing to participate in:
    - (i) a specified constructive income receipt arrangement; or
    - (ii) constructive income receipt arrangements included in a specified class of constructive income receipt arrangements.
- (6) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (7) The powers conferred on the trustee by subsections (5) and (6) may be exercised:
  - (a) on his or her own initiative; or
  - (b) on the application of the bankrupt.
- (8) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (5) or (6), the trustee must give the bankrupt written notice of the refusal.

*Offence*

- (9) A person is guilty of an offence if:
  - (a) the person is subject to a requirement under subsection (1) or (3); and

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- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection:                      Imprisonment  
for 12 months.

**139ZIHA Non-monetary income receipt arrangements**

*Bankrupt not to enter into new arrangements*

- (1) A bankrupt to whom the supervised account regime applies must not enter into a non-monetary income receipt arrangement.
- (2) Subsection (1) does not apply if the bankrupt enters into the non-monetary income receipt arrangement in accordance with the consent of the trustee under subsection (5).

*Bankrupt not to participate in existing arrangements*

- (3) If a bankrupt was participating in a non-monetary income receipt arrangement immediately before becoming a bankrupt to whom the supervised account regime applies, the bankrupt must, as soon as practicable after becoming such a bankrupt, cease to participate in the arrangement.
- (4) Subsection (3) does not apply if the bankrupt continues to participate in the non-monetary income receipt arrangement in accordance with the consent of the trustee under subsection (5).

*Consent*

- (5) The trustee may, by written notice given to the bankrupt:
  - (a) consent to the bankrupt entering into:
    - (i) a specified non-monetary income receipt arrangement;  
or
    - (ii) non-monetary income receipt arrangements included in a specified class of non-monetary income receipt arrangements; or
  - (b) consent to the bankrupt continuing to participate in:
    - (i) a specified non-monetary income receipt arrangement;  
or



- (ii) non-monetary income receipt arrangements included in a specified class of non-monetary income receipt arrangements.
- (6) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (7) The powers conferred on the trustee by subsections (5) and (6) may be exercised:
  - (a) on his or her own initiative; or
  - (b) on the application of the bankrupt.
- (8) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (5) or (6), the trustee must give the bankrupt written notice of the refusal.

*Offence*

- (9) A person is guilty of an offence if:
  - (a) the person is subject to a requirement under subsection (1) or (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection:          Imprisonment  
for 12 months.

**139ZII Cash income**

- (1) A bankrupt to whom the supervised account regime applies must not receive income in the form of cash.
- (2) Subsection (1) does not apply if the income was received in accordance with the consent of the trustee under subsection (3).

*Consent*

- (3) The trustee may, by written notice given to the bankrupt, consent to the bankrupt receiving in the form of cash:
  - (a) a specified item of income; or
  - (b) items of income included in a specified class of items of income.

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- (4) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (5) The powers conferred on the trustee by subsections (3) and (4) may be exercised:
  - (a) on his or her own initiative; or
  - (b) on the application of the bankrupt.
- (6) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (3) or (4), the trustee must give the bankrupt written notice of the refusal.

*Offence*

- (7) A person is guilty of an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection:          Imprisonment  
for 12 months.

**139ZIIA Keeping of books**

If:

- (a) a person is a bankrupt to whom the supervised account regime applies; and
- (b) the person has been discharged from the bankruptcy; section 277A applies in relation to the person as if:
  - (c) the person were a bankrupt within the meaning of that section; and
  - (d) the person had been discharged from the bankruptcy when the person ceases to be a bankrupt to whom the supervised account regime applies.

### **139ZIJ Injunctions**

#### *Restraining injunctions*

- (1) If a bankrupt has engaged, is engaging or is proposing to engage, in any conduct in contravention of this Subdivision, the Court may, on the application of the trustee, grant an injunction:
  - (a) restraining the bankrupt from engaging in the conduct; and
  - (b) if, in the Court's opinion, it is desirable to do so—requiring the bankrupt to do something.

#### *Performance injunctions*

- (2) If:
  - (a) a bankrupt has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of this Subdivision;the Court may, on the application of the trustee, grant an injunction requiring the bankrupt to do that act or thing.

### **139ZIK Interim injunctions**

#### *Grant of interim injunction*

- (1) If an application is made to the Court for an injunction under section 139ZIJ, the Court may, before considering the application, grant an interim injunction restraining a bankrupt from engaging in conduct of a kind referred to in that section.

#### *No undertakings as to damages*

- (2) The Court is not to require an applicant for an injunction under section 139ZIJ, as a condition of granting an interim injunction, to give any undertakings as to damages.

### **139ZIL Discharge etc. of injunctions**

The Court may discharge or vary an injunction granted under this Subdivision.

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**139ZIM Certain limits on granting injunctions not to apply**

*Restraining injunctions*

- (1) The power of the Court under this Subdivision to grant an injunction restraining a bankrupt from engaging in conduct of a particular kind may be exercised:
  - (a) if the Court is satisfied that the bankrupt has engaged in conduct of that kind—whether or not it appears to the Court that the bankrupt intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the bankrupt will engage in conduct of that kind—whether or not the bankrupt has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the bankrupt engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the Court to grant an injunction requiring a bankrupt to do an act or thing may be exercised:
  - (a) if the Court is satisfied that the bankrupt has refused or failed to do that act or thing—whether or not it appears to the Court that the bankrupt intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the bankrupt will refuse or fail to do that act or thing—whether or not the bankrupt has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the bankrupt refuses or fails to do that act or thing.

**139ZIN Other powers of the Court unaffected**

The powers conferred on the Court under this Subdivision are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

### **139ZIO Inspector-General may review trustee's decision**

#### *Reviewable decisions*

- (1) The Inspector-General may review a reviewable decision:
  - (a) on the Inspector-General's own initiative; or
  - (b) if requested to do so by the bankrupt for reasons that appear to the Inspector-General to be sufficient to justify doing so.
- (2) The Inspector-General must review a reviewable decision if requested to do so by the Ombudsman.

#### *Request by bankrupt*

- (3) A request by the bankrupt to the Inspector-General for the review of a reviewable decision must:
  - (a) be in writing and lodged with the Official Receiver's office not later than 60 days after the day on which the decision first came to the notice of the bankrupt; and
  - (b) be accompanied by:
    - (i) a copy of any relevant documents issued or given by the trustee under this Subdivision; and
    - (ii) any other documents on which the bankrupt relies in support of the request.
- (4) The Official Receiver must:
  - (a) endorse on the request the date when it was lodged; and
  - (b) send the request and the accompanying documents to the Inspector-General as soon as practicable after they are received.

#### *Time limit for review*

- (5) Within 60 days after the request is lodged, the Inspector-General must:
  - (a) decide whether to review the decision; and
  - (b) if the Inspector-General decides to review the decision—make his or her decision on the review.

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**139ZIP Inspector-General may request further information**

- (1) For the purposes of the exercise of powers in relation to a review, or a request for a review, of a reviewable decision, the Inspector-General may:
  - (a) ask the bankrupt to provide such further relevant information, either orally or in writing, as the Inspector-General specifies; and
  - (b) ask the trustee to provide such information, either orally or in writing, about the decision and the reasons for the decision as the Inspector-General specifies.
- (2) If any information is provided orally, the Inspector-General must record it in writing.

**139ZIR Inspector-General's decision on review**

- (1) On a review of a reviewable decision, the Inspector-General has all the powers of the trustee and may:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision; or
  - (d) set aside the decision and make a decision in substitution for the decision so set aside.

*Application of this Subdivision to Inspector-General's decision*

- (2) This Subdivision (apart from sections 139ZIO to 139ZIT), applies to a decision made by the Inspector-General as if it had been made by the trustee under this Subdivision.

**139ZIS Inspector-General to notify bankrupt and trustee of decision**

- (1) If the Inspector-General:
  - (a) reviews a reviewable decision; or
  - (b) refuses a request by a bankrupt for a review of a reviewable decision;the Inspector-General must give written notice to:
  - (c) the bankrupt; and
  - (d) the trustee; and
  - (e) the Official Receiver;

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of the Inspector-General's decision on the review or on the request, as the case may be.

- (2) The notice must:
  - (a) set out the decision; and
  - (b) give the reasons for the decision.

*Notification of right of review by AAT*

- (3) In the case of a decision on the review of a reviewable decision, the notice must also include a statement to the effect that, if the bankrupt or the trustee is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.
- (4) In the case of a decision refusing a request to review a reviewable decision, the notice to the bankrupt must also include a statement to the effect that, if the bankrupt is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for a review of the decision.
- (5) A breach of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.

*Inspector-General taken to have reviewed and confirmed decision*

- (6) If, within 60 days after lodgment of a request by a bankrupt for the review of a reviewable decision, the Inspector-General has not given written notice to the bankrupt of his or her decision in accordance with subsection (1), the Inspector-General is taken to have reviewed the trustee's decision and confirmed it under paragraph 139ZIR(1)(a).

**139ZIT AAT review of decisions**

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision of the Inspector-General on the review of a reviewable decision; or
- (b) a decision by the Inspector-General refusing a request to review a reviewable decision.

**Subdivision I—Collection of money or property by Official Receiver from person other than the bankrupt**

**139ZJ Definition** [see Table B]

In this Subdivision:

**bankrupt** includes a person who has been discharged from bankruptcy.

**139ZK Persons to whom Subdivision applies** [see Table B]

- (1) This Subdivision applies to a person:
  - (a) from whom any money is due or accruing, or may become due, to a bankrupt; or
  - (b) who holds, or may subsequently hold, money for or on account of a bankrupt; or
  - (c) who holds, or may subsequently hold, money on account of some other person for payment to or on behalf of a bankrupt; or
  - (d) who has authority from some other person to pay money to or on behalf of a bankrupt; or
  - (e) who is liable to pay money or transfer property wholly or principally in consideration of personal services supplied by a bankrupt after the commencement of the bankruptcy, whether the services were supplied to the first-mentioned person or to some other person; or
  - (f) who has received money or property wholly or principally in consideration of personal services supplied by a bankrupt after the commencement of the bankruptcy, whether the services were supplied to the first-mentioned person or to some other person.
- (2) In subsection (1):

**personal services**, in relation to a bankrupt, means personal services as defined by subsection 5(1), whether or not supplied for the payment of money, or the provision of other consideration, to the bankrupt.
- (3) If, apart from this subsection, money would not be due, or would not be repayable on demand, to a person, or the obligation to



transfer property to a person would not arise, unless a condition were fulfilled, then, for the purposes of this section, the money is taken to be due or to be repayable on demand, or the obligation to transfer the property to the person is taken to arise, as the case may be, even though the condition has not been fulfilled.

**139ZL Official Receiver may require persons to make payments**

[see Table B]

- (1) If a bankrupt is liable to pay to the trustee a contribution under section 139P or 139Q, the Official Receiver:
  - (a) if the Official Trustee is the trustee—on the initiative of the Official Receiver; or
  - (b) if a registered trustee is the trustee—on application by the trustee;may require a person to whom this Subdivision applies, by written notice given to the person, to make a payment or payments to the trustee in accordance with this section in or towards the discharge of the liability of the bankrupt to make the contribution.
- (2) The notice must set out the facts and circumstances, and in particular must specify the money or property, because of which the Official Receiver considers that this Subdivision applies to the person to whom the notice is given.
- (3) The notice may either:
  - (a) require payment of so much of the money, or of the value of the property, as does not exceed the amount, or the total of the amounts, of the contribution that the bankrupt is liable to pay; or
  - (b) in the case of a person who is liable to pay money to or on behalf of the bankrupt, require the person, out of each payment that the person becomes liable from time to time to make, to pay such amount as is set out in the notice until the liability of the bankrupt to pay the contribution has been discharged.
- (4) The notice may either:
  - (a) require a payment to be made immediately the money becomes due or is held, the authority becomes exercisable, the liability arises or the money or property is received, as the case requires; or

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- (b) require a payment to be made at a time or within a period set out in the notice, not being a time that occurs, or a period that commences, before the money becomes due or is held, the authority becomes exercisable, the liability arises or the money or property is received, as the case requires.
- (5) After the Official Receiver has given a notice to a person under subsection (1), the Official Receiver may at any time, by a further notice given to the person, revoke or amend the first-mentioned notice.
- (6) If the Official Receiver gives a notice under this section, the Official Receiver must send a copy of the notice to the bankrupt and, if a registered trustee is the trustee, to the trustee.
- (7) A notice to be given under this section to the Commonwealth, a State or a Territory, or to an authority of the Commonwealth, of a State or of a Territory, is taken to be duly given if it is given to a person who, by any law, regulation, appointment or authority, has the function of paying, or in fact pays, money on behalf of a Department of the Commonwealth, of that State or of that Territory, or on behalf of that authority, as the case may be.
- (8) If a person is required by a notice under this section to pay to the trustee the value of any property, the requirement is taken to be complied with if the property is transferred to the trustee.
- (9) A person making a payment or transferring property in accordance with this section is taken to have been acting under the authority of the bankrupt and of all other persons concerned and is entitled to be indemnified out of the estate of the bankrupt in respect of the payment or transfer.
- (10) An amount payable by a person to the trustee under this section is recoverable by the trustee as a debt by action against the person in a court of competent jurisdiction.

**139ZM Power of Court to set aside notice**

- (1) If the Court, on application by a person to whom a notice has been given under section 139ZL or by any other interested person, is satisfied that this Subdivision does not apply to the person on the basis of the alleged facts and circumstances set out in the notice, the Court may make an order setting aside the notice.

- (2) A notice that has been set aside is taken not to have been given.

**139ZN Charge over property**

- (1) If a notice under section 139ZL is given to a person to whom this Subdivision applies because the person is liable to transfer, or has received, any property as mentioned in paragraph 139ZK(1)(e) or (f):
- (a) the property is charged with the liability of the person to make payments as required by the notice; and
  - (b) if the person makes the payments or transfers the property to the trustee, the property ceases to be subject to the charge.
- (2) Subject to subsection (3), a charge under subsection (1) has priority over any existing or subsequent mortgage, lien, charge or other encumbrance over the property in favour of an associated entity of the bankrupt, and has that priority despite any other law of the Commonwealth or any law of a State or Territory.
- (3) A charge under subsection (1) does not have priority over a mortgage, lien, charge or other encumbrance in favour of an associated entity of the bankrupt if that entity satisfies the Court that that mortgage, lien, charge or other encumbrance arose from a transaction that was entered into at arm's length and for valuable and adequate consideration provided by that entity.
- (4) If any property being land is subject to a charge under subsection (1), the Official Receiver may certify by signed writing that the land is subject to a charge under that subsection and may lodge the certificate with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated.
- (5) The officer with whom the certificate is lodged may register the charge as nearly as practicable in the way in which mortgages over land are registered under the law in force in the State or Territory in which the land is situated.
- (6) The trustee has power to sell any property over which a charge exists under subsection (1) and, if the property is so sold, then, subject to any charges that have priority over the first-mentioned charge, the proceeds of the sale are, to the extent of the charge, to be applied in or towards the discharge of the liability to make a

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payment or payments to the trustee of the person to whom the notice was given.

**139ZO Failure to comply with notice**

- (1) A person who refuses or fails to comply with a notice under section 139ZL is guilty of an offence punishable upon conviction by imprisonment for a period not exceeding 6 months.
- (2) If a person is convicted of an offence against subsection (1) in relation to the refusal or failure of the convicted person or another person to comply with a notice under section 139ZL, the court that convicted the person may, in addition to imposing a penalty on the convicted person, order that person to pay to the trustee an amount not exceeding the amount, or the total of the amounts, that the convicted person or the other person, as the case may be, refused or failed to pay to the trustee in accordance with the notice.

**139ZP Employer not to dismiss or injure bankrupt because of giving of notice**

- (1) If a notice under section 139ZL is given to the employer of the bankrupt, the employer must not dismiss the bankrupt, injure the bankrupt in his or her employment, or alter the position of the bankrupt to the bankrupt's prejudice, because of the giving of the notice.

Penalty: Imprisonment for 6 months.

- (2) In a prosecution for an offence against subsection (1), it is not necessary for the prosecutor to prove that the defendant's reason for the action charged was the giving of the notice but it is a defence to the prosecution if the defendant proves that the action was not taken because of the giving of the notice.
- (3) If an employer is convicted of an offence against subsection (1) constituted by dismissing a bankrupt, the court that convicted the employer may order the employer:
  - (a) to reinstate the bankrupt to the position that the bankrupt occupied immediately before the dismissal or a position no less favourable than the first-mentioned position; and
  - (b) to pay to the bankrupt the whole or part of the wages lost by the bankrupt because of the dismissal.

**Subdivision J—Collection of money or property by Official Receiver from party to transaction that is void against the trustee**

**139ZQ Official Receiver may require payment** [*see* Table B]

- (1) If a person has received any money or property as a result of a transaction that is void against the trustee of a bankrupt under Division 3, the Official Receiver:
  - (a) if the Official Trustee is the trustee—on the initiative of the Official Receiver; or
  - (b) if a registered trustee is the trustee—on application by the trustee;may require the person, by written notice given to the person, to pay to the trustee an amount equal to the money or the value of the property received.
- (2) The notice must set out the facts and circumstances because of which the Official Receiver considers that the transaction is void against the trustee.
- (3) The notice may:
  - (a) require the amount to be paid at a time or within a period set out in the notice; or
  - (b) require the amount to be paid at such times, and in such instalments, as are set out in the notice.
- (4) After the Official Receiver has given a notice to a person under subsection (1), the Official Receiver may at any time, by a further notice given to the person, revoke or amend the first-mentioned notice.
- (5) If the Official Receiver gives a notice under this section, the Official Receiver must send a copy of the notice to the bankrupt and, if a registered trustee is the trustee, to the trustee.
- (6) A notice to be given under this section to the Commonwealth, a State or a Territory, or to an authority of the Commonwealth, of a State or of a Territory, is taken to be duly given if it is given to a person who, by any law, regulation, appointment or authority, has the function of paying, or in fact pays, money on behalf of a

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Department of the Commonwealth, of that State or of that Territory, or on behalf of the authority, as the case may be.

- (7) If a person is required by a notice under this section to pay to the trustee the value of any property, the requirement is taken to be complied with if the property is transferred to the trustee.
- (8) An amount payable by a person to the trustee under this section is recoverable by the trustee as a debt by action against the person in a court of competent jurisdiction.

**139ZR Charge over property** [*see* Table B]

- (1) If a notice under section 139ZQ is given to a person in respect of any property:
  - (a) the property is charged with the liability of the person to make payments to the trustee as required by the notice; and
  - (b) if the person makes the payments or transfers the property to the trustee, the property ceases to be subject to the charge.
- (2) Subject to subsection (3), a charge under subsection (1) has priority over any existing or subsequent mortgage, lien, charge or other encumbrance over the property in favour of an associated entity of the bankrupt, and has that priority despite any other law of the Commonwealth or any law of a State or Territory.
- (3) A charge under subsection (1) does not have priority over a mortgage, lien, charge or other encumbrance in favour of an associated entity of the bankrupt if that entity satisfies the Court that that mortgage, lien, charge or other encumbrance arose from a transaction that was entered into at arm's length and for valuable and adequate consideration provided by that entity and is not void against the trustee under Division 3.
- (4) If any property being land is subject to a charge under subsection (1), the Official Receiver may certify by signed writing that the land is subject to a charge under that subsection and may lodge the certificate with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated.
- (5) The officer with whom the certificate is lodged may register the charge as nearly as practicable in the way in which mortgages over

land are registered under the law in force in the State or Territory in which the land is situated.

- (6) The trustee has power to sell any property over which a charge exists under subsection (1) and, if the property is so sold, then, subject to any charges that have priority over the first-mentioned charge, the proceeds of the sale are, to the extent of the charge, to be applied in or towards the discharge of the liability to make a payment or payments to the trustee of the person to whom the notice was given.

### **139ZS Power of Court to set aside notice**

- (1) If the Court, on application by a person to whom a notice has been given under section 139ZQ or by any other interested person, is satisfied that this Subdivision does not apply to the person on the basis of the alleged facts and circumstances set out in the notice, the Court may make an order setting aside the notice.
- (2) A notice that has been set aside is taken not to have been given.

### **139ZT Failure to comply with notice**

- (1) A person who refuses or fails to comply with a notice under section 139ZQ is guilty of an offence punishable upon conviction by imprisonment for a period not exceeding 6 months.
- (2) If a person is convicted of an offence against subsection (1) in relation to the refusal or failure of the convicted person or another person to comply with a notice under section 139ZQ, the court that convicted the person may, in addition to imposing a penalty on the convicted person, order that person to pay to the trustee an amount not exceeding the amount, or the total of the amounts, that the convicted person or the other person, as the case may be, refused or failed to pay to the trustee in accordance with the notice.

## **Division 5—Distribution of property**

### **140 Declaration and distribution of dividends**

- (1) The trustee of the estate of a bankrupt shall, subject to this section, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.
- (2) Subject to the retention of such sums as are necessary to meet the costs of administration or to give effect to the provisions of this Act, the trustee shall distribute as dividend all moneys in hand.
- (3) 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.
- (4) The trustee shall, in a notice published or sent in pursuance of subsection (3), specify a reasonable period within which creditors may lodge their proofs of debts.
- (5) The trustee shall, before declaring a dividend (other than the first dividend or the final dividend) send notice of his or her intention to do so to each person who, to his or her knowledge, claims to be, or might claim to be, a creditor but has not lodged a proof of debt and has not been sent a notice under this section in relation to the declaration of a previous dividend.
- (6) The trustee shall, in a notice sent in pursuance of subsection (5), specify a reasonable period within which creditors may lodge their proofs of debts.
- (7) Where the trustee has sent a notice in pursuance of subsection (3) or (5) of this section in relation to the declaration of a dividend, the trustee shall not declare the dividend until after the expiration of 21 days after the expiration of the period specified in the notice.
- (8) Subject to subsections (9) and (10), where the trustee declares a dividend, he or she shall pay each creditor who has proved his or her debt the amount due to the creditor and send the creditor a statement in accordance with the approved form in relation to the realization and distribution of the estate.



- (9) Where, but for this subsection, the amount due to a creditor in respect of a dividend would be less than \$10 or, if a greater amount is, as at the beginning of the day on which the dividend is declared, prescribed by the regulations for the purposes of this subsection, that greater amount, the trustee need not pay that dividend to the creditor.
- (10) Where a creditor has furnished to the trustee an authority in writing to pay a dividend due to the creditor to another person, the dividend payable to the creditor may be paid, and the statement to be sent to the creditor in pursuance of subsection (8) may be sent, to that person.
- (11) This section has effect subject to an order under section 114 of the *Family Law Act 1975* (which deals with interlocutory injunctions).

#### **141 Joint and separate dividends**

Where one partner of a firm becomes bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm or any of them shall not receive a dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

#### **142 Apportionment of expenses of administration of joint and separate estates**

Where joint and separate estates are being administered, the expenses of and incidental to the administration of the estates shall be fairly apportioned by the trustee between the joint and separate estates, having regard to the work done for, and the benefit received by, each estate.

#### **143 Provision to be made for creditors residing at a distance etc.**

[see Table B]

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

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

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would not have had sufficient time to lodge their proofs of debt; and

- (b) debts provable in bankruptcy in respect of which proofs of debt have been lodged but have not been admitted.

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

A creditor who has not proved his or her debt before the declaration of a dividend is entitled to be paid, out of any available money for the time being in the hands of the trustee, dividends that he or she has failed to receive before that money is applied to the payment of a future dividend, but he or she is not entitled to disturb the distribution of a dividend declared before he or she proved his or her debt.

**145 Final dividend**

- (1) Subject to this section, when the trustee of the estate of a bankrupt has realized all the property of the bankrupt, or so much of it as can, in his or her opinion, be realized without needlessly protracting the trusteeship, he or she shall declare and distribute a final dividend.
- (2) The trustee shall distribute as the final dividend all moneys realized and not previously distributed and shall distribute the final dividend without regard to any debt that had not been proved at the time when he or she declared the final dividend.
- (3) The trustee shall, before declaring the final dividend, give notice, in the manner prescribed by the regulations, to each person who to his or her knowledge, claims to be, or might claim to be, a creditor but has not proved his or her debt that, if the person does not prove his or her debt within the period specified in the notice, the trustee will proceed to declare a final dividend without regard to his or her claim.
- (4) The trustee shall, in a notice sent to a person in pursuance of subsection (3), allow a reasonable period within which the person may prove his or her debt.

- (5) The Court may, on the application of a person claiming to be a creditor, extend the period within which the person may prove his or her debt.
- (6) Where the trustee has sent a notice in pursuance of subsection (3) in relation to the declaration of the final dividend, the trustee shall not declare the dividend until after the expiration of 21 days after the expiration of the period specified in the notice or, if the Court, under subsection (5), extends the period within which a person may prove his or her debt, until after the expiration of 21 days after the expiration of that extended period.

**146 Distribution of dividends where bankrupt fails to file statement of affairs** [*see* Table B]

Where a bankrupt has failed to file a statement of his or her affairs as required by this Act, the Court may, on the application of the trustee, upon such terms as it thinks fit, order that distribution of dividends amongst the creditors who have proved their debts shall proceed in accordance with this Division as if the bankrupt had filed a statement of his or her affairs and those creditors had been stated to be creditors in it.

**147 No action for dividend**

- (1) An action for a dividend does not lie against the trustee of the estate of a bankrupt but, if the trustee neglects or refuses to pay a dividend to a creditor, the Court, on the application of the creditor, may, if it thinks fit, order the trustee to pay the dividend and may also order that the trustee pay interest on the dividend for the time that it is withheld and the costs of the application.
- (2) Where the Court orders the trustee of the estate of a bankrupt to pay interest on a dividend or to pay the costs of an application under subsection (1), the trustee is personally liable for, and is not entitled to be reimbursed by the estate in respect of, the payment of that interest or those costs.

## Part VII—Discharge and annulment

### Division 1—Preliminary

#### 148 Misleading conduct by bankrupt

For the purposes of this Part, a bankrupt is taken to have engaged in misleading conduct in relation to a person in respect of a particular amount (in this section called the *relevant amount*) if:

- (a) the bankrupt, either alone or jointly with any other person, obtained credit to the extent of the relevant amount from the first-mentioned person without informing that person that he or she was an undischarged bankrupt; or
- (b) the bankrupt, either alone or jointly with any other person, obtained goods or services from the first-mentioned person:
  - (i) by giving a bill of exchange or cheque drawn, or a promissory note made, by the bankrupt, either alone or jointly with another person, being a bill, cheque or note under which the relevant amount is payable; or
  - (ii) by giving 2 or more such instruments under which the total of the amounts payable is equal to the relevant amount;  
without informing the first-mentioned person that he or she was an undischarged bankrupt; or
- (c) the bankrupt, either alone or jointly with any other person, entered into a hire-purchase agreement with the first-mentioned person, or entered into an agreement for the leasing or hiring of any goods from the first-mentioned person, being a hire-purchase agreement or agreement for the leasing or hiring of goods under which the total of the amounts payable is equal to the relevant amount, without informing the first-mentioned person that he or she was an undischarged bankrupt; or
- (d) the bankrupt, either alone or jointly with any other person, obtained goods or services from the first-mentioned person by promising to pay that person or another person the relevant amount, or amounts the total of which is equal to the relevant amount, without informing the first-mentioned person that he or she was an undischarged bankrupt; or

- (e) the bankrupt, either alone or jointly with any other person, obtained the relevant amount, or amounts the total of which is equal to the relevant amount, from the first-mentioned person by promising to supply goods to, or render services for, that person or another person without informing the first-mentioned person that he or she was an undischarged bankrupt; or
- (f) the bankrupt carried on business under an assumed name, in the name of another person or, either alone or in partnership, under a firm name and:
  - (i) in the course of the carrying on of that business the bankrupt, or, if the bankrupt carried on the business in partnership under a firm name, the partnership, dealt with the first-mentioned person; and
  - (ii) the bankrupt did not inform the first-mentioned person that he or she was an undischarged bankrupt.

## Division 2—Discharge by operation of law

### Subdivision A—Discharge after certain period

#### 149 Automatic discharge

- (1) Subject to section 149A, a bankrupt is, by force of this subsection, discharged from bankruptcy in accordance with this section.
- (2) If:
  - (a) the bankrupt became a bankrupt before the commencement of section 27 of the *Bankruptcy Amendment Act 1991*; and
  - (b) immediately before the commencement of that section, either:
    - (i) paragraph 149(3)(c) of the *Bankruptcy Act 1966* as amended applied in relation to the bankrupt; or
    - (ii) an order under subsection 149(8) or (12) of the *Bankruptcy Act 1966* as amended was in force in relation to the bankrupt;the bankrupt is discharged at the end of the period of 3 years from:
  - (c) the date on which the bankrupt filed his or her statement of affairs; or
  - (d) the date of commencement of that section;whichever is the later.
- (3) If the bankrupt became a bankrupt before the commencement of section 27 of the *Bankruptcy Amendment Act 1991*, and subsection (2) does not apply in relation to the bankrupt, the bankrupt is discharged at:
  - (a) the end of the period of 3 years from the date on which the bankrupt filed his or her statement of affairs; or
  - (b) the commencement of that section;whichever is the later.
- (4) If the bankrupt becomes a bankrupt after the commencement of section 27 of the *Bankruptcy Amendment Act 1991*, the bankrupt is discharged at the end of the period of 3 years from the date on which the bankrupt filed his or her statement of affairs.

**149A Bankruptcy extended when objection made**

- (1) If an objection to the discharge of a bankrupt has taken effect in accordance with section 149G, then, unless the objection is withdrawn or cancelled, the reference in whichever of subsections 149(2), (3) and (4) applies in relation to the bankrupt to the period of 3 years from the date on which the bankrupt filed his or her statement of affairs is taken to be a reference to the prescribed number of years from the prescribed date.
- (2) For the purposes of subsection (1):
  - (a) the prescribed number of years is:
    - (i) if the objection was made on a ground, or on grounds that included a ground, referred to in paragraph 149D(1)(ab), (d), (da), (e), (f), (g), (h), (ha), (k) or (ma)—8 years; or
    - (ii) in any other case—5 years; and
  - (b) the prescribed date is:
    - (i) if the objection was made on a ground, or on grounds that included a ground, referred to in paragraph 149D(1)(a) or (h)—the date on which the bankrupt returned to Australia; or
    - (ii) in any other case—the date on which the bankrupt filed his or her statement of affairs.
- (3) If the objection is withdrawn or cancelled:
  - (a) the objection is taken never to have been made; and
  - (b) if:
    - (i) the period specified in whichever of subsections 149(2), (3) and (4) applies in relation to the bankrupt has ended; and
    - (ii) no other objection against the discharge of the bankrupt is in effect;the bankrupt is taken to be discharged under section 149 immediately the objection is withdrawn or cancelled.

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**Subdivision B—Objections**

**149B Objection to discharge**

- (1) Subject to the following provisions of this Subdivision, at any time before a bankrupt is discharged from bankruptcy under section 149, the trustee may file with the Official Receiver a written notice of objection to the discharge.
- (2) The trustee of a bankrupt's estate must file a notice of objection to the discharge if the trustee believes:
  - (a) that doing so will help make the bankrupt discharge a 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.

**149C Form of notice of objection**

- (1) A notice of objection must:
  - (a) set out the ground or each of the grounds of objection, being a ground or grounds set out in subsection 149D(1) but not being a ground or grounds of a previous objection to the discharge that was cancelled; and
  - (b) refer to the evidence or other material that, in the opinion of the trustee, establishes that ground or each of those grounds; and
  - (c) state the reasons of the trustee for objecting to the discharge on that ground or those grounds.
- (1A) Paragraph (1)(c) does not apply to a ground specified in paragraph 149D(1)(ab), (d), (da), (e), (f), (g), (h), (ha), (k) or (ma).
- (2) A notice of objection is not invalid merely because it does not state the ground or grounds of objection precisely as set out in subsection 149D(1) provided that the ground or grounds can reasonably be identified from the terms of the notice.

**149D Grounds of objection**

- (1) The grounds of objection that may be set out in a notice of objection are as follows:



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- (a) the bankrupt has, whether before, on or after the date of the bankruptcy, left Australia and has not returned to Australia;
- (aa) any transfer is void against the trustee in the bankruptcy because of section 120 or 122;
- (ab) any transfer is void against the trustee in the bankruptcy because of section 121;
- (b) after the date of the bankruptcy, the bankrupt contravened section 206A of the *Corporations Act 2001* (disqualification from managing corporations);
- (c) after the date of the bankruptcy the bankrupt engaged in misleading conduct in relation to a person in respect of an amount that, or amounts the total of which, exceeded \$3,000;
- (d) the bankrupt, when requested in writing by the trustee to provide written information about the bankrupt's property, income or expected income, failed to comply with the request;
- (da) after the date of the bankruptcy, the bankrupt intentionally provided false or misleading information to the trustee;
- (e) the bankrupt failed to disclose any particulars of income or expected income as required by a provision of this Act referred to in subsection 6A(1) or by section 139U;
- (f) the bankrupt failed to pay to the trustee an amount that the bankrupt was liable to pay under section 139ZG;
- (g) at any time during the period of 5 years immediately before the commencement of the bankruptcy, or at any time during the bankruptcy, the bankrupt:
  - (i) spent money but failed to explain adequately to the trustee the purpose for which the money was spent; or
  - (ii) disposed of property but failed to explain adequately to the trustee why no money was received as a result of the disposal or what the bankrupt did with the money received as a result of the disposal;
- (h) while the bankrupt was absent from Australia he or she was requested by the trustee to return to Australia by a particular date or within a particular period but the bankrupt failed to return by that date or within that period;
- (ha) the bankrupt intentionally failed to disclose to the trustee a liability of the bankrupt that existed at the date of the bankruptcy;

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- (i) the bankrupt has failed, whether intentionally or not, to disclose to the trustee a liability of the bankrupt that existed at the date of the bankruptcy;
  - (j) the bankrupt failed to comply with paragraph 77(1)(bb) or (bc) or subsection 80(1);
  - (k) the bankrupt refused or failed to sign a document after being lawfully required by the trustee to sign that document;
  - (l) the bankrupt failed to attend a meeting of his or her creditors without having first obtained written approval of the trustee not to attend or without having given to the trustee a reasonable explanation for the failure;
  - (m) the bankrupt failed to attend an interview or examination for the purposes of this Act without having given a reasonable explanation to the trustee for the failure;
  - (ma) the bankrupt intentionally failed to disclose to the trustee the bankrupt's beneficial interest in any property;
  - (n) the bankrupt failed, whether intentionally or not, to disclose to the trustee the bankrupt's beneficial interest in any property.
- (2) This section has effect subject to section 304A.

**149F Copy of notice of objection to be given to bankrupt**

- (1) As soon as practicable after a notice of objection is filed by the trustee, the trustee must give a copy of the notice to the bankrupt together with a notice to the effect that the bankrupt may request the Inspector-General to review the decision of the trustee to file the notice of objection.
- (2) A notice given to the bankrupt under subsection (1) must set out the effect of subsection 149K(3).
- (3) A contravention of this section does not affect the validity of the objection.

**149G Date of effect of objection**

An objection takes effect at the beginning of the day on which details of the notice of objection are entered in the National Personal Insolvency Index.

### **149H Trustee ceasing to object on some grounds**

- (1) If at any time before a bankrupt is discharged the trustee ceases to object to the discharge on a particular ground, the trustee must give the Official Receiver a notice specifying the ground and give the bankrupt a copy of the notice.
- (3) If there is no longer an objection on any ground, the objection ceases to have effect at the beginning of the last day when details of a notice under subsection (1) are entered in the National Personal Insolvency Index.
- (4) If one or more grounds of objection remain, the objection continues to have effect on the remaining ground or grounds.

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

## **Subdivision C—Review of objection**

### **149K Internal review of objection**

- (1) The Inspector-General may review a decision of the trustee to file a notice of objection:
  - (a) on the Inspector-General's own initiative; or
  - (b) if requested to do so by the bankrupt for reasons that appear to the Inspector-General to be sufficient to justify such a review.
- (2) The Inspector-General must review such a decision if requested to do so by the Ombudsman.
- (3) A request by the bankrupt to the Inspector-General for the review of such a decision must:

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- (a) be in writing and lodged with the Official Receiver's office not later than 60 days after the day on which the bankrupt is notified of the trustee's objection; and
  - (b) be accompanied by:
    - (i) a copy of the notice of objection; and
    - (ii) any documents on which the bankrupt relies in support of the request.
- (4) The Official Receiver must endorse on the request the date when it was lodged and must send the request and the accompanying documents to the Inspector-General as soon as practicable after they are received.
- (5) Within 60 days after the request is lodged, the Inspector-General must:
- (a) decide whether to review the decision; and
  - (b) if the Inspector-General decides to review the decision—make his or her decision on the review.

**149M Inspector-General may request further information**

- (1) For the purposes of the exercise of powers under this Subdivision, the Inspector-General may:
- (a) ask the bankrupt to provide such further information, either orally or in writing, in support of the request as the Inspector-General specifies; and
  - (b) ask the trustee who filed the notice of objection to provide such information, either orally or in writing, about the decision to file the notice and the reasons for the decision as the Inspector-General specifies.
- (2) If any information is provided orally, the Inspector-General must record it in writing.

**149N Decision on review**

- (1) On a review of a decision, if the Inspector-General is satisfied that:
- (a) the ground or grounds on which the objection was made was not a ground or were not grounds specified in subsection 149D(1); or
  - (b) there is insufficient evidence to support the existence of the ground or grounds of objection; or

- (c) the reasons given for objecting on that ground or those grounds do not justify the making of the objection; or
  - (d) a previous objection that was made on that ground or those grounds, or on grounds that included that ground or those grounds, was cancelled;
- the Inspector-General must cancel the objection.
- (1A) An objection must not be cancelled under subsection (1) if:
    - (a) the objection specifies at least one special ground; and
    - (b) there is sufficient evidence to support the existence of at least one special ground specified in the objection; and
    - (c) the bankrupt fails to establish that the bankrupt had a reasonable excuse for the conduct or failure that constituted the special ground.
- For this purpose, *special ground* means a ground specified in paragraph 149D(1)(ab), (d), (da), (e), (f), (g), (h), (ha), (k) or (ma).
- (1B) In applying subsection (1A), no notice is to be taken of any conduct of the bankrupt after the time when the ground concerned first commenced to exist.
- (2) The cancellation does not take effect until:
    - (a) the end of the period within which an application may be made to the Administrative Appeals Tribunal for the review of the decision of the Inspector-General; or
    - (b) if such an application is made—the decision of the Tribunal is given.
  - (3) If the Inspector-General is not satisfied as mentioned in subsection (1), the Inspector-General must confirm the decision.

### **149P Inspector-General to notify bankrupt and trustee of decision**

- (1) If the Inspector-General:
  - (a) reviews a decision; or
  - (b) refuses a request by a bankrupt for a review of a decision;the Inspector-General must give written notice to the bankrupt, to the trustee and to the Official Receiver, of the Inspector-General's decision on the review or on the request, as the case may be.
- (2) The notice must:
  - (a) set out the decision; and

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- (b) refer to the evidence or other material on which the decision was based; and
  - (c) give the reasons for the decision.
- (3) In the case of a decision reviewing the decision to file a notice of objection, the notice must also include a statement to the effect that, if the bankrupt, or the trustee, is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.
- (4) In the case of a decision refusing a request to review the decision to file a notice of objection, the notice to the bankrupt must also include a statement to the effect that, if the bankrupt is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for a review of the decision.
- (5) A contravention of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.
- (6) If, within 60 days after lodgment of a request by a bankrupt for the review of the trustee's decision to file a notice of objection, the Inspector-General has not given written notice to the bankrupt of his or her decision in accordance with subsection (1), the Inspector-General is taken to have reviewed the decision and confirmed it under subsection 149N(3).

**149Q Review of decisions**

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision of the Inspector-General on the review of a decision of the trustee to file a notice of objection; or
- (b) a decision of the Inspector-General refusing a request to review a decision of the trustee to file a notice of objection.

## **Division 4—Provisions applicable to all discharges**

### **152 Discharged bankrupt to give assistance**

A discharged bankrupt must, even though discharged, give such assistance as the trustee reasonably requires in the realization and distribution of such of his or her property as is vested in the trustee.

Penalty: Imprisonment for 6 months.

### **153 Effect of discharge**

- (1) Subject to this section, where a bankrupt is discharged from a bankruptcy, the discharge operates to release him or her from all debts (including secured debts) provable in the bankruptcy, whether or not, in the case of a secured debt, the secured creditor has surrendered his or her security for the benefit of creditors generally.

Note: The operation of this section in relation to accumulated HEC debts and semester debts under the *Higher Education Funding Act 1988* is affected by section 106YA of that Act.

- (2) The discharge of a bankrupt from a bankruptcy does not:
  - (a) release the bankrupt from:
    - (i) a debt on a recognizance; or
    - (ii) a debt with which the bankrupt is chargeable at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of a person prosecuted for an offence against a law of the Commonwealth or of a State or Territory of the Commonwealth; or
  - (aa) release the bankrupt from liability to pay an amount to the trustee under subsection 139ZG(1); or
  - (b) release the bankrupt from a debt incurred by means of fraud or a fraudulent breach of trust to which he or she was a party or a debt of which he or she has obtained forbearance by fraud; or
  - (c) subject to any order of the Court made under subsection (2A), release the bankrupt from any liability under a maintenance agreement or maintenance order;

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Note: A discharged bankrupt remains liable under any pecuniary penalty order because such liabilities are not provable in bankruptcy, see subsection 82(3A).

- (2A) The Court may order that the discharge of a bankrupt from bankruptcy shall operate to release the bankrupt, to such extent and subject to such conditions as the Court thinks fit, from liability to pay arrears due under a maintenance agreement or maintenance order.
- (3) The discharge of a bankrupt from a bankruptcy does not affect the right of a secured creditor, or any person claiming through or under him or her, to realize or otherwise deal with his or her security:
- (a) if the secured creditor has not proved in the bankruptcy for any part of the secured debt—for the purpose of obtaining payment of the secured debt; or
  - (b) if the secured creditor has proved in the bankruptcy for part of the secured debt—for the purpose of obtaining payment of the part of the secured debt for which he or she has not proved in the bankruptcy;
- and, for the purposes of enabling the secured creditor or a person claiming through or under him or her so to realize or deal with his or her security, but not otherwise, the secured debt, or the part of the secured debt, as the case may be, shall be deemed not to have been released by the discharge of the bankrupt.
- (4) The discharge of a bankrupt from a bankruptcy does not release from any liability a person who, at the date on which the bankrupt became a bankrupt:
- (a) was a partner or a co-trustee with the bankrupt or was jointly bound or had made a joint contract with the bankrupt; or
  - (b) was surety or in the nature of a surety for the bankrupt.
- (5) Where a bankrupt has been discharged from a bankruptcy, all proceedings taken in or in respect of the bankruptcy shall be deemed to have been validly taken.



## **Division 5—Annulment of bankruptcy**

### **153A Annulment on payment of debts**

- (1) If the trustee is satisfied that all the bankrupt's debts have been paid in full, the bankruptcy is annulled, by force of this subsection, on the date on which the last such payment was made.
- (1A) In determining whether there has been full payment of a debt that bears interest, the interest must be reckoned up to and including the date on which the debt (including interest) is paid.
- (2) The trustee must, as soon as practicable after that date, give to the Official Receiver a written certificate setting out the former bankrupt's name and bankruptcy number and the date of the annulment.
- (4) For the purposes of this section, if a debt has been proved by a creditor but the creditor cannot be found or cannot be identified, the debt may be paid to the Official Receiver and, if so paid, is taken for the purposes of this section to have been paid in full to the creditor.
- (4A) Money received by the Official Receiver under subsection (4) is received on behalf of the Commonwealth.
- (5) If money is paid to the Official Receiver under subsection (4), the provisions of subsections 254(3) and (4) apply in relation to that money as if it had been paid to the Commonwealth by a trustee under subsection 254(2).
- (6) In this section:  
  
*bankrupt's debts* means all debts that have been proved in the bankruptcy and includes interest payable on such of those debts as bear interest, and the costs, charges and expenses of the administration of the bankruptcy, including the remuneration and expenses of the trustee.

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**153B Annulment by Court**

- (1) If the Court is satisfied that a sequestration order ought not to have been made or, in the case of a debtor's petition, that the petition ought not to have been presented or ought not to have been accepted by the Official Receiver, the Court may make an order annulling the bankruptcy.
- (2) In the case of a debtor's petition, the order may be made whether or not the bankrupt was insolvent when the petition was presented.

**154 Effect of annulment**

- (1) If the bankruptcy of a person (in this section called the *former bankrupt*) is annulled under this Division:
  - (a) all sales and dispositions of property and payments duly made, and all acts done, by the trustee or any person acting under the authority of the trustee or the Court before the annulment are taken to have been validly made or done; and
  - (b) the trustee may apply the property of the former bankrupt still vested in the trustee in payment of the costs, charges and expenses of the administration of the bankruptcy, including the remuneration and expenses of the trustee; and
  - (c) subject to subsections (3), (6) and (7), the remainder (if any) of the property of the former bankrupt still vested in the trustee reverts to the bankrupt.
- (2) If the property of the former bankrupt referred to in paragraph (1)(b) is insufficient to meet the costs, charges and expenses referred to in that paragraph, the amount of the deficiency is a debt due by the former bankrupt to the trustee and is recoverable by the trustee by action against the former bankrupt in a court of competent jurisdiction.
- (3) If an application is made to the Court by a person claiming an interest in property referred to in paragraph (1)(c), the Court, after hearing such persons as it thinks fit, may make an order, either unconditionally or on such conditions as the Court considers just and equitable, for the vesting of the property in, or delivery of the property to, a person in whom, or to whom, it seems to the Court to be just and equitable that it should be vested or delivered, or to a trustee for that person.

- (4) Subject to subsection (5), if an order vesting property in a person is made under subsection (3), the property vests immediately in the person without any conveyance, transfer or assignment.
- (5) If:
- (a) the property to which such an order relates is property the transfer of which is required by a law of the Commonwealth, of a State or of a Territory to be registered; and
  - (b) that law enables the registration of such an order;
- the property, even though it vests in equity in the person named in the order, does not vest in that person at law until the requirements of that law have been complied with.
- (6) The Court may make an order directing the trustee not to pay or transfer the property, or a specified part of the property, referred to in paragraph (1)(c) to the former bankrupt if:
- (a) the Director of Public Prosecutions, or a person who is entitled to apply for an interstate confiscation order under a corresponding law, applies to the Court for an order under this subsection; and
  - (b) the Court is satisfied that:
    - (i) proceedings are pending under a proceeds of crime law; and
    - (ii) property of the former bankrupt may:
      - (A) become subject to a forfeiture order or interstate forfeiture order made in the proceedings; or
      - (B) be required to satisfy a pecuniary penalty order or interstate pecuniary penalty order made in the proceedings.
- (7) The Court, on application made to it, may vary or revoke an order made under subsection (6).