



Bankruptcy Regulations 2021

made under the

Bankruptcy Act 1966

Compilation No. 2

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About this compilation

This compilation

This is a compilation of the *Bankruptcy Regulations 2021* that shows the text of the law as amended and in force on 23 November 2023 (the *compilation date*).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *Bankruptcy Regulations 2021*.

3 Authority

This instrument is made under the *Bankruptcy Act 1966*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) approved form;
- (b) registered trustee;
- (c) Registrar;
- (d) the Court;
- (e) the Official Receiver.

In this instrument:

Act means the *Bankruptcy Act 1966*.

charge period has the same meaning as in the *Bankruptcy (Estate Charges) Act 1997*.

contribution assessment period has the meaning given by section 139K of the Act.

controlling trustee has the meaning given by Part X of the Act.

current condition has the meaning given by section 5-10 of Schedule 2 to the Act.

estate charge means:

- (a) interest charge; or
- (b) realisations charge.

FBTA Act means the *Fringe Benefits Tax Assessment Act 1986* as in force at the start of 1 July 1992.

Fees and Remuneration Determination means the determination in force under subsection 316(1) of the Act.

Index means the National Personal Insolvency Index established under section 73.

infringement notice means an infringement notice given under section 90.

Section 4

infringement notice provision means an offence of a kind referred to in the table in subsection 277B(2) of the Act.

interest charge has the same meaning as in Part XV of the Act.

late payment penalty has the same meaning as in Part XV of the Act.

legal practitioner means a barrister, a solicitor, a barrister and solicitor or a legal practitioner, of the High Court or of the Supreme Court of a State or Territory.

preliminary remuneration and expenses of a trustee in relation to a debtor means:

- (a) remuneration paid to the trustee in accordance with a direction, or other order, made by the Court under subsection 50(1) of the Act directing the trustee to take control of the debtor's property or making another order in relation to the property; and
- (b) any expenses incurred by the trustee:
 - (i) as a result of that direction or other order; or
 - (ii) in relation to the examination of the debtor, or an examinable person in relation to the debtor, as a result of the issue of a summons under subsection 50(2) of the Act.

realisations charge has the same meaning as in Part XV of the Act.

regulated debtor has the meaning given by section 5-15 of Schedule 2 to the Act.

Part 2—Administration

5 Disclosure of information by Inspector-General

For the purposes of paragraph 12(4)(b) of the Act, the following professional disciplinary bodies are prescribed:

- (a) Chartered Accountants Australia and New Zealand;
- (b) CPA Australia;
- (c) the Australian Restructuring Insolvency and Turnaround Association;
- (d) the Institute of Public Accountants;
- (e) the New South Wales Bar Association;
- (f) The Law Society of New South Wales;
- (g) the Victorian Legal Services Commissioner;
- (h) the Victorian Legal Services Board;
- (i) the Bar Association of Queensland;
- (j) the Queensland Law Society;
- (k) the Legal Practice Board of Western Australia;
- (l) the Law Society of South Australia;
- (m) the Legal Profession Conduct Commissioner of South Australia;
- (n) the Law Society of Tasmania;
- (o) the Law Society of the Australian Capital Territory;
- (p) the Law Society Northern Territory.

6 Prescribed rate of interest on money held in Common Fund

For the purposes of section 20J of the Act, the rate of interest prescribed is 7% per year.

Note: This rate is referred to in subsections 20J(2) and (4) of the Act.

Part 3—Courts

7 Prescribed countries

For the purposes of subsection 29(5) of the Act, the following countries are prescribed:

- (a) Jersey;
- (b) Malaysia;
- (c) Papua New Guinea;
- (d) Singapore;
- (e) Switzerland;
- (f) the United States of America.

Part 4—Proceedings in connection with bankruptcy

Division 1—Bankruptcy notices

8 Application for bankruptcy notice

- (1) This section sets out the requirements for an application to the Official Receiver for a bankruptcy notice by a person who has obtained against a debtor one, or 2 or more, final judgments or final orders of a kind described in paragraph 40(1)(g) of the Act.

Note: Subsection 40(3) of the Act sets out several deeming rules for the purposes of paragraph 40(1)(g) of the Act.

- (2) The application must be in the approved form.
- (3) The application must specify the final judgment or final order or each of those final judgments or final orders.
- (4) The application must include:
- (a) if any final order specified in the application is an award that is a final order because of subparagraph 40(3)(a)(i) of the Act—both of the following:
 - (i) a copy of the award certified as a true copy by the arbitrator who made the award or by an officer of the Court who has compared the copy with the original award;
 - (ii) a sealed or certified copy of the order giving leave to enforce the award; and
 - (b) for any other final order or final judgment specified in the application—at least one of the following:
 - (i) a copy of the sealed or certified judgment or order;
 - (ii) a certificate of the judgment or order sealed by the court that made the judgment or order (the *relevant court*) or signed by an officer of the relevant court;
 - (iii) a copy of the entry of the judgment or order certified as a true copy of that entry and sealed by the relevant court or signed by an officer of the relevant court.

Note 1: For bankruptcy notices, see section 9 and Schedule 1.

Note 2: A fee is payable to the Official Receiver for an application under this section (see the Fees and Remuneration Determination).

9 Form of bankruptcy notice

- (1) For the purposes of subsection 41(2) of the Act, the form of bankruptcy notice set out in Schedule 1 is prescribed.
- (2) A bankruptcy notice must follow that form in respect of its format (for example, bold or italic typeface, underlining and notes).

Section 10

- (3) Subsection (2) does not limit section 25C of the *Acts Interpretation Act 1901*.

Note: Section 25C of the *Acts Interpretation Act 1901* provides that strict compliance with a form is not required and substantial compliance is sufficient.

10 Service of bankruptcy notice

- (1) A bankruptcy notice in relation to a debtor must be served on the debtor within:
- the 6 month period beginning on the day that the Official Receiver issues the notice; or
 - any additional period that the Official Receiver determines in writing for the purposes of this paragraph.

Note: If paragraph (b) applies, a fee is payable under the Fees and Remuneration Determination.

- (2) A bankruptcy notice in relation to a debtor that is served on the debtor outside of a period mentioned in subsection (1) is not valid.

10A Prescribed statutory minimum

For the purposes of paragraph (a) of the definition of *statutory minimum* in subsection 5(1) of the Act, the amount prescribed is \$10,000.

11 Inspection of bankruptcy notice

- (1) Subject to subsection (2), the only persons who may inspect a bankruptcy notice issued by the Official Receiver under subsection 41(1) of the Act are the following:
- a person specified in the notice;
 - a party to a proceeding to which the notice relates;
 - a legal practitioner acting on behalf of a person mentioned in paragraph (a) or (b) of this subsection.
- (2) If a creditor's petition is presented that is founded on an act of bankruptcy consisting of failure to comply with the bankruptcy notice, any person may inspect the notice.

12 Judgment or order in foreign currency

- (1) This section applies in relation to a bankruptcy notice issued by the Official Receiver in relation to a debtor if the notice includes a final judgment, or final order, that is expressed in an amount of foreign currency (whether or not the judgment or order is also expressed in an amount of Australian currency).
- (2) The bankruptcy notice must include the following:
- a statement to the effect that the debtor must pay:
 - the amount of foreign currency; or
 - the equivalent amount of Australian currency;

- (b) the conversion calculation for the equivalent amount of Australian currency;
 - (c) a statement to the effect that the conversion of the amount of foreign currency into the equivalent amount of Australian currency has been made in accordance with this section.
- (3) For the purposes of subparagraph (2)(a)(ii), the equivalent amount of Australian currency is the amount worked out using the rate of exchange for the foreign currency published by the Reserve Bank of Australia in relation to the day that is 2 business days before the day on which the application for the notice is made.

Note: The Reserve Bank of Australia exchange rates could in 2021 be viewed on the Reserve Bank of Australia's website (<http://www.rba.gov.au>).

Division 2—Petitions

13 Copy of petition, and certain orders, to be given to Official Receiver

A creditor who presents a petition to the Court under Division 2 of Part IV of the Act must give to the Official Receiver:

- (a) a copy of the petition within 2 business days after the Court files the petition; and
- (b) a copy of any order entered by the Court, dismissing, staying or extending the petition, or adjourning the hearing of the petition, within 2 business days after the Court enters the order.

14 Control of debtor's property before sequestration

- (1) If the Court gives a direction, or makes another order, under subsection 50(1) of the Act in relation to a debtor, the creditor who applied under subsection 50(1A) of the Act for the Court to make a direction must:

- (a) serve the documents specified in subsection (2) of this section on both of the following:
 - (i) the trustee who the Court has directed to take control of the debtor's property;
 - (ii) the Official Receiver; and
- (b) do so within 2 business days after the Court gives the direction or makes the order as the case may be.

Note: A direction under subsection 50(1) of the Act may be given to the Official Trustee or a registered trustee.

- (2) The following documents are specified:

- (a) a copy of the application;
- (b) a copy of any affidavit filed in support of the application;
- (c) a certified copy of the direction or order as the case may be.

15 Preliminary remuneration and expenses of trustee

Scope

- (1) This section applies if:
 - (a) a creditor applies under subsection 50(1A) of the Act for the Court to make a direction in relation to a debtor; and
 - (b) the Court, under subsection 50(1) of the Act, directs a trustee to take control of the debtor's property or makes another order in relation to the property; and
 - (c) in accordance with the direction or other order, the creditor deposits an amount (the **first amount**) with the trustee for the purposes of covering the preliminary remuneration and expenses of the trustee in relation to the debtor.

Note: A direction under subsection 50(1) of the Act may be given to the Official Trustee or a registered trustee.

Refund to creditor of amounts deposited in excess of preliminary remuneration and expenses

- (2) The creditor is entitled to a refund of the sum of the first amount and any amount covered by subsection (4) less an amount equal to the preliminary remuneration and expenses of the trustee in relation to the debtor if any of the following events occur:
- (a) the debtor enters into a personal insolvency agreement, or the debtor's estate is administered under Part XI of the Act, and the Court authorises the trustee to transfer the debtor's property to some other person;
 - (b) a sequestration order is made against the estate of the debtor;
 - (c) if a creditor's petition was presented in relation to the debtor—the creditor's petition is dismissed;
 - (d) a debtor's petition relating to the debtor is accepted by the Official Receiver;
 - (e) a proposal by the debtor relating to a debt agreement is accepted under section 185EC of the Act.
- (3) The trustee must pay a refund payable under subsection (2) to the creditor.

Additional amounts

- (4) An amount (the **additional amount**) is covered by this subsection if:
- (a) both of the following apply:
 - (i) the trustee requests the creditor to deposit with the trustee the additional amount in addition to the first amount;
 - (ii) the creditor deposits the additional amount with the trustee; or
 - (b) all of the following apply:
 - (i) the Court is satisfied that the first amount is insufficient to cover the preliminary remuneration and expenses of the trustee in relation to the debtor;
 - (ii) the Court, under subsection 50(1) of the Act, directs, on application by the trustee, the creditor to deposit the additional amount with the trustee;
 - (iii) the creditor deposits the additional amount with the trustee.

16 Application for damages where petition dismissed

- (1) This section applies if:
- (a) a creditor's petition is presented to the Court in relation to a debtor; and
 - (b) the Court, under subsection 50(1) of the Act, directs a trustee to take control of the debtor's property or makes another order in relation to the property; and
 - (c) the Court subsequently dismisses the creditor's petition.

Section 17

Note: The trustee could be the Official Trustee or a registered trustee (see subsection 50(1) of the Act).

- (2) The Court may, on application by the debtor within 15 business days after the day the petition is dismissed, order the creditor to pay the debtor an amount equal to the damage the Court assesses as resulting from the acts or omissions of the trustee in reliance on the direction or other order mentioned in paragraph (1)(b).

17 Prescribed modifications of applied provisions

For the purposes of subsection 50(5) of the Act, section 81 of the Act is modified as follows:

- (a) by omitting from subsection (2) “An” and substituting “Subject to subsection (2A), an”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) The Court or a magistrate may direct that an examination, or any part of an examination, under this section shall be held in private.”;
- (c) by omitting from subsection (9) “is the trustee” and substituting “has been directed to take control of the property of the relevant person”;
- (d) by omitting subsection (10A);
- (e) by omitting subsection (14) and substituting the following subsections:

“(14) Subject to subsection (14A), the applicant for an examination under this section is to pay the costs incurred in connection with the examination.

(14A) The Court or a magistrate may order that all or some of the costs mentioned in subsection (14) are to be paid by the relevant person.”.

18 Acceptance of debtor’s declaration

If:

- (a) a debtor presents a declaration under section 54A of the Act; and
- (b) the Official Receiver accepts the declaration, and signs a copy of the declaration, under paragraph 54C(1)(a) of the Act;

the Official Receiver must give a copy of the signed copy of the declaration to the debtor.

19 Prescribed information to be supplied by Official Receiver to debtor

- (1) For the purposes of subsections 54D(1), 55(3A), 56B(5) and 57(3A) of the Act, the following information is prescribed:
 - (a) information about alternatives to bankruptcy;
 - (b) information about the consequences of bankruptcy;
 - (c) information about sources of financial advice and guidance to persons facing or contemplating bankruptcy;
 - (d) information about a debtor’s right to choose whether the bankruptcy is initially administered by a registered trustee or the Official Trustee;

(e) a statement that it is an act of bankruptcy for a debtor to present to the Official Receiver, under section 54A of the Act, a declaration of intention to present a debtor's petition.

(2) The information must be factual and objective.

20 Presentation of debtor's petition

(1) This section applies if a debtor intends to present a petition under section 55, 56B or 57 of the Act and the debtor is:

(a) unable to read the relevant material because the debtor:

- (i) is blind or has low vision; or
- (ii) is illiterate or partially literate; or
- (iii) is insufficiently familiar with the English language; or

(b) unable to sign the petition because of a physical incapacity.

(2) The petition may be signed on behalf of the debtor by another person, who must also sign a statement:

- (a) if subparagraph (1)(a)(i) or (ii) applies—that the person has read the relevant material to the debtor; or
- (b) if subparagraph (1)(a)(iii) applies—that the person has interpreted the relevant material to the debtor in a language with which the person and the debtor are familiar; or
- (c) if paragraph (1)(b) applies—that the person believes that the debtor has read and understood the relevant material.

(3) In this section:

relevant material means the petition and the information prescribed under section 19.

21 Debtor's petition—filing of trustee's consent

If:

(a) a debtor presents, or 2 or more debtors present, a petition to the Official Receiver under section 55, 56B or 57 of the Act; and

(b) there is in force under subsection 156A(1) of the Act an instrument of consent of a registered trustee to act as the trustee of:

- (i) the estate of the debtor; or
- (ii) in the case of 2 or more debtors—the separate estates, the joint estates, or the joint and separate estates, of the debtors or any of them;

the petition must include the original, or a clearly legible copy, of the instrument of consent.

Section 22

22 Notice to partners of referral to Court of petition by other partners against the partnership

- (1) For the purposes of subsection 56C(2) of the Act, if the Official Receiver refers a debtor's petition against a partnership to the Court, the notice given by the Official Receiver to each member of the partnership who did not present the petition must:
 - (a) be in writing; and
 - (b) state that the petition has been referred to a court specified in the notice; and
 - (c) specify the day, time and place of hearing of the petition.
- (2) The Official Receiver must give the notice at least 5 business days before the day of the hearing.

Note: See section 102 of this instrument (service of documents) and section 28A of the *Acts Interpretation Act 1901*.

Part 5—Control over person and property of debtors and bankrupts

23 Arrest of debtor or bankrupt

If a person is arrested under a warrant issued by the Court under section 78 of the Act, the arresting officer must immediately notify a Registrar of the Court.

Part 6—Administration of property

Division 1—Proof of debts

24 Proof of debt in foreign currency

- (1) This section applies if:
 - (a) a creditor lodges, or causes to be lodged, a proof of debt in a bankruptcy in accordance with section 84 of the Act; and
 - (b) the debt is an amount of foreign currency.
- (2) The proof of debt must include the following:
 - (a) a statement of:
 - (i) the amount of foreign currency; and
 - (ii) the equivalent amount of Australian currency; and
 - (iii) the conversion calculation for the equivalent amount of Australian currency;
 - (b) a statement to the effect that the conversion of the amount of foreign currency into the equivalent amount of Australian currency has been made in accordance with this section.
- (3) For the purposes of subparagraph (2)(a)(ii), the equivalent amount of Australian currency is the amount worked out using the rate of exchange for the foreign currency published by the Reserve Bank of Australia in relation to the day that is 2 business days before the date of the bankruptcy.

Note: The Reserve Bank of Australia exchange rates could in 2021 be viewed on the Reserve Bank of Australia's website (<http://www.rba.gov.au>).

Division 2—Order of payment of debts

25 Priority payments—order of payment of certain costs, charges, expenses and remuneration

- (1) For the purposes of paragraph 109(1)(a) of the Act, the order that the trustee of the estate of a bankrupt must apply the proceeds of the bankrupt's property to the costs, charges, expenses and remuneration mentioned in the following table is the order that appears in the table.

Order of payment of certain costs, charges, expenses and remuneration

| Item | Costs, charges and expenses |
|------|--|
| 1 | Realisations charge payable by the trustee in relation to the estate under the <i>Bankruptcy (Estate Charges) Act 1997</i> |
| 2 | If the trustee is a registered trustee to whom the Official Trustee transferred the administration of the bankruptcy, both of the following in relation to the administration of the bankruptcy by the Official Trustee before the transfer: (a) any remuneration payable to the Official Trustee under the Fees and Remuneration Determination; (b) any reimbursement that is payable to the Official Trustee under section 108 |
| 3 | Expenses reasonably incurred by or on behalf of the trustee: (a) in protecting all or part of the bankrupt's assets; or (b) in carrying on, in accordance with the Act, a business of the bankrupt |
| 4 | If a creditor made an advance to the trustee for the purposes of the trustee's administration of the bankruptcy—an amount, payable to the creditor, equal to that advance |
| 5 | Fees, costs, charges or expenses (other than fees, costs, charges or expenses covered by another item of this table) paid or payable by the trustee in administering the bankrupt's estate |
| 6 | If: (a) an order was made under subsection 50(1) of the Act in relation to the bankrupt when the bankrupt was a debtor; and (b) an amount was deposited by a creditor, in accordance with that order, with the trustee; an amount, payable to the creditor, equal to the trustee's preliminary remuneration and expenses in relation to the debtor |
| 7 | The following: (a) if a creditor applied for: (i) a sequestration order against the estate; or (ii) an order for the administration of the estate under Part XI of the Act; the taxed costs of the creditor in relation to the application; (b) if the administrator of the estate of a deceased person presented a petition for an order for the administration of the estate under Part XI of the Act—the taxed costs of the administrator; (c) if a person made an application for a sequestration order under Part X of the Act—both of the following: (i) the taxed costs of that person in relation to the application; (ii) any taxed costs of that person in respect of an application for an order under |

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Order of payment of certain costs, charges, expenses and remuneration

Division 5 or 6 of Part IX of the Act in relation to the estate

| | |
|----|---|
| 8 | The trustee's remuneration (other than remuneration covered by item 6): (a) if the trustee is the Official Trustee—payable to the Official Trustee under the Fees and Remuneration Determination; or (b) if the trustee is a registered trustee—payable to the registered trustee under section 60-5 of Schedule 2 to the Act |
| 9 | If: (a) there is a committee of inspection in relation to the administration of the estate; and (b) the creditors of the estate, or a majority of them, have approved payment of out-of-pocket expenses incurred by a member of the committee of inspection; those expenses, to the extent that the trustee allows them as being fair and reasonable |
| 10 | Costs of any audit carried out under section 70-15 or 70-20 of Schedule 2 to the Act in relation to the estate |

References to certain applicants and petitioners where debtor's petition accepted

- (2) For the purposes of item 7 of the table, a reference to an applicant or a person presenting a petition is taken to include a reference to a person whose application or petition has not been proceeded with because a debtor's petition presented by the bankrupt has been accepted by the Official Receiver (whether or not that debtor's petition was referred to the Court under subsection 55(3B) of the Act, and whatever the outcome of such a referral).

26 Maximum amount payable to employee

For the purposes of paragraph 109(1)(e) of the Act, the maximum amount due to or in respect of an employee of a bankrupt is:

- (a) if the date of the bankruptcy is in a financial year specified in column 1 of an item of the following table—the amount specified in column 2 of that item; or
- (b) if the date of the bankruptcy is in the financial year beginning on 1 July 2020—\$4,600; or
- (c) if the date of the bankruptcy is in the financial year beginning on 1 July 2021 or a later financial year—\$4,600:
- (i) indexed in accordance with section 114 of this instrument; and
- (ii) rounded down to the nearest multiple of \$50.

Note: Indexed amounts could in 2021 be viewed on the Australian Financial Security Authority's website (<http://www.afsa.gov.au>).

Maximum amount payable to employee

| Item | Column 1 Financial year | Column 2 Amount |
|------|----------------------------|--------------------|
| 1 | 2019-20 | \$4,600 |

| Maximum amount payable to employee | | |
|---|-----------------------|-----------------|
| Item | Column 1 | Column 2 |
| | Financial year | Amount |
| 2 | 2018-19 | \$4,550 |
| 3 | 2017-18 | \$4,500 |
| 4 | 2016-17 | \$4,450 |
| 5 | 2015-16 | \$4,400 |
| 6 | 2014-15 | \$4,350 |
| 7 | 2013-14 | \$4,300 |
| 8 | 2012-13 | \$4,200 |
| 9 | 2011-12 | \$4,150 |
| 10 | 2010-11 | \$4,100 |
| 11 | 2009-10 | \$4,000 |
| 12 | 2008-09 | \$3,950 |
| 13 | 2007-08 | \$3,850 |
| 14 | 2006-07 | \$3,750 |
| 15 | 2005-06 | \$3,650 |
| 16 | 2004-05 | \$3,550 |
| 17 | 2003-04 | \$3,500 |
| 18 | 2002-03 | \$3,450 |
| 19 | 2001-02 | \$3,350 |
| 20 | 2000-01 | \$3,300 |
| 21 | 1999-2000 | \$3,150 |
| 22 | 1998-99 | \$3,100 |
| 23 | 1997-98 | \$3,100 |
| 24 | 1996-97 | \$3,100 |

Division 3—Property available for payment of debts

27 Household property that is not available for payment of debts

Property to which subsection 116(1) of the Act does not extend

- (1) For the purposes of subparagraph 116(2)(b)(i) of the Act, the following kinds of property are prescribed:
 - (a) basic household property of a kind covered by subsection (2);
 - (b) property of a kind covered by subsection (3) to the extent that it is reasonably appropriate for a household, having regard to the criteria specified in subsection (4);
 - (c) property (including recreational and sports equipment) of a kind that is reasonably necessary for the domestic use of a household, having regard to:
 - (i) current social standards; and
 - (ii) the criteria specified in subsection (4).

Basic household property

- (2) This subsection covers the following:
 - (a) sufficient household furniture for the members of the household;
 - (b) sufficient beds for the members of the household;
 - (c) educational, sporting or recreational items (including books) that are wholly or mainly for the use of children or students in the household;
 - (d) one television set;
 - (e) one set of stereo equipment;
 - (f) one radio;
 - (g) either:
 - (i) one washing machine and one clothes drier; or
 - (ii) one combined washing machine and clothes drier;
 - (h) either:
 - (i) one refrigerator and one freezer; or
 - (ii) one combined refrigerator and freezer;
 - (i) one generator, if relied on to supply electrical power to the household;
 - (j) one telephone;
 - (k) one appliance or console used for home entertainment;
 - (l) one personal computer;
 - (m) one set of equipment providing internet access to the members of the household.

Property that is reasonably appropriate for a household

- (3) This subsection covers the following:
 - (a) kitchen equipment;
 - (b) cutlery;

- (c) crockery;
- (d) foodstuffs;
- (e) heating equipment;
- (f) cooling equipment;
- (g) telephone equipment;
- (h) fire detectors and extinguishers;
- (i) anti-burglar devices;
- (j) bedding;
- (k) linen;
- (l) towels;
- (m) other household effects.

Criteria

- (4) The following criteria are specified for the purposes of paragraph (1)(b) and subparagraph (1)(c)(ii):
 - (a) the number and ages of members of the household;
 - (b) any special health or medical needs of any of those members;
 - (c) any special climatic or other factors (including geographical isolation) of the place where the household residence is located;
 - (d) whether the property is reasonably necessary for the functioning or servicing of the household as a viable and properly-run household;
 - (e) whether the costs of seizure, storage and sale of the property would be likely to exceed the sale price of the property;
 - (f) if paragraph (e) does not apply—whether for any other reason (for example, costs of transport) the sale of the property would be likely to be uneconomical.

Antique items

- (5) Nothing in this section prevents subsection 116(1) of the Act from extending to antique items.
- (6) For the purposes of subsection (5), an item is an antique item only if a substantial part of its market value is attributable to its age or historical significance.

28 Personal property with sentimental value that is not available for payment of debts

For the purposes of subparagraph 116(2)(ba)(ii) of the Act, non-monetary sporting, cultural, military or academic awards are a kind of property that is prescribed.

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29 Tools that are not available for payment of debts

For the purposes of subparagraph 116(2)(c)(i) of the Act, the maximum total value of a bankrupt's property that is for use by the bankrupt in earning income by personal exertion is:

- (a) if the date of the bankruptcy is in a financial year specified in column 1 of an item of the following table—the amount specified in column 2 of that item; or
- (b) if the date of the bankruptcy is in the financial year beginning on 1 July 2020—\$3,800; or
- (c) if the date of the bankruptcy is in the financial year beginning on 1 July 2021 or a later financial year—\$3,800:
 - (i) indexed in accordance with section 114 of this instrument; and
 - (ii) rounded down to the nearest multiple of \$50.

Note: Indexed amounts could in 2021 be viewed on the Australian Financial Security Authority's website (<http://www.afsa.gov.au>).

| Maximum total value of tools | | |
|-------------------------------------|------------------------------------|----------------------------|
| Item | Column 1 Financial year | Column 2 Amount |
| 1 | 2019-20 | \$3,800 |
| 2 | 2018-19 | \$3,800 |
| 3 | 2017-18 | \$3,750 |
| 4 | 2016-17 | \$3,700 |
| 5 | 2015-16 | \$3,650 |
| 6 | 2014-15 | \$3,600 |
| 7 | 2013-14 | \$3,550 |
| 8 | 2012-13 | \$3,500 |
| 9 | 2011-12 | \$3,450 |
| 10 | 2010-11 | \$3,400 |
| 11 | 2009-10 | \$3,300 |
| 12 | 2008-09 | \$3,250 |
| 13 | 2007-08 | \$3,200 |
| 14 | 2006-07 | \$3,100 |
| 15 | 2005-06 | \$3,050 |
| 16 | 2004-05 | \$3,000 |
| 17 | 2003-04 | \$2,950 |
| 18 | 2002-03 | \$2,900 |
| 19 | 2001-02 | \$2,850 |
| 20 | 2000-01 | \$2,800 |
| 21 | 1999-2000 | \$2,650 |
| 22 | 1998-99 | \$2,600 |

| Maximum total value of tools | | |
|-------------------------------------|-----------------------|-----------------|
| Item | Column 1 | Column 2 |
| | Financial year | Amount |
| 23 | 1997-98 | \$2,600 |
| 24 | 1996-97 | \$2,600 |

30 Motor vehicles that are not available for payment of debts

For the purposes of paragraph 116(2)(ca) of the Act, the maximum aggregate value of property used by the bankrupt primarily as a means of transport is:

- (a) if the date of the bankruptcy is in a financial year specified in column 1 of an item of the following table—the amount specified in column 2 of that item; or
- (b) if the date of the bankruptcy is in the financial year beginning on 1 July 2020—\$8,100; or
- (c) if the date of the bankruptcy is in the financial year beginning on 1 July 2021 or a later financial year—\$8,100:
 - (i) indexed in accordance with section 114 of this instrument; and
 - (ii) rounded down to the nearest multiple of \$50.

Note: Indexed amounts could in 2021 be viewed on the Australian Financial Security Authority's website (<http://www.afsa.gov.au>).

| Maximum value of motor vehicle | | |
|---------------------------------------|-----------------------|-----------------|
| Item | Column 1 | Column 2 |
| | Financial year | Amount |
| 1 | 2019-20 | \$8,100 |
| 2 | 2018-19 | \$8,000 |
| 3 | 2017-18 | \$7,900 |
| 4 | 2016-17 | \$7,800 |
| 5 | 2015-16 | \$7,700 |
| 6 | 2014-15 | \$7,600 |
| 7 | 2013-14 | \$7,500 |
| 8 | 2012-13 | \$7,350 |
| 9 | 2011-12 | \$7,200 |
| 10 | 2010-11 | \$7,050 |
| 11 | 2009-10 | \$6,850 |
| 12 | 2008-09 | \$6,700 |
| 13 | 2007-08 | \$6,500 |
| 14 | 2006-07 | \$6,300 |
| 15 | 2005-06 | \$6,150 |
| 16 | 2004-05 | \$6,000 |

Part 6 Administration of property

Division 3 Property available for payment of debts

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Maximum value of motor vehicle

| Item | Column 1 Financial year | Column 2 Amount |
|-------------|--|----------------------------------|
| 17 | 2003-04 | \$5,900 |
| 18 | 2002-03 | \$5,800 |
| 19 | 2001-02 | \$5,650 |
| 20 | 2000-01 | \$5,500 |
| 21 | 1999-2000 | \$5,200 |
| 22 | 1998-99 | \$5,050 |
| 23 | 1997-98 | \$5,000 |
| 24 | 1996-97 | \$5,000 |

Division 4—Undervalued transactions

31 Transfers exempt from being void against trustee

For the purposes of paragraph 120(2)(d) of the Act, a transfer is of a kind to which subsection 120(1) of the Act does not apply if the costs of recovering the transferred property would, in the opinion of the trustee in the transferor's bankruptcy, be likely to exceed the value of the property to the transferor's creditors.

Division 5—Realisation of property

32 Disclaimer of onerous property

- (1) A notice of disclaimer under subsection 133(1) or (1A) of the Act must:
 - (a) adequately identify both of the following:
 - (i) the bankrupt to whom the notice relates;
 - (ii) the property or contract being disclaimed; and
 - (b) in the case of disclaimer, without the leave of the Court, of a lease—set out facts showing that subsection 133(4) of the Act has been complied with; and
 - (c) in the case of disclaimer, without the leave of the Court, of a contract—set out facts showing that the contract is, for the purposes of subsection 133(5A) of the Act, an unprofitable contract.
- (2) A trustee who gives a notice of disclaimer under subsection 133(1) or (1A) of the Act must give the notice to each person who, to the trustee's knowledge:
 - (a) in the case of disclaimer of property—has an interest in the property; or
 - (b) in the case of disclaimer of a contract—is:
 - (i) entitled to a benefit of, or right under, the contract; or
 - (ii) subject to a burden or liability under the contract.
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of a notice of disclaimer under subsection 133(1) or (1A) of the Act.

Division 6—Definition of income

33 Fringe benefits—modification of the FBTA Act

- (1) This section is made for the purposes of subparagraph (a)(v) of the definition of *income* in subsection 139L(1) of the Act.
- (2) The FBTA Act is modified in accordance with Schedule 2 to this instrument.
- (3) The FBTA Act is also modified so that it has effect as if:
 - (a) a reference in that Act to a year of tax were a reference to a contribution assessment period; and
 - (b) a reference in that Act to the taxable value of a benefit were a reference to the value, for the purposes of the Act, of the benefit; and
 - (c) a reference in that Act to a declaration date were a reference to the date occurring 21 days after the end of a contribution assessment period in relation to a bankrupt; and
 - (d) a reference in that Act to a declaration to be given to an employer of a person were a reference to a declaration to be given to the trustee of the person's estate; and
 - (e) a reference in that Act to a form approved by the Commissioner were a reference to a form approved by the Inspector-General under section 6D of the Act; and
 - (f) subject to paragraph (d), a reference in the FBTA Act to an employer, or to the employer, were a reference to any person (other than the bankrupt); and
 - (g) a reference in the FBTA Act to an employee, or to the employee, were a reference to a bankrupt, or to the bankrupt, as the case requires.
- (4) The FBTA Act is also modified so that a reference (however expressed) in the FBTA Act to:
 - (a) the employment of an employee; or
 - (b) an associate of an employee;is to be disregarded.
- (5) Despite subsections (2), (3) and (4), the modifications specified or referred to in those subsections do not apply in relation to the provision of a fringe benefit (within the meaning of the FBTA Act) to a bankrupt if the provider of the fringe benefit:
 - (a) was the employer of the bankrupt; and
 - (b) provided the fringe benefit to the bankrupt in respect of the bankrupt's employment by the provider; and
 - (c) was not an employer over whom the bankrupt exercised effective control, whether directly or indirectly.

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34 Superannuation contributions

- (1) For the purposes of subparagraph (b)(v) of the definition of *income* in subsection 139L(1) of the Act, the following contributions and payments made for the purpose of providing superannuation benefits for a bankrupt person are not income of the person:
- (a) contributions made by, or on behalf of, each employer of the person to the extent that the contributions reduce the employer's potential liability for the superannuation guarantee charge imposed under section 5 of the *Superannuation Guarantee Charge Act 1992*;
 - (b) contributions made by, or on behalf of, each employer of the person in accordance with the employer's obligation to make contributions for the person under:
 - (i) an industrial award or determination made under a law of the Commonwealth, a State or a Territory; or
 - (ii) an industrial agreement registered, made or lodged under a law of the Commonwealth, a State or a Territory; or
 - (iii) a law of the Commonwealth, or of a State or Territory;that exceed the contributions, made by or on behalf of the employer, mentioned in paragraph (a);
 - (c) payments of shortfall components made to, or for the benefit of, the person under sections 65 to 67 of the *Superannuation Guarantee (Administration) Act 1992*.
- (2) Despite subsection (1), contributions for a contribution assessment period are taken to be income of a person if:
- (a) the contributions exceed the relevant superannuation guarantee charge percentage of the employee's ordinary time earnings for the contribution assessment period; and
 - (b) the employer has an obligation to make the contributions that arise under an individual industrial agreement; and
 - (c) the contributions are not contributions of the kind mentioned in subparagraph (1)(b)(iii).
- (3) In this section:

individual industrial agreement means an industrial agreement made solely between the employer and the person, including the following:

- (a) an AWA, or an ITEA, (both within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*) to which that Act applies;
- (b) a similar agreement under the law of a State or Territory.

ordinary time earnings has the meaning given by subsection 6(1) of the *Superannuation Guarantee (Administration) Act 1992*.

relevant superannuation guarantee charge percentage: the ***relevant superannuation guarantee charge percentage*** for a year (the ***bankruptcy year***) is the percentage whose number is the same as that set out in column 2 of the

table in subsection 19(2) of the *Superannuation Guarantee (Administration) Act 1992* for the financial year in which the bankruptcy year starts.

shortfall component has the same meaning as in Part 8 of the *Superannuation Guarantee (Administration) Act 1992*.

35 Family assistance and social security payments

For the purposes of subparagraph (b)(v) of the definition of **income** in subsection 139L(1) of the Act, the following payments or amounts are not income of a bankrupt:

- (a) a payment or amount of family tax benefit paid under the family assistance law (within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*);
- (b) an amount that is not income for the purposes of the *Social Security Act 1991* because of subsection 8(8) of that Act, except for a payment or amount mentioned in paragraph (a), (h), (ha), (k), (ka), (m), (z), (za) or (zb) of that subsection.

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Division 7—Contributions by bankrupt

36 Contribution assessment—income of dependant

For the purposes of paragraph (c) of the definition of *dependant* in section 139K of the Act, the prescribed amount of income derived (or likely to be derived) by a person during a contribution assessment period is:

- (a) if the period begins between 5 May 2003 and 30 June 2003—\$2,500; or
- (b) if the period begins in a financial year specified in column 1 of an item of the following table—the amount specified in column 2 of that item; or
- (c) if the period begins in the financial year beginning on 1 July 2020—\$3,741; or
- (d) if the period begins in a later financial year—\$3,741 indexed in accordance with section 114 of this instrument as if the period were that financial year.

Note: Indexed amounts could in 2021 be viewed on the Australian Financial Security Authority's website (<http://www.afsa.gov.au>).

| Maximum income of dependant | | |
|-----------------------------|----------------------------|--------------------|
| Item | Column 1 Financial year | Column 2 Amount |
| 1 | 2019-20 | \$3,720 |
| 2 | 2018-19 | \$3,642 |
| 3 | 2017-18 | \$3,596 |
| 4 | 2016-17 | \$3,532 |
| 5 | 2015-16 | \$3,459 |
| 6 | 2014-15 | \$3,411 |
| 7 | 2013-14 | \$3,363 |
| 8 | 2012-13 | \$3,264 |
| 9 | 2011-12 | \$3,181 |
| 10 | 2010-11 | \$3,131 |
| 11 | 2009-10 | \$3,030 |
| 12 | 2008-09 | \$2,942 |
| 13 | 2007-08 | \$2,870 |
| 14 | 2006-07 | \$2,756 |
| 15 | 2005-06 | \$2,688 |
| 16 | 2004-05 | \$2,611 |
| 17 | 2003-04 | \$2,549 |

37 Contributions by bankrupt—modes of payment

- (1) This section applies in relation to a contribution that a bankrupt:

- (a) is liable to pay to the trustee of the bankrupt's estate under subsection 139P(1) or 139Q(1) of the Act; or
 - (b) wishes to pay to the trustee under subsection 139P(2) or paragraph 139Q(3)(a) of the Act.
- (2) The bankrupt may pay the contribution in one of the following ways:
- (a) by bank draft, cheque, money order or postal order payable to the trustee and delivered or posted to that office;
 - (b) by deposit of the amount of the contribution in, or transfer of that amount to, the trustee's bank account;
 - (c) any other method authorised in writing by the trustee.
- (3) If the bankrupt pays the contribution by cheque, payment is taken to occur when the cheque is cleared and the amount of the payment is credited to the account into which the cheque is deposited.
- (4) The trustee may, on reasonable notice in writing to the bankrupt, vary or withdraw an authorisation under paragraph (2)(c).
- (5) If the trustee incurs a delivery or postal charge (including a surcharge) or bank charge in connection with the receipt or processing of the contribution, the trustee may reimburse the trustee for the amount of the charge from the bankrupt's estate.

38 Contributions where bankrupt dies

- (1) This section applies if:
- (a) a bankrupt is liable to pay a contribution to the trustee of the bankrupt's estate under subsection 139P(1) or 139Q(1) of the Act in respect of a contribution assessment period; and
 - (b) the bankrupt dies during the period.

Note: For proceedings in bankruptcy on the death of a bankrupt, see section 63 of the Act.

- (2) No refund is payable in respect of any part of the contribution paid by or on behalf of the bankrupt.
- (3) If the contribution remains unpaid, the deceased bankrupt's estate is liable for the portion of the contribution attributable to the part of the period occurring before the bankrupt's death.

39 Discharged bankrupt to give information if contribution unpaid

- (1) This section applies if:
- (a) a person is discharged from bankruptcy; and
 - (b) immediately before being discharged, the person was liable to pay a contribution to the trustee of the person's estate under subsection 139P(1) or 139Q(1) of the Act; and
 - (c) the person has not paid the contribution; and
 - (d) a change occurs to:

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- (i) the particulars set out in the person's statement of affairs in relation to the bankruptcy; or
- (ii) the person's name; or
- (iii) the address of the person's principal place of residence.

Note: Section 139R of the Act provides that any liability of a bankrupt under section 139P or 139Q of the Act is not affected by the bankrupt's discharge from bankruptcy after the making of the assessment that gave rise to the liability.

- (2) The person must:
 - (a) give the trustee written notice of the change; and
 - (b) do so within 2 business days after the change occurs.
- (3) A person commits an offence if:
 - (a) the person is required to give notice in accordance with subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: 10 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) For the purposes of subparagraph (1)(d)(ii), a change in the name of a person is taken to occur if the person in fact assumes the use of a different name or an additional name.

Division 8—Collection of money or property by Official Receiver from person other than the bankrupt

40 Notice under section 139ZL of the Act not to refer to protected money

A notice under section 139ZL of the Act must not specify money or property that is protected, under a law of the Commonwealth or a State or Territory, from a process such as assignment, attachment, charging, execution or garnishment.

41 Notice under section 139ZL of the Act (notice of ceasing or commencing employment)

Scope

- (1) This section applies if:
 - (a) an employer of a bankrupt receives a notice under section 139ZL of the Act in relation to the bankrupt; and
 - (b) after receiving the notice, the employer ceases to employ the bankrupt.

Notice by employer of cessation of employment

- (2) The employer must:
 - (a) give the trustee of the bankrupt's estate written notice of the day on which the bankrupt's employment ceased; and
 - (b) do so within 15 business days after the day of that cessation.

Notice by bankrupt of new employment

- (3) If the bankrupt commences employment with a new employer, the bankrupt must:
 - (a) give the trustee written notice of the following:
 - (i) the new employer's name and postal address;
 - (ii) the address of the place where the bankrupt is employed;
 - (iii) the amount of the bankrupt's average gross weekly income from the employment; and
 - (b) do so within 15 business days after the day on which the bankrupt commences employment with the new employer.

Offence

- (4) A person commits an offence if:
 - (a) the person is required to give notice in accordance with subsection (2) or (3); and
 - (b) the person fails to comply with the requirement.

Penalty: 2 penalty units.

Part 6 Administration of property

Division 8 Collection of money or property by Official Receiver from person other than the bankrupt

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(5) An offence against subsection (4) is an offence of strict liability.

Division 9—Distribution of property

42 Minimum amount of dividend

For the purposes of subsection 140(9) of the Act, the amount of \$50 is prescribed.

43 Manner of declaring final dividend

For the purposes of subsection 145(3) of the Act, notice must be given by serving it on each person to whom, under that subsection, it must be given.

Note: See section 102 of this instrument (service of documents) and section 28A of the *Acts Interpretation Act 1901*.

Part 7—Discharge and annulment

44 Trustee to inform Official Receiver of return of bankrupt to Australia

- (1) This section applies if:
 - (a) an objection to the discharge of a bankrupt has been made on a ground, or on grounds that include a ground, mentioned in paragraph 149D(1)(a) or (h) of the Act (which refer to the bankrupt being out of Australia); and
 - (b) the bankrupt returns to Australia; and
 - (c) the trustee of the bankrupt's estate is a registered trustee; and
 - (d) the registered trustee becomes aware that the bankrupt has returned to Australia.
- (2) Within 5 business days after the day that the registered trustee becomes aware that the bankrupt has returned to Australia, the registered trustee must give notice in writing to the Official Receiver stating:
 - (a) that the bankrupt has returned to Australia; and
 - (b) the day on which:
 - (i) the bankrupt returned; or
 - (ii) if the trustee does not know the day on which the bankrupt returned—the trustee became aware that the bankrupt had returned.
- (3) A person commits an offence if:
 - (a) the person is required to give notice in accordance with subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

45 Grounds of objection—failure to provide complete and accurate information

For the purposes of the ground of objection mentioned in paragraph 149D(1)(d) of the Act, a bankrupt is taken to have failed to comply with a request to provide information if the bankrupt has provided information that is incomplete or inaccurate.

46 Inspector-General to inform Official Receiver of AAT decision about Inspector-General's decision

- (1) This section applies if:
 - (a) a registered trustee of a bankrupt's estate files a notice of objection under section 149B of the Act; and
 - (b) the Inspector-General, under section 149K of the Act, decides to either:
 - (i) review the trustee's decision to make the objection; or
 - (ii) refuse to review the trustee's decision to make the objection; and

- (c) an application is made to the Administrative Appeals Tribunal under section 149Q of the Act for the review of the decision of the Inspector-General; and
 - (d) the Tribunal varies or sets aside the Inspector-General's decision.
- (2) The Inspector-General must:
- (a) give the Official Receiver written notice of the Tribunal's decision; and
 - (b) do so within 2 business days after being notified of the Tribunal's decision.

Part 8 Trustees

Division 1 Consent to act, and appointment, as trustee of estate

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Part 8—Trustees

Division 1—Consent to act, and appointment, as trustee of estate

47 Filing consent to act as trustee with the Official Receiver

An instrument under subsection 156A(1) of the Act in relation to a debtor must be filed with the Official Receiver:

- (a) if the debtor presents a debtor’s petition to the Official Receiver—on or before the day that the debtor so presents the petition; or
- (b) otherwise—before the day on which the Court makes a sequestration order against the debtor’s estate.

48 Certificate of appointment under subsection 156A(3) of the Act

If a registered trustee becomes, under subsection 156A(3) of the Act, the trustee of an estate or of joint and separate estates, the Official Receiver may give the registered trustee a certificate to that effect.

Division 2—Controlling trustees other than Official Trustee or registered trustees

49 Ineligibility of certain persons to act as controlling trustee

Prescribed circumstances

- (1) For the purposes of subsection 188(2A) of the Act, a person (other than the Official Trustee or a registered trustee) is ineligible to act under Part X of the Act as a controlling trustee in relation to a debtor in any of the following circumstances:
 - (a) the person is or was convicted of an offence involving fraud or dishonesty at any time during the 10 year period ending on the day the debtor signs an authority under subsection 188(1) of the Act purportedly naming and authorising the person;
 - (b) the person is not insured against the liabilities the person may become subject to as a controlling trustee;
 - (c) the person is a solicitor who does not hold an Australian practising certificate (within the meaning of the *Evidence Act 1995*);
 - (d) the person is or was an insolvent under administration at any time during the 10 year period ending on the day the debtor signs an authority under subsection 188(1) of the Act purportedly naming and authorising the person;
 - (e) a determination under subsection (3) of this section is in force in relation to the person;
 - (f) both of the following apply:
 - (i) the person is not a full member of the Australian Restructuring Insolvency and Turnaround Association;
 - (ii) the person has not satisfactorily completed a course in insolvency approved by the Inspector-General.
- (2) For the purposes of subparagraph (1)(f)(ii), the Inspector-General may approve a course in insolvency by notice published on the Australian Financial Security Authority's website.

Determination by Inspector-General

- (3) The Inspector-General may make a determination under this subsection in relation to a person if:
 - (a) the person is, or has been, a controlling trustee; and
 - (b) the Inspector-General is satisfied that the person:
 - (i) has failed to properly exercise the powers, or carry out the duties, of a controlling trustee; or
 - (ii) has refused or failed to cooperate with the Inspector-General in an inquiry or investigation under paragraph 12(1)(b) of the Act.

Section 50

- (4) Before making a determination under subsection (3) in relation to a person, the Inspector-General must:
 - (a) give the person a written notice that:
 - (i) specifies the grounds on which the Inspector-General proposes to make the determination; and
 - (ii) invites the person to give the Inspector-General, within 20 business days after the day the notice is given or such longer time as is specified in the notice, a written statement showing cause why the determination should not be made; and
 - (b) consider the person's written statement (if any).
- (5) If the Inspector-General makes a determination under subsection (3) in relation to a person, the Inspector-General must give the person a written notice stating the following:
 - (a) that the Inspector-General has made a determination under subsection (3) in relation to the person;
 - (b) the reasons for the determination.

50 Review by Tribunal of determination

Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General to make a determination under subsection 49(3).

51 Official Trustee to perform duties of controlling trustee

- (1) This section applies if:
 - (a) an authorisation by a debtor under subsection 188(1) of the Act is in force in relation to a person; and
 - (b) the person becomes ineligible to act as a controlling trustee under Part X of the Act because one or more of the circumstances prescribed by subsection 49(1) of this instrument apply in relation to the person.
- (2) The Official Trustee must perform the duties of a controlling trustee in relation to the debtor unless and until the debtor authorises another person under subsection 188(1) of the Act.

Division 3—Registered trustee ceasing to be trustee of an estate

52 Notice of removal of trustee of estate

Court order that person cease to be trustee

- (1) If, on application, the Court makes an order under subsection 90-15(1) of Schedule 2 to the Act that a person (the **old trustee**) cease to be the trustee of a regulated debtor's estate, the applicant for the order must:
 - (a) give a written notice to the Official Receiver that includes the following:
 - (i) the name of the old trustee;
 - (ii) the fact that the Court has ordered the old trustee to cease to be the trustee of the estate;
 - (iii) if the order provides for another person to be appointed as the trustee of the estate—the name of that person;
 - (iv) the day on which the order takes effect; and
 - (b) do so within 2 business days after the day the order is made.

Inspector-General not required to give notice

- (2) However, subsection (1) does not apply if the applicant is the Inspector-General.

Removal of trustee by creditors

- (3) If the creditors of a regulated debtor, by resolution at a meeting, remove the trustee (the **old trustee**) of the regulated debtor's estate under paragraph 90-35(1)(a) of Schedule 2 to the Act, the person appointed by the creditors under paragraph 90-35(1)(b) of that Schedule as trustee of the estate must:
 - (a) give a written notice to the Official Receiver that includes the following:
 - (i) the name of the old trustee;
 - (ii) the fact that the creditors have removed the old trustee;
 - (iii) the day on which the removal takes effect; and
 - (b) do so within 2 business days after the day of the person's appointment.

Official Trustee not required to give notice

- (4) However, subsection (3) does not apply if the person appointed is the Official Trustee.

Offence

- (5) A person commits an offence if:
 - (a) the person is required to give notice in accordance with subsection (1) or (3); and
 - (b) the person fails to comply with the requirement.

Part 8 Trustees

Division 3 Registered trustee ceasing to be trustee of an estate

Section 53

Penalty: 1 penalty unit.

- (6) An offence against subsection (5) is an offence of strict liability.

53 Notice of finalisation of administration

- (1) If the trustee of a regulated debtor's estate (other than the Official Trustee) finalises the administration of the debtor's estate, the trustee must:
- (a) give the Official Receiver written notice of the finalisation; and
 - (b) do so within 5 business days after the day of the finalisation.

Offence

- (2) A person commits an offence if:
- (a) the person is required to give notice in accordance with subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 1 penalty unit.

- (3) An offence against subsection (2) is an offence of strict liability.

Part 9—Debt agreements

54 Prescribed information to be supplied to debtor

- (1) For the purposes of paragraph 185C(2D)(b) of the Act, the following information is prescribed:
 - (a) information about alternatives to entering into a debt agreement;
 - (b) information about the consequences of making a debt agreement proposal;
 - (c) information about sources of financial advice and guidance to persons facing or contemplating entering into a debt agreement;
 - (d) a statement that it is an act of bankruptcy for a debtor to give a debt agreement proposal to the Official Receiver.
- (2) The information must be factual and objective.

55 Presentation of debt agreement proposal

- (1) This section applies if a debtor intends to give the Official Receiver a debt agreement proposal under subsection 185C(1) of the Act and the debtor is:
 - (a) unable to read the relevant material, because the debtor:
 - (i) is blind or has low vision; or
 - (ii) is illiterate or partially literate; or
 - (iii) is insufficiently familiar with the English language; or
 - (b) unable to sign the debt agreement proposal because of a physical incapacity.
- (2) The debt agreement proposal may be signed on behalf of the debtor by another person, who must also sign a statement:
 - (a) if subparagraph (1)(a)(i) or (ii) applies—that the person has read the relevant material to the debtor; or
 - (b) if subparagraph (1)(a)(iii) applies—that the person has interpreted the relevant material to the debtor in a language with which the person and the debtor are familiar; or
 - (c) if paragraph (1)(b) applies—that the person believes that the debtor has read and understood the relevant material.
- (3) In this section:

relevant material means the debt agreement proposal and the information prescribed by section 54.

56 Qualifications for approval of application to be registered as debt agreement administrator

For the purposes of paragraph 186C(2)(e) of the Act, the prescribed qualifications are any of the following:

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- (a) any of the following awarded by a registered provider (within the meaning of the *Education Services for Overseas Students Act 2000*):
 - (i) a Certificate IV in Financial Services (Accounting) awarded for study starting between 10 July 2004 and 23 November 2010;
 - (ii) a Certificate IV in Accounting awarded for study starting between 24 November 2010 and 12 February 2018;
 - (iii) a Certificate IV in Accounting and Bookkeeping awarded for study starting on or after 13 February 2018;
- (b) a degree, diploma or similar qualification for which the following conditions are satisfied:
 - (i) it is of a level equivalent to or higher than a qualification mentioned in paragraph (a);
 - (ii) the study for it included the same or similar subject matter as the study for a qualification mentioned in paragraph (a);
 - (iii) it was awarded by an Australian tertiary education institution;
- (c) a degree, diploma or similar qualification awarded by a foreign tertiary education institution and for which the Inspector-General is satisfied the following conditions are satisfied:
 - (i) it is of a level equivalent to or higher than a qualification mentioned in paragraph (a);
 - (ii) the study for it included the same or similar subject matter as the study for a qualification mentioned in paragraph (a);
- (d) membership of either of the following bodies:
 - (i) Chartered Accountants Australia and New Zealand;
 - (ii) CPA Australia Ltd.

57 Prescribed amount of owed notified estate charges preventing renewal of registration as debt agreement administrator

For the purposes of paragraphs 186C(3)(d) and (5)(d) of the Act, the prescribed amount of notified estate charges is \$500.

Part 10—Personal insolvency agreements

58 Modifications of Part X of the Act—joint debtors

For the purposes of section 187A of the Act, a provision of Part X of the Act specified in Part 1 of Schedule 3 to this instrument is modified in accordance with Part 1 of Schedule 3 to this instrument in relation to its application, in accordance with that section of the Act, to joint debtors, whether partners or not.

59 Information to be given to debtor about personal insolvency agreements

Prescribed information

- (1) For the purposes of subsections 188(2AA) and (2AB) of the Act, the following information is prescribed:
 - (a) information about the consequences of entering into a personal insolvency agreement;
 - (b) information about sources of financial advice and guidance to persons facing or contemplating entering into a personal insolvency agreement;
 - (c) information about whether a personal insolvency agreement may be administered by a registered trustee or the Official Trustee;
 - (d) a statement that it is an act of bankruptcy if any of the things mentioned in paragraphs 40(1)(i) to (m) of the Act happen in relation to a debtor;
 - (e) information about the processes under Part X of the Act;
 - (f) information about a debtor's rights and responsibilities under Part X of the Act, including a debtor's obligation to disclose all related entities;
 - (g) information about a controlling trustee's obligation to disclose the controlling trustee's relationship (if any) with a debtor.
- (2) The information must be factual and objective.

Acknowledgement that prescribed information has been received and read

- (3) A registered trustee or a solicitor authorised by a debtor, under subsection 188(1) of the Act, to take control of the debtor's property must not consent to exercise the powers given by the authority unless the debtor has given the registered trustee or the solicitor, as the case may be, a signed acknowledgement that the debtor has received and read the prescribed information.
- (4) If the Official Trustee is authorised by a debtor, under subsection 188(1) of the Act, to take control of the debtor's property, the Official Receiver must not give the debtor a written approval under paragraph 188(2)(aa) of the Act unless the debtor has given the Official Trustee a signed acknowledgement that the debtor has received and read the prescribed information.

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60 Signing authority by another person on behalf of debtor

- (1) This section applies if a debtor intends to sign an authority under subsection 188(1) of the Act and the debtor is:
 - (a) unable to read the relevant material, because the debtor:
 - (i) is blind or has low vision; or
 - (ii) is illiterate or partially literate; or
 - (iii) is insufficiently familiar with the English language; or
 - (b) unable to sign the authority or an acknowledgement under subsection 59(3) of this instrument relating to the authority because of a physical incapacity.
- (2) The authority and the acknowledgement may be signed by another person, who must sign a statement:
 - (a) if subparagraph (1)(a)(i) or (ii) applies—that the person has read the relevant material to the debtor; or
 - (b) if subparagraph (1)(a)(iii) applies—that the person has interpreted the relevant material to the debtor in a language with which the person and debtor are familiar; or
 - (c) if paragraph (1)(b) applies—that the person believes that the debtor has read and understood the relevant material.
- (3) In this section:

relevant material means the authority, the information prescribed by section 59 and the acknowledgement under subsection 59(3) relating to the authority.

61 Documents under section 188 of the Act

Scope

- (1) This section applies if:
 - (a) a debtor, under section 188 of the Act, signs an authority that names and authorises a person; and
 - (b) the person is a registered trustee or a solicitor; and
 - (c) the person consents to exercise the powers given by the authority.

Consent of registered trustee or solicitor

- (2) The person must:
 - (a) sign a consent in accordance with the approved form; and
 - (b) within 2 business days after signing the consent, give a copy of the signed consent to the Official Receiver.

Proposal for dealing with debtor's affairs

- (3) The person must, at the same time as calling a meeting of the debtor's creditors, give a copy of the proposal for dealing with the debtor's affairs under Part X of the Act to:
 - (a) the Official Receiver; and

(b) each creditor of the debtor of whom the person is aware.

- Note 1: An authority signed by a debtor under section 188 of the Act is not effective for the purposes of Part X of the Act unless, before the person authorised consents to exercise the powers given by the authority, the debtor gives to the person authorised:
- (a) a statement of the debtor's affairs; and
 - (b) a proposal for dealing with those affairs under Part X of the Act (see subsection 188(2C) of the Act).
- Note 2: Under subsection 188(5) of the Act, a registered trustee or solicitor who consents to exercise the powers given by an authority must also give a copy of the authority and the debtor's statement of affairs to the Official Receiver.

62 Controlling trustee to give Official Receiver copy of special resolution and certain particulars

Scope

- (1) This section applies if:
- (a) under an authority under section 188 of the Act, a controlling trustee calls a meeting of a debtor's creditors; and
 - (b) a special resolution is passed at the meeting under subsection 204(1) of the Act.

Information to be given to Official Receiver

- (2) The controlling trustee must:
- (a) give to the Official Receiver:
 - (i) a copy of the resolution; and
 - (ii) written notice of the particulars specified in subsection (3); and
 - (b) do so within 5 business days after the day the resolution is passed.
- (3) The following particulars are specified:
- (a) the date of the resolution;
 - (b) the debtor's full name and alias (if any);
 - (c) the debtor's address;
 - (d) the debtor's occupation (if any);
 - (e) if the resolution requires the debtor to execute a personal insolvency agreement—the name of each person nominated under subsection 204(3) of the Act to be a trustee of the agreement.

Official Trustee not required to give information

- (4) However, subsection (2) does not apply if the controlling trustee is the Official Trustee.

Offence

- (5) A person commits an offence if:
- (a) the person is required to give notice, and a copy of a resolution, in accordance with subsection (2); and

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(b) the person fails to comply with the requirement.

Penalty: 1 penalty unit.

(6) An offence against subsection (5) is an offence of strict liability.

63 Modifications of Part VIII of the Act—controlling trustees and trustees of personal insolvency agreements

For the purposes of section 210 of the Act, a provision of Part VIII of the Act specified in Part 2 of Schedule 3 to this instrument is modified in accordance with Part 2 of Schedule 3 to this instrument in relation to its application, in accordance with that section, to the controlling trustee in relation to a debtor.

64 Modifications of Division 1 of Part V of the Act—debtors whose property is subject to control under Division 2 of Part X of the Act

For the purposes of subsection 211(1) of the Act, a provision in Division 1 of Part V of the Act specified in Part 3 of Schedule 3 to this instrument is modified in accordance with Part 3 of Schedule 3 to this instrument in relation to its application, in accordance with that subsection, to a debtor whose property is subject to control under Division 2 of Part X of the Act.

65 Notification of personal insolvency agreement

For the purposes of subsection 218(3) of the Act, a notification under paragraph 218(1)(a) of the Act must be in writing.

66 Information to be given to Official Receiver in relation to certain sequestration orders

- (1) If the Court makes a sequestration order under subsection 221(1), 222(10) or 222C(5) of the Act, the applicant for the order must:
- (a) give a copy of the order to the Official Receiver; and
 - (b) do so within 2 business days after the order is made.

Official Trustee and Inspector-General not required to give copies

- (2) However, subsection (1) does not apply if the applicant is the Official Trustee or the Inspector-General.

Offence

- (3) A person commits an offence if:
- (a) the person is required to give a copy of an order to the Official Receiver in accordance with subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

67 Information to be given to Official Receiver in relation to orders terminating or setting aside a personal insolvency agreement

- (1) If the Court makes an order:
- (a) under subsection 222(1), (2) or (5) of the Act, setting aside a personal insolvency agreement; or
 - (b) under subsection 222C(1) of the Act, terminating a personal insolvency agreement;

the applicant for the order must:

- (c) give a copy of the order to the Official Receiver; and
- (d) do so within 2 business days after the order is made.

Persons not required to give copies

- (2) However, subsection (1) does not apply if the applicant is:
- (a) the Official Trustee; or
 - (b) the Inspector-General; or
 - (c) a registered trustee.

Note: If the Court makes an order setting aside or terminating a personal insolvency agreement and a registered trustee was the trustee of the agreement, the registered trustee must give written notice of the order to the Official Receiver (see subsection 224A(4) of the Act).

Offence

- (3) A person commits an offence if:
- (a) the person is required to give a copy of an order to the Official Receiver in accordance with subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

68 Termination of personal insolvency agreement by trustee

- (1) If a personal insolvency agreement is terminated in accordance with section 222A of the Act, the trustee of the agreement must:
- (a) give written notice of the termination to the Official Receiver; and
 - (b) do so within 2 business days after the termination takes effect.

Note: Before the termination takes effect, the trustee must give notice of the proposed termination to all the creditors who are entitled to receive notice of a meeting of creditors (see subsection 222A(2) of the Act).

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Official Trustee not required to give copies

- (2) However, subsection (1) does not apply if the trustee of the agreement is the Official Trustee.

Offence

- (3) A person commits an offence if:
- (a) the person is required to give notice in accordance with subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

69 Modifications of Parts V and VI of the Act—personal insolvency agreements

- (1) For the purposes of subsection 231(1) of the Act, a provision specified in Part 4 of Schedule 3 to this instrument is modified in accordance with that Part in relation to its application, in accordance with that subsection, to a debtor who has executed a personal insolvency agreement.
- (2) For the purposes of subsection 231(3) of the Act, a provision specified in Part 5 of Schedule 3 to this instrument is modified in accordance with that Part in relation to its application, in accordance with that subsection, to a personal insolvency agreement.

70 Certificate relating to realisation of divisible property and non-availability of dividend

Certificate to be given to debtor

- (1) If the trustee of a personal insolvency agreement in relation to a debtor is satisfied that:
- (a) the divisible property of the debtor has, so far as practicable, been realised; and
 - (b) no dividend is payable to the creditors;
- the trustee must give the debtor a certificate signed by the trustee to that effect.
- (2) The trustee must give the certificate to the debtor within 5 business days after becoming so satisfied.
- (3) In any proceeding, a certificate signed by the trustee under subsection (1):
- (a) is prima facie evidence of the matters stated in it; and
 - (b) may be tendered in evidence without further proof.

Copy of certificate to be given to Official Receiver

- (4) If the trustee gives a certificate to the debtor under subsection 232(1) of the Act or subsection (1) of this section, the trustee must:

- (a) give a copy of the certificate to the Official Receiver; and
- (b) do so within 5 business days after giving the certificate.

Official Trustee not required to give copy

- (5) However, subsection (4) does not apply if the trustee is the Official Trustee.

Offence

- (6) A person commits an offence if:
- (a) the person is required to give a copy of a certificate to the Official Receiver in accordance with subsection (4); and
 - (b) the person fails to comply with the requirement.

Penalty: 1 penalty unit.

- (7) An offence against subsection (6) is an offence of strict liability.

Part 11—Administration of estates of deceased persons in bankruptcy

71 Modifications of the Act—administration of estates of deceased persons

For the purposes of subsections 248(1) and (3) of the Act, a provision specified in Schedule 4 to this instrument is modified in accordance with that Schedule in relation to proceedings under Part XI of the Act and the administration of estates under that Part.

Part 12—Unclaimed dividends or money

72 Statement where money paid to the Commonwealth

Statement about payment to Commonwealth of unclaimed money

- (1) If a trustee (within the meaning of section 254 of the Act) pays money to the Commonwealth under subsection 254(2) of the Act, the trustee must:
- (a) give to the Official Receiver a statement in the approved form setting out the name and address of the following:
 - (i) the trustee;
 - (ii) unless subparagraph (iii) applies—the relevant bankrupt or debtor;
 - (iii) if the trustee is a trustee of the estate of a deceased person—the deceased person;
 - (iv) each person who, so far as the trustee is aware, is entitled to the money or any part of it; and
 - (b) do so at the time of payment.

Note: Payments to the Commonwealth under subsection 254(2) of the Act are made to the Official Receiver on behalf of the Commonwealth.

Official Trustee not required to give statement about payment to Commonwealth of unclaimed money

- (2) However, subsection (1) does not apply if the trustee is the Official Trustee.

Statement about payment to Commonwealth following withdrawal of creditor's petition

- (3) If a registered trustee pays money to the Commonwealth under subsection 254(2A) of the Act, the registered trustee must:
- (a) give to the Official Receiver a statement in the approved form setting out the name and address of:
 - (i) the payer; and
 - (ii) each person who, so far as the registered trustee is aware, is entitled to the money or any part of it; and
 - (b) do so at the time of payment.

Note: Payments to the Commonwealth under subsection 254(2A) of the Act are made to the Official Receiver on behalf of the Commonwealth.

Offence

- (4) A person commits an offence if:
- (a) the person is required to give a statement to the Official Receiver under subsection (1) or (3); and
 - (b) the person fails to comply with the requirement.

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Penalty: 1 penalty unit.

- (5) An offence against subsection (4) is an offence of strict liability.

Part 13—National Personal Insolvency Index

Division 1—General

73 Establishment and maintenance of the National Personal Insolvency Index

- (1) For the purposes of the definition of *National Personal Insolvency Index* in subsection 5(1) of the Act, an electronic index to be known as the National Personal Insolvency Index is established.
- (2) The Inspector-General has responsibility for the operation of the Index.
- (3) The Inspector-General has control of access to the Index.
- (4) The Official Receiver is to maintain the Index on behalf of the Inspector-General.

74 Information in the Index

Division 2 of this Part (information to be entered in the Index) has effect subject to Division 3 of this Part (information not to be entered in the Index and information to be removed from the Index).

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Division 2—Information to be entered in the Index

75 Documents that must be given to Official Receiver

- (1) The person specified in column 2 of an item of the table in subsection (3) must, at a time within the time period specified in column 2 of that item, give a copy of each document specified in column 1 of that item to the Official Receiver.
- (2) If:
 - (a) a single document is specified in column 1 of an item of the table; and
 - (b) a person gives to the Official Receiver a copy of that document;
 the Official Receiver must enter in the Index the information specified in column 3 of that item.
- (3) If:
 - (a) 2 or more documents are specified in column 1 of an item of the table; and
 - (b) a person gives to the Official Receiver a copy of each of those documents;
 the Official Receiver must enter in the Index the information specified in column 3 of that item.

| Documents that must be given to the Official Receiver | | | |
|--|---|---|--|
| Item | Column 1 Document(s) | Column 2 Person and time period | Column 3 Information |
| 1 | A notice given under subsection 181A(2) of the Act by the current trustee of a bankrupt's estate nominating another trustee as the new trustee of the estate | The new trustee within 2 business days after the date specified in the notice (see paragraph 181A(3)(a) of the Act) | The day on which the new trustee became the trustee of the estate |
| 2 | An order under subsection 185Q(4) of the Act terminating a debt agreement | The applicant for the order within 3 business days after the order is made | The day on which the order was made |
| 3 | An order under subsection 185U(1) of the Act declaring all or part of a debt agreement void | The applicant for the order within 2 business days after the order is made | Both of the following: (a) the day on which the order was made; (b) whether all or part of the agreement was declared void |
| 4 | An authority, signed by a debtor under subsection 188(1) of the Act, naming and authorising a registered trustee, a solicitor or the Official Trustee to call | The person named in the authority within 2 business days after the debtor signs the authority | All of the following: (a) particulars of the debtor; (b) the day on which the copy of the authority was given to the Official Receiver; (c) the day on which the debtor's |

| Documents that must be given to the Official Receiver | | | |
|--|--|--|---|
| Item | Column 1 Document(s) | Column 2 Person and time period | Column 3 Information |
| | a meeting of the debtor's creditors and to take control of the debtor's property | | statement of affairs was given to the Official Receiver (see subsections 188(2D) and (5) of the Act); (d) the name of the controlling trustee (see subsection 188(6) of the Act) |
| 5 | Written evidence of an event of a kind mentioned in paragraph 192(1)(a), (b) or (c) of the Act, or a written request given to the Official Trustee under paragraph 192(1)(d) of the Act, resulting in the Official Trustee becoming the controlling trustee in relation to a debtor | The Official Trustee within 14 days after the Official Trustee becomes the controlling trustee | Both of the following: (a) particulars of the debtor; (b) the day on which the Official Trustee became the controlling trustee |
| 6 | Both of the following: (a) a petition to the Court, under subsection 244(1) of the Act, for an order for the administration of the estate of a deceased person; (b) an affidavit verifying the petition (see subsection 244(5) of the Act) | The creditor, or one of the creditors, who presented the petition to the Court within 2 business days after the petition is filed by the Court | All of the following: (a) particulars of the deceased person; (b) the day the petition was presented; (c) the name of the creditor or creditors who presented the petition; (d) the name and telephone number of any legal practitioner acting on behalf of the creditor or creditors; (e) the day the Court is to hear the petition |
| 7 | Both of the following: (a) a petition, under subsection 247(1) of the Act, for an order for the administration of a deceased person's estate under Part XI of the Act; (b) a statement of the deceased person's affairs and of the petitioner's administration of the deceased person's estate (see subsection 247(1) of | The petitioner within 2 business days after the petition is filed by the Court | All of the following: (a) particulars of the deceased person; (b) the day on which the petition and the statement of affairs were presented; (c) the name of the administrator; (d) the name and telephone number of any legal practitioner acting on behalf of the administrator |

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| Documents that must be given to the Official Receiver | | | |
|--|---|---|--|
| Item | Column 1 Document(s) | Column 2 Person and time period | Column 3 Information |
| | the Act) | | |
| 8 | An order, under section 252B of the Act, annulling the administration of the estate of a deceased person under Part XI of the Act | The trustee of the estate within 2 business days after the trustee becomes aware of the order | The day on which the order was made |
| 9 | An order, under subsection 253E(1) of the Act, staying proceedings under a creditor's petition or debtor's petition | The applicant for the order within 7 business days after the order is made | Both of the following: (a) the day on which the order was made; (b) the length of the stay (see subsection 253E(3) of the Act) |

76 Documents given to Official Receiver in accordance with the Act

- (1) If a document, or a copy of a document, specified in column 1 of an item of the table in subsection (2) is given to the Official Receiver, the Official Receiver must enter in the Index the information specified in column 2 of the item.
- (2) However:
 - (aa) in the case of a statement of affairs mentioned in item 2 of the table, subsection (1) applies only if the Official Receiver accepts the statement; and
 - (a) in the case of a debtor's petition mentioned in item 3, 4 or 5 of the table, subsection (1) applies only if the Official Receiver accepts the petition; and
 - (b) in the case of a debt agreement proposal mentioned in item 12 of the table, subsection (1) applies only if the Official Receiver accepts the debt agreement proposal for processing.

| Documents given to the Official Receiver in accordance with the Act | | |
|--|--|---|
| Item | Column 1 Document | Column 2 Information |
| 1 | A sequestration order made against the estate of a debtor (see subsection 52(1A) of the Act) | All of the following: (a) particulars of the debtor; (b) the day on which the order was made; (c) the name of the trustee of the estate of the debtor; (d) the name of the creditor who obtained the order; (e) the name and telephone number of any |

| Documents given to the Official Receiver in accordance with the Act | | |
|--|--|--|
| Item | Column 1 Document | Column 2 Information |
| | | legal practitioner acting on behalf of that creditor |
| 2 | A statement of the affairs of a person against whose estate a sequestration order is made, that is given for the purposes of subsection 54(1) of the Act | The day on which the statement of affairs was filed with the Official Receiver |
| 3 | A debtor's petition (see subsection 55(1) of the Act) | All of the following: (a) particulars of the debtor; (b) the day on which the Official Receiver accepted the debtor's petition; (c) the time of the commencement of the resulting bankruptcy; (d) the name of the trustee of the estate of the debtor; (e) the day on which the statement of the debtor's affairs accepted by the Official Receiver was given to the Official Receiver for the purposes of paragraph 55(2)(b) of the Act |
| 4 | A debtor's petition against a partnership presented by members of the partnership (see subsection 56B(1) of the Act) | All of the following: (a) particulars of each of the partners who presented the petition; (b) the day on which the Official Receiver accepted the debtor's petition; (c) the time of the commencement of the bankruptcy of each of those partners as a result of the acceptance of the petition; (d) the name of the trustee of the estate of each bankrupt partner; (e) the day on which each of the following was given to the Official Receiver: (i) the statement of affairs of each of those partners, given for the purposes of paragraph 56B(3)(a) of the Act, that was accepted by the Official Receiver; (ii) the statement of the partnership affairs, given for the purposes of paragraph 56B(3)(b) of the Act, that was accepted by the Official Receiver |
| 5 | A debtor's petition by joint debtors who are not partners (see subsection 57(1) of the Act) | All of the following: (a) particulars of each of those debtors; (b) the day on which the Official Receiver |

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| Documents given to the Official Receiver in accordance with the Act | | |
|--|--|---|
| Item | Column 1 Document | Column 2 Information |
| | | <ul style="list-style-type: none"> accepted the debtor’s petition; (c) the time of the commencement of each bankruptcy that results from acceptance of the debtor’s petition; (d) the name of the trustee of the estate of each debtor; (e) the day on which each of the following was given to the Official Receiver: <ul style="list-style-type: none"> (i) the statement of affairs of each of those debtors, given for the purposes of paragraph 57(2)(a) of the Act, that was accepted by the Official Receiver; (ii) the statement of their joint affairs, given for the purposes of paragraph 57(2)(b) of the Act, that was accepted by the Official Receiver |
| 6 | A notice relating to the annulment of a bankruptcy (see subsection 74(5A) of the Act) | The day on which the bankruptcy was annulled |
| 7 | A notice of objection by a trustee to the discharge of a bankrupt from bankruptcy (see subsection 149B(1) of the Act) | All of the following: <ul style="list-style-type: none"> (a) when the objection took effect (see section 149G of the Act); (b) each ground of objection set out in the notice (see paragraph 149C(1)(a) of the Act); (c) the name of the trustee |
| 8 | A notice that a trustee ceases to object to a bankrupt’s discharge from bankruptcy on a particular ground (see subsection 149H(1) of the Act) | All of the following: <ul style="list-style-type: none"> (a) if there is no longer an objection on any ground—when the objection ceased to have effect (see subsection 149H(3) of the Act); (b) each ground of objection to which the notice relates; (c) the name of the trustee |
| 9 | A notice of withdrawal of objection by a trustee to a bankrupt’s discharge from bankruptcy (see subsection 149J(1) of the Act) | Both of the following: <ul style="list-style-type: none"> (a) when the withdrawal takes effect (see subsection 149J(3) of the Act); (b) the name of the trustee |
| 10 | A notice about the cancellation, under subsection 149N(1) of the Act, of a notice of objection filed by a trustee of a bankrupt’s estate (see subsection 149P(1) | The day on which the cancellation took effect |

| Documents given to the Official Receiver in accordance with the Act | | |
|--|--|--|
| Item | Column 1 Document of the Act) | Column 2 Information |
| 11 | A certificate relating to the annulment of a bankruptcy (see subsection 153A(2) of the Act) | The date of annulment included in the certificate |
| 12 | A debtor's written proposal for a debt agreement (see subsection 185C(1) of the Act) | Both of the following: (a) particulars of the debtor; (b) the day on which the Official Receiver accepted the debt agreement proposal for processing (see section 185E of the Act) |
| 13 | A notification that a debt agreement has ended (see subsection 185N(5) of the Act) | Both of the following: (a) the day on which the debt agreement ended; (b) the reasons why the debt agreement ended |
| 14 | A notification that control of the property of a debtor has ended (see subsection 189(1B) of the Act) | The day on which that control ended |
| 15 | A personal insolvency agreement relating to a debtor (see paragraph 218(1)(b) of the Act) | All of the following: (a) particulars of the debtor; (b) the day on which the agreement was executed; (c) the name of the trustee of the personal insolvency agreement |
| 16 | A resolution or special resolution terminating a personal insolvency agreement (see subsection 224A(1) of the Act) | The day on which the personal insolvency agreement was terminated |
| 17 | A resolution or special resolution terminating a composition or scheme of arrangement (see section 76B and subsection 224A(1) of the Act) | The day on which the composition or scheme of arrangement was terminated |
| 18 | A notice that a personal insolvency agreement is terminated or set aside (see subsection 224A(3) or (4) of the Act) | The day on which the personal insolvency agreement was terminated or set aside |
| 19 | A notice that a composition or scheme of arrangement is terminated or set aside (see section 76B and subsection 224A(3) or (4) of the Act) | The day on which the composition or scheme of arrangement was terminated or set aside |
| 20 | An order that the estate of a deceased person be administered under Part XI of the Act (see subsection 244(14), 245(3) or 247(3) of the Act) | All of the following: (a) particulars of the deceased person; (b) the day on which the order was made; (c) the name of the trustee administering |

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| Documents given to the Official Receiver in accordance with the Act | | |
|--|---|---|
| Item | Column 1 Document | Column 2 Information |
| | | the estate |
| 21 | A statement of a deceased person's affairs and of the administration of the deceased person's estate by a legal personal representative of the deceased person (see paragraph 246(1)(b) of the Act) | The day on which the statement was given to the Official Receiver |
| 22 | A certificate in relation to the annulment, by force of subsection 252A(1) of the Act, of the administration of an estate under Part XI of the Act (see subsection 252A(2) of the Act) | The day of the annulment |

77 Documents given to Official Receiver in accordance with this instrument

If a document, or a copy of a document, specified in column 1 of an item of the table in this section is given to the Official Receiver, the Official Receiver must enter in the Index the information specified in column 2 of the item.

| Documents given to the Official Receiver in accordance with this instrument | | |
|--|---|---|
| Item | Column 1 Document | Column 2 Information |
| 1 | A creditor's petition presented against a debtor or joint debtors (see section 13) | All of the following: (a) particulars of the debtor or joint debtors; (b) the day on which the petition was presented against the debtor or joint debtors; (c) the name of the petitioning creditor; (d) the name and telephone number of any legal practitioner acting on behalf of the petitioning creditor; (e) the day of the court hearing for a sequestration order relating to the petition |
| 2 | A direction given, or an order made, by the Court under subsection 50(1) of the Act (see section 14 of this instrument) | All of the following: (a) particulars of the debtor to whom the order or direction relates; (b) the day on which the order was made or the direction given; (c) the day (if any) on which a trustee's control of that debtor's property is to end (see subsection 50(1B) of the Act) |
| 3 | A notice under subsection 46(2) that the | The day on which the decision was varied |

| Documents given to the Official Receiver in accordance with this instrument | | |
|--|--|---|
| Item | Column 1 Document | Column 2 Information |
| | Administrative Appeals Tribunal has varied or set aside a decision of the Inspector-General in relation to a notice of objection | or set aside |
| 4 | A notice given under subsection 52(1) in relation to an order about a regulated debtor's estate, if the order provides for another person (the <i>new trustee</i>) to be appointed as the trustee of the estate | Both of the following: (a) the name of the new trustee; (b) the day of the appointment |
| 5 | A notice given under subsection 52(3) by a person appointed as trustee of the estate of a regulated debtor | Both of the following: (a) the name of the person appointed; (b) the day of the appointment |
| 6 | A notice under subsection 53(1) that the trustee of a regulated debtor's estate has finalised the administration of the debtor's estate | The day on which the administration of the estate was finalised |
| 7 | A notice under subparagraph 62(2)(a)(ii) of particulars specified in subsection 62(3) in relation to a special resolution passed at a meeting of a debtor's creditors | The particulars |
| 8 | A sequestration order against the estate of a debtor made under subsection 221(1), 222(10) or 222C(5) of the Act (see subsection 66(1) of this instrument) | All of the following: (a) particulars of the debtor; (b) the day on which the order was made; (c) if the person who applied for the order was a creditor of the debtor—the name of the creditor and the name and telephone number of the creditor's solicitor (if any); (d) if the order was made under subsection 221(1) of the Act—the name of the trustee of the debtor's estate |
| 9 | A notice under paragraph 68(1)(a) that a personal insolvency agreement is terminated in accordance with section 222A of the Act | The day on which the personal insolvency agreement was terminated |
| 10 | A certificate given by a trustee to a debtor under subsection 232(1) of the Act (see subsection 70(4) of this instrument) | The day on which the trustee signed the certificate |

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78 Information about specified events

If an event specified in column 1 of an item of the table in this section occurs, the Official Receiver must enter in the Index the information specified in column 2 of the item.

| Item | Column 1 Event | Column 2 Information |
|-------------|--|--|
| 1 | A bankrupt is, by force of subsection 149(1) of the Act, discharged from bankruptcy | The day on which the bankrupt was discharged from bankruptcy |
| 2 | The Official Receiver issues a certificate of appointment to a registered trustee under subsection 157(3) of the Act | Both of the following: (a) the name of the registered trustee; (b) the day on which the registered trustee was appointed |
| 3 | A trustee, or the Official Trustee, is released from the trusteeship of an estate by force of section 184 or 184A of the Act | The fact that the trustee, or the Official Trustee, has been so released |
| 4 | A debt agreement proposal is withdrawn | The day on which the debt agreement proposal was withdrawn |
| 5 | A proposal to terminate a debt agreement that was made before 1 July 2007 is accepted (see sections 185B and 185P of the Act as in force immediately before 1 July 2007) | The day on which the proposal was accepted |
| 6 | A debt agreement proposal is not accepted (see section 185EC of the Act) | The day on which the debt agreement proposal was not accepted |
| 7 | The Official Receiver cancels the acceptance of a debt agreement proposal for processing (see section 185ED of the Act) | The day on which the Official Receiver cancelled the acceptance of the debt agreement proposal for processing |
| 8 | A debt agreement proposal lapses (see section 185G of the Act) | The day on which the debt agreement proposal lapsed |
| 9 | The Official Receiver gives to a debtor a certificate under subsection 185N(3) of the Act | The day on which the certificate was given |
| 10 | A proposal to terminate a debt agreement is accepted (see section 185PC of the Act) | Both of the following: (a) the day on which the debt agreement was terminated; (b) the reasons for the termination |
| 11 | The Official Receiver terminates a debt agreement under subsection 185QA(1) of the Act | Both of the following: (a) the day on which the debt agreement was terminated; (b) the reasons for the termination |
| 12 | The minutes of a meeting of creditors at which a special resolution was passed terminating a debt agreement made before 1 July 2007 are given to the Official | The day on which the resolution was passed |

| Item | Column 1 Event | Column 2 Information |
|-------------|--|--|
| | Receiver (see subsection 185QA(1) of the Act as in force immediately before 1 July 2007) | |
| 13 | A special resolution is passed at a meeting of a debtor's creditors under subsection 204(1) of the Act if the Official Trustee called the meeting under an authority under section 188 of the Act | All of the following: (a) the date of the resolution; (b) the debtor's full name and alias (if any); (c) the debtor's address; (d) the debtor's occupation (if any); (e) if the resolution requires the debtor to execute a personal insolvency agreement—the name of each person nominated under subsection 204(3) of the Act to be a trustee of the agreement |
| 14 | A sequestration order is made against the estate of a debtor under subsection 221(1), 222(10) or 222C(5) of the Act on the application of the Official Trustee or the Inspector-General | All of the following: (a) particulars of the debtor; (b) the day on which the order was made; (c) if the order was made under subsection 221(1) of the Act—the name of the trustee of the debtor's estate |
| 15 | An order is made under subsection 222(1), (2) or (5) of the Act setting aside a personal insolvency agreement on the application of the Official Trustee or the Inspector-General | The day on which the personal insolvency agreement was set aside |
| 16 | A personal insolvency agreement is terminated in accordance with section 222A of the Act where the Official Trustee is the trustee of the agreement | The day on which the personal insolvency agreement was terminated |
| 17 | An order is made under subsection 222C(1) of the Act terminating a personal insolvency agreement on the application of the Official Trustee or the Inspector-General | The day on which the personal insolvency agreement was terminated |
| 18 | The Official Trustee gives a certificate to a debtor under subsection 232(1) of the Act | The day on which the Official Trustee signed the certificate |
| 19 | The Official Trustee finalises the administration of a debtor's estate | The day on which the administration of the estate was finalised |
| 20 | The Court makes an order under subsection 90-15(1) of Schedule 2 to the Act, on application by the Inspector-General, that provides for another person (the <i>new trustee</i>) to be appointed as the trustee of an estate | Both of the following: (a) the name of the new trustee; (b) the day of the appointment |
| 21 | The Official Trustee is appointed by the creditors of an estate under | The day of the appointment |

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| Item | Column 1 Event | Column 2 Information |
|-------------|--|---------------------------------|
| | paragraph 90-35(1)(b) of Schedule 2 to the Act as trustee of an estate | |

- Note: A number of provisions of the Act require the Official Receiver to enter information in the Index when certain events occur. These provisions include the following:
- (a) paragraph 185H(2)(c) (acceptance of an unconditional debt agreement proposal);
 - (b) paragraph 185H(3)(d) (acceptance of a conditional debt agreement proposal);
 - (c) paragraph 185QA(1)(d) (declaration that a debt agreement is terminated).

79 Information about certain debtors

- (1) The Official Receiver must enter in the Index the following information about a debtor covered by subsection (2):
 - (a) the debtor's full name and alias (if any);
 - (b) the debtor's address;
 - (c) the debtor's occupation (if any);
 - (d) the day on which the information referred to in paragraphs (a) to (c) is entered in the Index.
- (2) The following debtors are covered by this subsection:
 - (a) a debtor whose property is under the control of the Official Trustee or a registered trustee because of a direction given by the Court under paragraph 50(1)(a) of the Act;
 - (b) a debtor who signs an authority under subsection 188(1) of the Act;
 - (c) a deceased debtor if a petition for an order for the administration of the deceased debtor's estate has been presented under Part XI of the Act;
 - (d) a debtor in relation to whom an application is made to the Court under subsection 253E(1) of the Act for an order staying all or any proceedings under a petition.
- (3) In the case of a deceased debtor, the information to be entered in accordance with paragraphs (1)(a), (b) and (c) is the information immediately before the debtor's death.

Division 3—Information not to be entered in the Index and information to be removed from the Index

80 Application for information to be removed, corrected or not entered in the Index

- (1) Subject to subsection (4), a person who is a debtor or bankrupt may apply in writing to the Inspector-General for information about the person:
 - (a) not to be entered in the Index, on the ground that the entry of the information would jeopardise, or be likely to jeopardise, the person's safety; or
 - (b) in the Index to be removed on the ground that:
 - (i) its inclusion jeopardises, or is likely to jeopardise, the person's safety; or
 - (ii) it is inaccurate or misleading; or
 - (c) in the Index to be corrected on the ground that it is inaccurate or misleading.
- (2) The application must specify the ground relied on and include full particulars in support of the ground.

Example: A person may rely on a court order (such as a domestic violence order) to show that publication of the information in question would jeopardise, or be likely to jeopardise, the person's safety.
- (3) The Inspector-General must, as soon as practicable:
 - (a) decide the application; and
 - (b) give notice in writing to the applicant of:
 - (i) the decision and the reasons for it; and
 - (ii) the applicant's right to apply under section 81 to the Administrative Appeals Tribunal for review of the decision.
- (4) An application cannot be made under this section to remove from, or not enter in, the Index:
 - (a) a person's name; or
 - (b) a person's date of birth.

81 Application to the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General under paragraph 80(3)(a) refusing to grant an application.

82 Removal from the Index of information relating to debt agreement

- (1) If a debt agreement ends under section 185N of the Act, the Official Receiver must remove all information relating to the debt agreement from the Index within 1 month after the later of the following days:
-

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- (a) 5 years after the day on which the debt agreement was made;
 - (b) the day on which the debt agreement ends.
- (2) If a debt agreement is terminated under section 185P, 185Q, 185QA or 185R of the Act, the Official Receiver must remove all information relating to the debt agreement from the Index within 1 month after the later of the following days:
- (a) 5 years after the day on which the debt agreement was made;
 - (b) 2 years after the day on which the debt agreement is terminated.
- (3) If an order is made under section 185U of the Act declaring all of a debt agreement void, the Official Receiver must remove all information relating to the debt agreement from the Index within 1 month after the later of the following days:
- (a) 5 years after the day on which the debt agreement was made;
 - (b) 2 years after the day on which the order is made.

83 Removal from the Index of information relating to debt agreement proposal

The Official Receiver must remove all information relating to a debt agreement proposal from the Index within 1 year after the day on which any of the following occurs:

- (a) the proposal is withdrawn;
- (b) the proposal is not accepted under section 185EC of the Act;
- (c) the acceptance of the proposal for processing is cancelled under section 185ED of the Act;
- (d) the proposal lapses under section 185G of the Act.

Division 4—Other matters

84 Inspection of the Index

- (1) A person may, by application in writing, ask the Official Receiver to inspect material in the Index and give to the person an extract of material specified in the application.
- (2) On receiving such an application, the Official Receiver:
 - (a) if the applicant has paid any applicable fee determined under the Fees and Remuneration Determination for obtaining the requested extract—must inspect the Index and, within 10 business days of receiving the application:
 - (i) give the requested extract to the applicant; or
 - (ii) advise the applicant, in writing, that the requested extract is not entered in the Index; or
 - (b) may give the applicant a list of Index search agents who may be able to inspect material entered in the Index for the applicant.
- (3) A person who has been granted access to the Index by the Inspector-General may, after paying any applicable fee determined under the Fees and Remuneration Determination:
 - (a) inspect material entered in the Index; or
 - (b) obtain an extract of material entered in the Index.
- (4) However, prior payment is not required under subsection (3) if the person has an alternative arrangement with the Inspector-General about the method of payment.
- (5) The Inspector-General may specify conditions that apply to:
 - (a) the use of information entered in the Index; and
 - (b) the use of an extract of material entered in the Index.

Note: Under subsection 73(3) the Inspector-General has control of access to the Index.

85 Information extracted from the Index to be evidence

An extract of information in the Index is admissible in any proceedings as prima facie evidence of the matters in the extract.

86 Immunity from defamation

- (1) The Inspector-General, and any officer acting at the direction or with the authority of the Inspector-General, have immunity from actions for defamation arising out of publication of material in the Index or publication of extracts of material from the Index.
- (2) An officer has immunity from actions for defamation arising out of publication of material in the Index or publication of extracts of material from the Index, if the publication was done:

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- (a) by the officer acting in the course of the officer's duty; and
 - (b) in good faith.
- (3) A person who provides material for entry in the Index has immunity from actions for defamation arising out of publication of the material by way of:
- (a) providing it for such inclusion; or
 - (b) publication of the material in the Index; or
 - (c) publication of extracts of the material from the Index;
- if the publication was done:
- (d) in the performance of a function or duty under this instrument or any other law of the Commonwealth; and
 - (e) in good faith.
- (4) Subsections (2) and (3) do not limit subsection (1).
- (5) The immunity of the Inspector-General or another officer under this section arising out of publication of material extends to the Commonwealth and the Official Trustee to the extent that the Commonwealth or the Official Trustee would, apart from this subsection, be liable in respect of the publication.
- (6) This section does not limit any other ground of defence in relation to actions for defamation arising out of publication of material in the Index or publication of extracts of material from the Index.

Part 14—Offences under the Act

Division 1—Arrest of person failing to attend before the Court etc.

87 Apprehension under a warrant—notification to Registrar in certain cases

- (1) This section applies if:
 - (a) a warrant issued under subsection 264B(1) of the Act for the apprehension of a person is executed; and
 - (b) the person executing the warrant considers that it is impracticable to immediately bring the apprehended person before the Court, the Registrar or a magistrate.
- (2) The person executing the warrant must, as soon as reasonably practicable, notify the Registrar of the following:
 - (a) the apprehension;
 - (b) a day and time when the person executing the warrant considers that it will be practicable to bring the apprehended person before the Court, the Registrar or a magistrate.

88 Registrar to act on notification—direction to person executing warrant

- (1) If the Registrar receives a notification under subsection 87(2) in relation to an apprehended person, the Registrar must, as soon as reasonably practicable:
 - (a) determine a day, time and place for the apprehended person to be brought before the Court, the Registrar or a magistrate; and
 - (b) direct the person who gave the notification to bring the apprehended person before the Court, the Registrar or a magistrate in accordance with that determination.
- (2) The time and day determined under paragraph (1)(a) must be the earliest that the Registrar reasonably believes are practicable.
- (3) A person to whom a direction is given under paragraph (1)(b) must comply with it.

Division 2—Infringement notices

89 Purpose and operation of this Division

For the purposes of subsection 277B(1) of the Act, this Division establishes an infringement notice scheme, as an alternative to prosecution, for an infringement notice provision.

90 When an infringement notice may be given

- (1) If the Inspector-General believes on reasonable grounds that a person has contravened an infringement notice provision, the Inspector-General may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) The Inspector-General may give a person a single infringement notice relating to multiple contraventions of a single provision if:
 - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than 1 day; and
 - (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.

91 Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name of the person who issued the notice and how that person may be contacted; and
 - (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
 - (iii) the time (if known) and day of, and the place of, each alleged contravention; and

- (f) state the amount that is payable under the notice, as worked out in accordance with subsection 277B(2) of the Act and subsection (2) of this section; and
 - (g) give an explanation of how payment of the amount is to be made; and
 - (h) state that, if the person to whom the notice is given pays the amount within 20 business days after the day the notice is given, then (unless the notice is withdrawn) the person will not be liable to be prosecuted in a court for the alleged contravention; and
 - (i) state that payment of the amount is not an admission of guilt or liability; and
 - (j) state that the person may apply to the Inspector-General to have the period in which to pay the amount extended; and
 - (k) state that the person may choose not to pay the amount and, if the person does so the person may be prosecuted in a court for the alleged contravention; and
 - (l) set out how the notice can be withdrawn; and
 - (m) state that if the notice is withdrawn, the person may be prosecuted in a court for the alleged contravention; and
 - (n) state that the person may make written representations to the Inspector-General seeking the withdrawal of the notice.
- (2) If the notice relates to more than one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the sum of the amount worked out in accordance with subsection 277B(2) of the Act for each alleged contravention.

Note: Under section 90, a single infringement notice may only deal with multiple contraventions if they are contraventions of a single provision continuing over a period.

92 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the Inspector-General for an extension of the period referred to in paragraph 91(1)(h).
- (2) If the application is made before the end of that period, the Inspector-General may, in writing, extend that period. The Inspector-General may do so before or after the end of that period.
- (3) If the Inspector-General extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 91(1)(h) is taken to be a reference to that period so extended.
- (4) If the Inspector-General does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 91(1)(h) is taken to be a reference to the period that ends on the later of the following days:
 - (a) the day that is the last day of the period referred to in paragraph 91(1)(h);

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- (b) the day that is 7 days after the day the person was given notice of the Inspector-General's decision not to extend.
- (5) The Inspector-General may extend the period more than once under subsection (2).

93 Withdrawal of an infringement notice

Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the Inspector-General seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The Inspector-General may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the Inspector-General:
 - (a) must take into account any written representations seeking the withdrawal that were given by the person to the Inspector-General; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of an infringement notice provision;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of an infringement notice provision if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
 - (iv) any other matter the Inspector-General considers relevant.

Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
 - (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that the person may be prosecuted in a court for the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
 - (a) the Inspector-General withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;

the Commonwealth must refund to the person an amount equal to the amount paid.

94 Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 91(1)(h):
 - (a) any liability of the person for the alleged contravention is discharged; and
 - (b) the person may not be prosecuted in a court for the alleged contravention; and
 - (c) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
 - (d) the person is not regarded as having been convicted of the alleged offence.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

95 Evidentiary certificates

- (1) The Inspector-General may sign a certificate that states any of the following in relation to an infringement notice given to a person:
 - (a) that the amount specified in the notice was not fully paid by the person within the time specified in the notice;
 - (b) that the Inspector-General granted, or refused to grant, an extension of time to the person to pay the amount specified in the notice;
 - (c) if the Inspector-General granted an extension of time to the person to pay the amount specified in the notice—that that amount was not fully paid by the person within the period specified in the extension;
 - (d) that the infringement notice was withdrawn under subsection 93(2) on a day specified in the certificate.
- (2) At a hearing of a prosecution for an offence alleged in an infringement notice, a certificate signed by the Inspector-General in accordance with subsection (1) is prima facie evidence of the matters specified in the certificate.
- (3) A certificate that purports to be signed by the Inspector-General is taken to have been signed by the Inspector-General unless the contrary is proved.

96 Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of an infringement notice provision; or
- (b) affect the liability of a person for an alleged contravention of an infringement notice provision if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or

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- (ii) an infringement notice is not given to the person for the contravention; or
- (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of an infringement notice provision; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened an infringement notice provision.

Part 15—Provisions relating to the Bankruptcy (Estate Charges) Act 1997

97 Purpose of Part

This Part is made for the purposes of section 286 of the Act.

98 Mode of payment

Estate charge or late payment penalty may be paid to the Inspector-General by:

- (a) direct debit; or
- (b) electronic transfer; or
- (c) cheque; or
- (d) any other means that the Inspector-General approves in writing for the purposes of this paragraph.

99 Overpayments to be refunded or offset

The amount of an overpayment by a person of estate charge or late payment penalty may be:

- (a) refunded to the person; or
- (b) unless the person, by notice in writing to the Inspector-General, directs otherwise—offset against estate charge or late payment penalty payable by the person.

100 Information to accompany payment of interest charge

- (1) A payment of interest charge by a person must be accompanied by, in the approved form, any information required by the approved form.
- (2) This section does not apply to the Official Trustee.

101 Information to accompany payment of realisations charge

- (1) A payment of realisations charge by a person must be accompanied by, in the approved form, any information required by the approved form.
- (2) This section does not apply to the Official Trustee.

Part 16—Miscellaneous

Division 1—Matters relating to documents

102 Service of documents

- (1) Unless the contrary intention appears, if a document is required or permitted by the Act or this instrument to be given or sent to, or served on, a person (other than the Inspector-General, the Official Receiver or the Official Trustee), the document may be:
 - (a) sent by a courier service to the person at the address of the person last known to the person serving the document; or
 - (b) left, in an envelope or similar packaging marked with the person's name and any relevant document exchange number, at a document exchange where the person maintains a document exchange facility.

Note 1: See also section 28A of the *Acts Interpretation Act 1901*.

Note 2: The *Electronic Transactions Act 1999* deals with giving information in writing by means of an electronic communication.

- (2) In the absence of proof to the contrary, the document is taken to have been received by, or served on, the person when the document would, in the due course of business practice, be delivered to that address or document exchange.
- (3) Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* do not apply to documents that are required or permitted by the Act or this instrument to be given or sent to, or served on, a person.

Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information to the information being given by way of electronic communication.

103 Documents for Inspector-General, Official Receiver or Official Trustee

- (1) Unless the contrary intention appears, this section applies if a document is required or permitted by the Act or this instrument to be given or sent to, or filed or lodged with:
 - (a) the Inspector-General; or
 - (b) the Official Receiver; or
 - (c) the Official Trustee.
- (2) The document must be posted, delivered, sent by email, or sent through the website of the Australian Financial Security Authority, to:
 - (a) in the case of a document for the Inspector-General—the office of the Inspector-General; or
 - (b) in the case of a document for the Official Receiver—the office of the Official Receiver; or
 - (c) in the case of a document for the Official Trustee—the office of the Official Receiver.

- (3) If this section applies, the document is taken to be received, filed or lodged only when the document (or, where applicable, a copy of it) is actually received by, or on behalf of, the Inspector-General or the Official Receiver (as the case requires).

104 Proof of statement of affairs

- (1) Subsection (2) applies in any proceedings to a document or copy of a document that purports to be a certificate signed by the Inspector-General stating that, at a particular time, the form of statement of affairs that is attached to the certificate was the approved form for the purposes of section 6A of the Act.
- (2) The document or copy is admissible in any proceedings as prima facie evidence of the matters in it.

105 Document filed by Inspector-General or Official Receiver—fee not payable

A fee is not payable by the Inspector-General or the Official Receiver in respect of an application to, or the filing of a document in, the Court in relation to proceedings under the Act, this instrument or the Insolvency Practice Rules.

Note: See subparagraph 315(2)(j)(i) of the Act.

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Division 2—Matters relating to fees

106 Payment of fees

- (1) If a fee is payable under the Fees and Remuneration Determination in respect of:
 - (a) the making of a request or an application to the Official Receiver; or
 - (b) the presentation or lodgement of a document with the Official Receiver;the request, application or document need not be dealt with unless the fee has been paid.
- (2) If such a fee is payable in respect of the doing of a matter or thing by the Official Receiver, the matter or thing need not be done unless the fee has been paid.

107 Official Trustee's entitlement to interim remuneration

- (1) The Official Trustee's entitlement to remuneration under the Fees and Remuneration Determination arises when the Official Trustee:
 - (a) performs work or first acts in accordance with section 3.03, 3.04, 3.07 or 3.08 of the Fees and Remuneration Determination; or
 - (b) is appointed as described in section 3.06 of the Fees and Remuneration Determination; or
 - (c) first acts in accordance with subsection 3.09(1) of the Fees and Remuneration Determination; or
 - (d) performs work as described in subsection 3.09(2) or section 3.10 of the Fees and Remuneration Determination.
- (2) For paragraph (1)(a), (b) or (d), remuneration is payable to the Official Trustee in respect of an amount received by the Official Trustee:
 - (a) when the amount is received; and
 - (b) at the rate applicable when the amount is received.
- (3) For paragraph (1)(c), remuneration is payable to the Official Trustee:
 - (a) from time to time as the funds are realised; and
 - (b) at the rate applicable when the funds are realised.

108 Reimbursement of Official Trustee for expenses

Carrying on business or taking control of property under section 50 of the Act

- (1) If the Official Trustee performs work of a kind mentioned in section 3.03 of the Fees and Remuneration Determination in relation to the property or business of a debtor, an amount equal to the amount of expenses incurred by the Official Trustee in performing that work is payable to the Official Trustee out of the estate of the debtor.

Compositions and schemes of arrangement

- (2) If the Official Trustee performs work of a kind mentioned in section 3.04 of the Fees and Remuneration Determination in relation to a composition or scheme of arrangement with the creditors of a bankrupt, an amount equal to the amount of expenses incurred by the Official Trustee in performing that work is payable to the Official Trustee out of the composition or scheme of arrangement as the case may be.

Personal insolvency agreements

- (3) If the Official Trustee performs work of a kind mentioned in section 3.08 of the Fees and Remuneration Determination in relation to a personal insolvency agreement relating to a debtor who signed an authority under section 188 of the Act, an amount equal to the amount of expenses incurred by the Official Trustee in performing that work is payable to the Official Trustee out of the estate of the debtor.

Bankrupt estates

- (4) If the Official Trustee performs work of a kind mentioned in section 3.09 of the Fees and Remuneration Determination in relation to the estate of a bankrupt, or of a deceased person for whose estate an order for administration has been made under Part XI of the Act, an amount equal to the amount of expenses incurred by the Official Trustee in performing that work is payable to the Official Trustee out of the estate of the bankrupt or deceased person as the case may be.

109 Fee for inspecting notes and transcript of evidence

For the purposes of paragraph 81(17)(b) of the Act, the prescribed fee is \$20.

110 Fee for making request for consent to leave Australia

- (1) This section applies in relation to a request by a bankrupt to the Official Trustee for the Official Trustee's consent, under paragraph 272(1)(c) of the Act, to the bankrupt leaving Australia.
- (2) A fee is payable to the Official Trustee in relation to the making of the request.

Note: For the amount of the fee, see the Fees and Remuneration Determination.

111 Waiver or remission of fees by Inspector-General

- (1) The Inspector-General may decide to waive or remit the whole or part of any fee covered by subsection (4) if the Inspector-General is reasonably satisfied that:
 - (a) payment of the fee by the person liable to pay it has imposed, or would impose, hardship on the person that is unusual and exceptional in comparison to the hardship arising in the normal course of bankruptcy; or
 - (b) because of other exceptional circumstances, it is proper and reasonable to do so.

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- (2) A decision under subsection (1) in relation to a fee must be notified in writing to:
 - (a) the person liable to pay the fee; and
 - (b) unless the fee is payable to the Inspector-General—the officer to whom the fee is payable or would have been payable if the fee had not been waived or remitted.
- (3) If the Inspector-General decides under subsection (1) to refuse to waive or remit the whole or part of any fee covered by subsection (4), the notification under subsection (2) in relation to the decision must include the reasons for the decision.
- (4) A fee payable under any of the following provisions is covered by this subsection:
 - (a) section 109;
 - (b) item 1, 2, 3, 4, 9, 13, 14 or 15 of the table in section 2.01 of the Fees and Remuneration Determination;
 - (c) section 2.02 or 2.03 of the Fees and Remuneration Determination.

112 Review of decision of the Inspector-General

Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General under subsection 111(1) refusing to waive or remit the whole or part of a fee that is payable by the person.

Division 3—Other matters

113 Inventory by trustee taking possession of, or attaching, property

If, under the Act, a trustee takes possession of, or attaches, the property of a bankrupt, debtor or deceased person, the trustee must, as soon as is reasonably practicable:

- (a) do at least one of the following:
 - (i) make, sign and date an inventory of the property;
 - (ii) take photographs of the property;
 - (iii) make video recordings of the property; and
- (b) give a copy of the inventory, of the photographs or of the video recordings, as the case may be, to any person who has custody of the property or part of the property.

114 Indexation

- (1) If a provision of this instrument states that a dollar amount is to be indexed in accordance with this section, then at the start of each financial year (an *indexation year*) beginning on or after 1 July 2021, the dollar amount is replaced by the amount worked out using the following formula:

$$\frac{\text{Indexation factor for the indexation year}}{\text{Dollar amount for the previous year}} \times$$

- (2) The *indexation factor* for an indexation year is the number worked out using the following formula:

$$\frac{\text{Index number for the reference quarter}}{\text{Index number for the base quarter}}$$

where:

base quarter means the last March quarter before the reference quarter.

index number, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

reference quarter means the March quarter immediately before the indexation year.

- (3) An indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (4) If an indexation factor worked out under subsection (2) would be less than 1, that indexation factor is to be increased to 1.
- (5) Calculations under subsection (2):

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- (a) are to be made using only the index numbers published in terms of the most recently published index reference period; and
- (b) are to be made disregarding index numbers that are published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

Part 17—Application, saving and transitional provisions

115 Things done under the *Bankruptcy Regulations 1996*

- (1) If:
 - (a) a thing was done for a particular purpose under the *Bankruptcy Regulations 1996* as in force immediately before those Regulations were repealed; and
 - (b) the thing could be done for that purpose under this instrument;
the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

116 Taxable value of car fringe benefits

Despite the repeal of the *Bankruptcy Regulations 1996*, item 3 of Schedule 4 to those Regulations, as in force immediately before that repeal, continues to apply in relation to a contribution assessment period if an assessment under section 139W of the Act was made for that contribution assessment period before that repeal.

Schedule 1—Forms

Note: See subsection 9(1).

Bankruptcy Notice

Bankruptcy Act 1966 Subsection 41(2)
Bankruptcy Regulations 2021 Section 9

| | | | |
|------------|----------------------|----------------------|----------------------|
| To | Title | Given Name/s | Surname |
| | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | Address | | Postcode |
| of | <input type="text"/> | | <input type="text"/> |
| and | Title | Given Name/s | Surname |
| | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| of | Address | | Postcode |
| | <input type="text"/> | | <input type="text"/> |

You are notified that:

| | |
|----------------------|----------------------|
| Creditor's name | ABN / ACN |
| <input type="text"/> | <input type="text"/> |
| Address | Postcode |
| <input type="text"/> | <input type="text"/> |

| | |
|----------------------|----------------------|
| Creditor's name | ABN / ACN |
| <input type="text"/> | <input type="text"/> |
| Address | Postcode |
| <input type="text"/> | <input type="text"/> |

claim/s that you owe the following debt

| | | |
|----|---|--|
| 1. | Amount as per the accompanying final judgment/s or final order/s (note A) | |
| 2. | Add legal costs (note B) | |
| 3. | Add interest accrued since date of judgment/s or order/s (note C) | |
| 4. | Sub total (1 + 2 + 3) | |
| 5. | Less payments made and/or credit allowed since judgment/s or order/s | |
| 6. | TOTAL DEBT AMOUNT (4 - 5) | |

Notes

A. If an accompanying final judgment or final order is expressed in an amount of foreign currency, you may pay the amount in that foreign currency, or pay an equivalent amount in Australian dollars that has been calculated using the rate of exchange for the foreign currency published by the **Reserve Bank of Australia (RBA)** as at [date]

Foreign currency amount X [RBA exchange rate] = AUD \$

Note: the above is in accordance with the Bankruptcy Regulations 2021 section 12

B. Where legal costs are being claimed (and a specific amount was not included in the judgment/s or order/s), a certificate of taxed or assessed costs in support of the amount claimed is attached.

C. Where interest is being claimed, the provisions under which it is claimed and the basis of its calculation are shown in the accompanying interest schedule. If no interest is claimed the creditor need not provide the schedule with this notice.

1. You are required, within days after service on you of the Bankruptcy Notice, to either:

- (a) pay to the creditor the amount of the debt claimed; or
 (b) make arrangements to the creditor's satisfaction for settlement of the debt.

Note: a Bankruptcy Notice served in Australia must be complied with within 21 days after service. The Court may fix a different time for compliance where it gives leave to serve a Bankruptcy Notice outside of Australia.

2. Payment of the debt can be made to:

3. Bankruptcy proceedings may be taken against you if, within the time stated in paragraph 1 above, you do not comply with either paragraph 1(a) or 1(b), and the Court (that is, the Federal Court of Australia or the Federal Circuit Court of Australia) does not extend the time for compliance with this Bankruptcy Notice (see paragraph 4 below).

4. **Applying to extend the time for compliance:** You may apply to the Court, within the time stated in paragraph 1 above, for an extension of time for compliance with this Bankruptcy Notice on the grounds that:

- (a) you have instituted proceedings to set aside the judgment/s or order/s in respect of which this Bankruptcy Notice has been issued; and/or
 (b) you have filed with the Court an application to set aside this Bankruptcy Notice (on grounds other than those set out in paragraph 5 below).

5. **Applying to set aside the Bankruptcy Notice:** You may apply to the Court, within the time stated in paragraph 1 above, for an order that this Bankruptcy Notice be set aside on the grounds that you have a counter-claim, set-off or cross demand, equal to or exceeding the amount claimed in this Bankruptcy Notice, and you could not have set up that counter-claim, set-off or cross demand in the action or proceeding in which the judgment or order in respect of which this Bankruptcy Notice has been issued was obtained.

6. You should note the following points carefully:

- (a) if you apply to the Court for an extension of time to comply with this Bankruptcy Notice (see paragraph 4 above), and the Court has not granted any extension before the expiration of the time stated in paragraph 1 above, you must still comply with this Bankruptcy Notice within the time stated;
 (b) **however**, if you have applied to the Court to set aside this Bankruptcy Notice on the grounds set out in paragraph 5 above, you need not comply with this Bankruptcy Notice before the Court decides on your application. Whether you have to comply with the Bankruptcy Notice after this time will depend on the Court's decision.

7. If you make an application to the Court, the creditor will accept service of legal documents at:

WARNING

THIS BANKRUPTCY NOTICE IS AN IMPORTANT DOCUMENT. THE INFORMATION IT CONTAINS IS BASED ON PROVISIONS OF THE BANKRUPTCY ACT 1966 (THE ACT). THE INFORMATION IS A SUMMARY ONLY AND NOT A COMPLETE STATEMENT OF THE LAW. IF YOU REQUIRE A MORE DETAILED EXPLANATION, OR ARE UNSURE WHAT TO DO AFTER READING THE NOTICE, YOU SHOULD SEEK LEGAL ADVICE.

Note to creditor about use of information

The information you provide on the Bankruptcy Notice may be included on a public record. It may also be disclosed to government agencies and departments, or other persons or bodies for purposes authorised by the Act.

Issued by the Official Receiver when endorsed below

Schedule of Post-Judgment Interest Calculation

Interest calculation in relation to the judgment/s or order/s accompanying this notice.

| Interest claim period Date From | Interest claim period Date To | Statutory provision under which the post- judgment interest is being claimed | Principal amount on which interest is claimed | Rate of Interest (%) | Interest amount claimed |
|------------------------------------|----------------------------------|---|---|-------------------------|----------------------------|
| Judgment / order number: | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Total amount of interest claimed | | | | | \$ |

Schedule 2—Modifications of the FBTA Act

Note: See the definition of *FBTA Act* in section 4 and subsection 33(2).

FBTA Act

1 Subsections 7(1), (2), (3) and (4)

Repeal the subsections, substitute:

- (1) Where, at any time on a day, a person:
 - (a) applies a car held by the person; or
 - (b) makes a car held by the person available;for the private use of a bankrupt, the car is taken, for the purposes of this Act, to constitute a benefit provided on that day by the person to the bankrupt.

2 Subsections 8(1) and (2)

Repeal the subsections.

3 Section 9

Repeal the section, substitute:

9 Taxable value of car fringe benefits—statutory formula

- (1) Subject to this Part, where one or more car fringe benefits in relation to an employer in relation to a contribution assessment period relate to a particular car held by a particular person (the *provider*), the taxable value of that fringe benefit, or the aggregate of the taxable values of those fringe benefits, as the case may be, in relation to that contribution assessment period, is the amount calculated in accordance with the formula:

$$\left(0.2 \times \text{Base value of the car} \times \frac{\text{Number of days during that contribution assessment period on which the car fringe benefits were provided by the provider}}{\text{Number of days in that contribution assessment period}} \right) - \text{Amount (if any) of the recipient's payment}$$

- (2) For the purposes of this section:
 - (a) the *base value* of the car is the sum of:
 - (i) where, at the earliest holding time, the car was owned by the provider or an associate of the provider, the amount calculated in accordance with the formula *AB*, where:

A is the cost price of the car to the provider or associate, as the case may be; and

B is:

- (A) in a case where the commencement of the contribution assessment period is later than the fourth anniversary of the earliest holding time— $\frac{2}{3}$; or
 - (B) in any other case—1; and
- (ii) in a case to which subparagraph (i) does not apply—the amount calculated in accordance with the formula AB , where:

A is the leased car value of the car at the earliest holding time; and

B is:

- (A) in a case where the commencement of the contribution assessment period is later than the fourth anniversary of the earliest holding time— $\frac{2}{3}$; or
 - (B) in any other case—1; and
- (iii) the cost price of each non-business accessory that:
- (A) was fitted to the car after the earliest holding time and before the end of the contribution assessment period; and
 - (B) remained fitted to the car at a time during the contribution assessment period when the car was held by the provider;
- (b) the earliest holding time, in relation to a car held by the provider at a particular time (the **current time**), is the earliest time before the current time when the car was held by the provider or an associate of the provider; and
- (c) the amount of the recipient's payment is the sum of:
- (i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and
 - (ii) in a case where car expenses in respect of fuel or oil for the car were incurred during the holding period by recipients of the car fringe benefits and the persons incurring those expenses give to the employer, before the declaration date, declarations, in a form approved by the Inspector-General under section 6D of the *Bankruptcy Act 1966*, in respect of those expenses—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and
- (iii) in a case where:
- (A) car expenses in respect of the car (other than car expenses in respect of fuel or oil for the car) were incurred during the holding period by recipients of the car fringe benefits; and
 - (B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;

- the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and
- (d) the holding period is the period in the contribution assessment period when the car was held by the provider.

Example:

Christopher was declared bankrupt on 1 July 2020.

In June 2021 Christopher's employer acquires a car for Christopher's use. The purchase price, and base value, of the car is \$20,000.

As part of his employment arrangement, the car is made available to Christopher for the entire period 1 July 2021 to 30 June 2022 during which time he travels 10,000 kilometres. During the period Christopher makes a \$300 contribution to expenses in the form of unreimbursed expenditure on petrol.

It is necessary to assess the value of a car fringe benefit provided to Christopher by his employer for the contribution assessment period 1 July 2021 to 30 June 2022.

Applying the formula in subsection (1), the value of the car fringe benefit is calculated as follows:

$$\left(0.2 \times \$20,000 \times \frac{365}{365} \right) - \$300 = \$3,700$$

- (3) In this section:

declaration date means the date occurring 21 days after the end of a contribution assessment period in relation to a bankrupt.

taxable value of a fringe benefit means the value, for the purposes of the *Bankruptcy Act 1966*, of the benefit.

4 Sections 10 to 12

Repeal the sections.

5 Subsection 13(1)

Omit all the words after “section 9”.

6 Section 22A

Repeal the section.

7 Section 23

Omit “external”.

8 Section 26

Repeal the section, substitute:

26 Taxable value of housing fringe benefits

Subject to this Part, the value of a housing fringe benefit in relation to a contribution assessment period is the portion of the market value of the recipient's current housing right that exceeds the recipient's rent.

9 Sections 28 to 29A

Repeal the sections.

10 At the end of section 31

Add:

- (2) For the purposes of this section, “deducted home consumption expenditure” referred to in the definition of *exempt food component* in section 136 is to be taken to be:

- (a) in relation to a person of the age of 12 years or over—\$42; and
(b) in relation to a person under the age of 12 years—\$21.

Example: **Calculation of the value of a living-away-from-home allowance.**

Assume that a bankrupt living away from their family is given a living-away-from-home allowance of \$220 a week. Of this amount, \$100 represents reasonable compensation for the costs of accommodation (i.e. the “exempt accommodation component” is \$100), and \$80 represents reasonable compensation for the cost of food.

The remaining \$40 is compensation for the disadvantage of living away from home in a town where facilities that would be available at home are not available.

Under subsection 31(2), the exempt food component is \$80 minus \$42 (i.e. the compensation for increased food cost less the deducted home consumption expenditure). The value of the benefit is:

$$\$200 - \$100 - (\$80 - \$42) = \$62$$

11 Sub-subparagraph 32(b)(ii)(B)

Omit “and”.

12 Paragraph 32(c)

Repeal the paragraph.

13 Section 36

Repeal the section, substitute:

36 Taxable value of board fringe benefits

Subject to this Part, the value of a board fringe benefit is:

- (a) in relation to a contribution assessment period beginning:
(i) on 1 July 1992; or
(ii) during the year beginning on 1 July 1992;
\$1; and

- (b) in relation to a later contribution assessment period—a sum worked out according to the formula:

$$1 \times CPI$$

where:

CPI is the increase in the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities published by the Australian Statistician in respect of the period that commences on 1 July 1992 and ends immediately before the start of the financial year in which the contribution assessment period commences.

14 Section 37

Repeal the section.

15 Division 11 of Part III

Repeal the Division.

16 Section 46

Repeal the section, substitute:

46 Contribution assessment period in which residual fringe benefits are to be assessed

A residual benefit that is provided during a period which extends over 2 or more contribution assessment periods is subject to assessment for income contribution in each of those periods.

17 Sections 48 and 49

Repeal the sections.

18 Section 50

Repeal the section, substitute:

50 Value of residual fringe benefits

Subject to this Part, the value of a residual fringe benefit in relation to a contribution assessment period is the cost to the provider of providing the benefit, reduced by the amount of the recipient's contribution.

19 Section 51

Repeal the section.

20 Divisions 14, 14A and 14B of Part III

Repeal the Divisions.

21 Subsection 136(1)

Insert:

contribution assessment period has the meaning given by section 139K of the *Bankruptcy Act 1966* as in force from time to time.

22 Subsection 136(1) (definition of *family member*)

Repeal the definition, substitute:

family member, in relation to:

- (a) a benefit provided to an employee, or to an associate of an employee, means:
 - (i) the employee; or
 - (ii) the spouse of the employee; or
 - (iii) a child of the employee; and
- (b) a benefit provided to a bankrupt, or to an associate of a bankrupt, means:
 - (i) the bankrupt; or
 - (ii) the spouse of the bankrupt; or
 - (iii) a child of the bankrupt;’.

23 Subsection 136(1) (definition of *fringe benefit*)

Repeal the definition, substitute:

fringe benefit, in relation to a bankrupt, in relation to a contribution assessment period, means a benefit provided at any time during the period by any person to the bankrupt, other than:

- (a) a benefit provided to the bankrupt by the bankrupt’s spouse under, or because of a genuine maintenance agreement between the spouses; or
- (b) a benefit provided under a maintenance order, within the meaning of the *Bankruptcy Act 1966* as in force from time to time; or
- (c) the benefit of an order by a court in favour of the bankrupt in respect of costs of litigation; or
- (d) educational expenses paid by any person in respect of a child of:
 - (i) the bankrupt; or
 - (ii) the bankrupt’s spouse; or
- (e) the amount of a refund, or part of a refund, due by the Commissioner to the bankrupt under a law of the Commonwealth, being an amount that the Commissioner has lawfully offset against a tax liability, within the meaning of the *Taxation Administration Act 1953* as in force from time to time, of the bankrupt; or
- (f) subject to subsection (1A), a benefit of a kind referred to in paragraphs (f) to (p) (inclusive) of the definition of *fringe benefit* in this Act (in its unmodified form) as in force at the beginning of 1 July 1992; or
- (g) support by way of one or both of the following:
 - (i) lodging (including any board);
 - (ii) occasional use of a motor vehicle used for domestic purposes; up to a value of \$250 a week, if the support is provided by a person in the person’s principal place of residence, and the person is:
 - (iii) a close relative; or

- (iv) a brother or sister (including a half-brother, half-sister, adoptive brother or adoptive sister);
of the bankrupt.

Note: **Close relative**, in relation to a person, is defined in section 136 of the *Fringe Benefits Tax Assessment Act 1986* as:

- (a) the spouse of the person; or
- (b) a child or parent of the person; or
- (c) a parent of the person's spouse.

24 After subsection 136(1)

Insert:

- (1A) For the purposes of paragraph (f) of the definition of **fringe benefit** in subsection (1), paragraph (h) of the paragraphs referred to in that paragraph has effect as if “the employee, or by a relative of the employee,” were omitted and “the bankrupt” substituted.

Schedule 3—Modifications in relation to Part X of the Act

Part 1—Modifications of Part X of the Act—joint debtors

Note: See section 58.

Bankruptcy Act 1966

1 Section 187A

Omit “This Part”, substitute “(1) This Part”.

2 At the end of section 187A

Add:

- (2) In the application of this Part (other than subsection 187(1A)) to joint debtors, whether partners or not, an expression specified in one of the following rules of interpretation applies to the extent that the context reasonably permits:
 - (a) “a debtor” is to be read as “joint debtors”;
 - (b) “the debtor” is to be read as “the joint debtors”;
 - (c) “the debtor’s” is to be read as “the joint debtors”;
 - (d) if used in relation to a debtor:
 - (i) “he or she” is to be read as “they”; and
 - (ii) “his or her” is to be read as “their”; and
 - (iii) “him or her” is to be read as “them”; and
 - (iv) a noun or verb in the singular form is to be read as being in the plural form.
- (3) Subsection (2) applies, subject to any specific modifications of this Part by the *Bankruptcy Regulations 2021*.
- (4) To the extent that the context reasonably permits, a reference (by operation of subsection (2)) to joint debtors includes a reference to any of the joint debtors.
- (5) A reference to the affairs, or examinable affairs, of a debtor includes a reference to the separate affairs, or separate examinable affairs, of a joint debtor.

3 Subsection 188(1)

Omit “A debtor”, substitute “If each joint debtor is a person”.

4 Subsection 188(1)

Before “may sign”, insert “the joint debtors”.

5 Subsections 188(2AA) and (2AB)

Omit “the debtor”, substitute “each joint debtor”.

6 Subsections 188(2C) and (2D)

Omit “the debtor” (second occurring), substitute “each joint debtor”.

7 Subsection 188(4)

Before “debtor”, insert “joint”.

8 Paragraph 188A(2)(a)

Omit “the debtor’s property (whether or not already owned by the debtor when he or she executes the agreement)”, substitute “each joint debtor’s property (whether or not already owned by that joint debtor when the joint debtors execute the agreement)”.

9 Paragraph 188A(2)(c)

Omit “the debtor’s income (whether or not already derived by the debtor when he or she executes the agreement)”, substitute “each joint debtor’s income (whether or not already derived by that joint debtor when the joint debtors execute the agreement)”.

10 Paragraphs 188A(2)(e) and (l)

Omit “the debtor”, substitute “each joint debtor”.

11 Subsection 189AB(1)

Omit “When the debtor’s property becomes subject to control under this Division, the debtor’s property is charged with”, substitute “When the property of joint debtors becomes charged under this Division, the charges specified in subsection (1A) are created with respect to”.

12 After subsection 189AB(1)

Insert:

(1A) The charges are:

- (a) a charge over the joint property of the joint debtors; and
- (b) a separate charge over the separate property of each joint debtor.

13 Subsection 189AB(2)

Omit “the charge is not affected”, substitute “none of the charges is affected”.

14 Subsections 189AB(3) and (4)

Omit “The charge”, substitute “Each charge”.

15 Paragraph 189A(1)(a)

Repeal the paragraph, substitute:

- (a) summarising and commenting on the information about:
 - (i) the joint estates of the joint debtors; and
 - (ii) the separate estate of each joint debtor;that is available to the controlling trustee; and

16 Subsection 219(2)

Repeal the subsection, substitute:

- (2) For the purposes of subsection (1), the prescribed official name is “The Trustee (or Trustees) of the Property of (names of debtors), joint debtors”.

Part 2—Modifications of Part VIII of the Act—controlling trustees and trustees of personal insolvency agreements

Note: See section 63.

Bankruptcy Act 1966

17 Before Division 1 of Part VIII

Insert:

Division 1A—Interpretation

154A Interpretation

In this Part, in its application to Part X, a reference to a registered trustee includes a reference to a controlling trustee and a trustee of a personal insolvency agreement.

18 Section 156A

Repeal the section.

19 Subsection 157(1)

Repeal the subsection, substitute:

- (1) If:
- (a) the Official Trustee is:
 - (i) under section 188 or 192, the controlling trustee in relation to a debtor; or
 - (ii) under Part X, the trustee of a personal insolvency agreement; and
 - (b) the creditors wish to appoint, in place of the Official Trustee:
 - (i) a registered trustee or a solicitor as the controlling trustee; or
 - (ii) a registered trustee as the trustee of the personal insolvency agreement;

the creditors may do so by resolution at a meeting of creditors.

20 Section 158

Repeal the section, substitute:

158 Appointment of 2 or more controlling trustees

The creditors may appoint 2 or more controlling trustees jointly, or jointly and severally.

21 Section 159

Repeal the section.

22 Section 160

Repeal the section, substitute:

160 Vacancy in position of trustee—Official Trustee to act

If at any time there is no controlling trustee in relation to a debtor, or no trustee of a personal insolvency agreement under Part X, the Official Trustee is to act as the trustee.

23 After subsection 161(1)

Insert:

- (1A) This section does not apply in relation to a trustee of a personal insolvency agreement.

24 Section 180

Omit “trustee of an estate”, substitute “trustee, other than controlling trustee, under Part X”.

25 Subsection 181A(1)

Repeal the subsection, substitute:

- (1) The current controlling trustee or the current trustee of a personal insolvency agreement may, with the written consent of another trustee (either a registered trustee or the Official Trustee), nominate the other trustee as the new trustee.

26 Subsection 181A(4)

Repeal the subsection, substitute:

- (4) If no creditor lodges a written notice of objection with the current trustee at least 2 days before the specified date, the new trustee replaces the current trustee on the date specified in the notice.

Part 3—Modifications of Division 1 of Part V of the Act— debtors whose property is subject to control under Division 2 of Part X of the Act

Note: See section 64.

Bankruptcy Act 1966

27 Section 77F

Repeal the section, substitute:

77F Allowances and expenses to be paid out of debtor's property subject to control under Division 2 of Part X

If the evidence that a person gives, or the books that a person produces, under section 77C, relate to matters concerning the property of a debtor that is subject to control under Division 2 of Part X, any amount payable to the person under section 77D or 77E is to be paid out of that property.

28 Subsection 81(1)

Repeal the subsection, substitute:

- (1) Where a person (the *relevant person*) becomes a debtor whose property is subject to control under Division 2 of Part X, the Court or the Registrar may at any time (whether before or after control over that property has ended), on the application of:
 - (a) a person (a *creditor*) who has or had a debt that would be provable if the debtor were a bankrupt; or
 - (b) the controlling trustee; or
 - (c) the Official Receiver;summon the relevant person for examination in relation to the property that is subject to control under Division 2 of Part X.

Part 4—Modification under subsection 231(1) of the Act— personal insolvency agreements

Note: See subsection 69(1).

Bankruptcy Act 1966

29 Section 77F

Repeal the section, substitute:

77F Allowances and expenses to be paid out of debtor's property subject to personal insolvency agreement

If the evidence that a person gives, or the books that a person produces, under section 77C, relate to matters concerning the property of a debtor that is subject to a personal insolvency agreement, any amount payable to the person under section 77D or 77E is to be paid out of that property.

Part 5—Modifications under subsection 231(3) of the Act— personal insolvency agreements

Note: See subsection 69(2).

Bankruptcy Act 1966

30 Subsection 113(1)

Omit “presentation of a petition on which, or by virtue of the presentation of which, a person became a bankrupt”, substitute “making of a sequestration order”.

31 Subsection 113(1)

Omit “or, in the case of a debtor’s petition, the presentation of the petition”.

32 At the end of section 133

Add:

- (14) This section does not apply in relation to a personal insolvency agreement.

33 After paragraph 134(1)(b)

Insert:

- (ba) carry on a business of the debtor in accordance with an authorisation given under subsection (4);

34 At the end of section 134

Add:

- (4) If a personal insolvency agreement provides for the business of the debtor to be assigned to the trustee, the agreement may:
- (a) authorise the trustee to carry on a business of a debtor; and
 - (b) specify the period during which, and the conditions (if any) subject to which, the trustee may carry on the business.
- (5) The creditors may vary or terminate an authority under subsection (4) by passing a special resolution to that effect at a meeting.
- (6) This section extends only in relation to property of the debtor that is subject to the personal insolvency agreement.

35 Subsection 136(1)

Omit “Where any property of the bankrupt is subject to a mortgage”, substitute “Where any property of the debtor that is subject to the personal insolvency agreement is also subject to a mortgage”.

36 Subsection 137(1)

Omit “Where goods of a bankrupt”, substitute “Where goods of a debtor that are subject to a personal insolvency agreement”.

37 Paragraphs 138(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the property of a debtor that is subject to a personal insolvency agreement includes rights in respect of industrial property; and
- (b) the debtor is liable to pay royalties or a share of profits to a person in respect of those rights;

38 Paragraphs 138(1)(c) and (d)

Omit “the bankrupt”, substitute “the debtor”.

39 Paragraphs 139(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the trustee has seized or disposed of any goods in the possession or on the premises of a debtor that are subject to a personal insolvency agreement without notice of any claim by any person in respect of those goods; and
- (b) the goods were not, at the date of execution of the personal insolvency agreement, the property of the debtor;

40 Subsection 139(2)

Omit all the words after “in respect of property”, substitute:

that is subject to the personal insolvency agreement, being rates, land tax or municipal or other statutory charges that fall due on or after the date of execution of the personal insolvency agreement, 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 execution of the personal insolvency agreement

41 Subsection 139(3)

Repeal the subsection, substitute:

- (3) Where the trustee of a personal insolvency agreement carries on a business previously carried on by the debtor, the trustee is not personally liable for any payment in respect of long service leave or extended leave:
 - (a) for which the debtor was liable; or
 - (b) to which a person employed by the trustee in the person’s capacity as trustee of the personal insolvency agreement, or the legal personal representative of such a person, becomes entitled after the date of execution of the personal insolvency agreement.

42 Subsection 139(4)

Omit “the estate of a bankrupt”, substitute “a personal insolvency agreement”.

43 Section 139ZJ

Before “In”, insert “(1)”.

44 At the end of section 139ZJ

Add:

(2) In sections 139ZK, 139ZL and 139ZP, a reference to a bankrupt is to be read as a reference to a debtor.

(3) In subsection (2):

debtor means a person who has executed a personal insolvency agreement.

45 Paragraphs 139ZK(1)(e) and (f)

Omit “bankruptcy”, substitute “personal insolvency agreement”.

46 Subsection 139ZL(1)

Omit “If a bankrupt is liable to pay to the trustee a contribution under section 139P or 139Q, the Official Receiver”, substitute “If a debtor is liable to pay a specified amount of the debtor’s income to the trustee in accordance with a personal insolvency agreement, the Official Receiver”.

47 Subsection 139ZL(1)

Omit “make the contribution”, substitute “pay that amount”.

48 Paragraphs 139ZL(3)(a) and (b)

Omit “the contribution”, substitute “the amount of income”.

49 Subsection 139ZQ(1)

Omit “bankrupt under Division 3”, substitute “personal insolvency agreement because of the application of any of sections 120 to 125”.

50 Subsection 139ZR(3)

Omit “Division 3”, substitute “any of sections 120 to 125”.

Schedule 4—Modifications under Part XI of the Act— administration of estates of deceased persons

Note: See section 71.

Bankruptcy Act 1966

1 Section 49

Omit “debtor”, substitute “deceased debtor’s estate”.

2 Subsection 50(1)

Omit “debtor, but before the debtor becomes”, substitute “debtor who dies after presentation of a creditor’s petition but before becoming”.

3 Paragraph 50(1)(a)

Omit “debtor’s property”, substitute “deceased debtor’s estate”.

4 Paragraph 50(1)(b)

Omit “property”, substitute “estate”.

5 Paragraph 50(1A)(c)

Omit “debtor”, substitute “deceased debtor’s legal personal representative”.

6 Subsection 50(1B)

Omit “debtor’s property”, substitute “deceased debtor’s estate”.

7 Subsection 50(2)

Omit “debtor” (first occurring), substitute “legal personal representative of the deceased debtor”.

8 Subsection 50(2)

Before “debtor” (second and third occurring), insert “deceased debtor”.

9 Subsection 50(3)

Omit “debtor and the debtor’s”, substitute “deceased debtor and the deceased debtor’s”.

10 Subsection 50(4)

Before “debtor” (wherever occurring), insert “deceased”.

11 Subsection 50(4)

Before “debtor’s”, insert “deceased”.

12 Paragraph 50(5)(a)

Omit “a sequestration order had been made against the debtor”, substitute “an order had been made for the administration of the estate of the deceased debtor”.

13 Paragraph 50(5)(c)

Omit “debtor’s bankruptcy if a sequestration”, substitute “administration of the deceased debtor’s estate if an”.

14 At the end of section 50

Add:

(6) In this section:

legal personal representative, in relation to a deceased debtor, means:

- (a) the executor under the deceased debtor’s will; or
- (b) the administrator under letters of administration or court order; of the deceased debtor’s estate, or a part of that estate.

15 Subsection 73(1)

Omit “a bankrupt”, substitute “the legal personal representative of a deceased debtor”.

16 Subsection 73(1)

Omit “his or her” (wherever occurring), substitute “the deceased debtor’s”.

17 At the end of section 73

Add:

(2) In this section:

legal personal representative, in relation to a deceased debtor, means:

- (a) the executor under the deceased debtor’s will; or
- (b) the administrator under letters of administration or court order; of the deceased debtor’s estate, or a part of that estate.

18 Section 74

Repeal the section, substitute:

74 Annulment of administration

- (1) If a proposal to annul the administration of an estate is accepted by a special resolution of creditors at a meeting held in accordance with the Insolvency Practice Rules, the administration of the estate is annulled, by force of this subsection, on the day the special resolution is passed.
- (2) Within 2 business days after that day, the trustee of the estate must give to the Official Receiver a certificate, signed by the trustee, of the following matters:
 - (a) the name of the estate;

- (b) the number of the administration;
- (c) the terms and date of the special resolution.

Penalty: 5 penalty units.

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

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) The Official Receiver must enter the day on which the administration of the estate is annulled in the National Personal Insolvency Index.

19 Subsections 74A(2) and (3)

Omit “debtor”, substitute “legal personal representative of the deceased debtor”.

20 At the end of section 74A

Add:

- (8) In this section:

legal personal representative, of a deceased debtor, means:

- (a) the executor under the deceased debtor’s will; or
- (b) the administrator under letters of administration or court order; of the deceased debtor’s estate, or a part of that estate.

21 Subsection 75(2)

Repeal the subsection.

22 Subsection 81(1)

Repeal the subsection, substitute:

- (1) At any time during or after the administration under Part XI of the estate of a deceased debtor (the *relevant person*), the Court may, on the application of:
 - (a) a person (a *creditor*) who has or had a debt provable in the administration; or
 - (b) the trustee of the estate of the relevant person; or
 - (c) the Official Receiver;

summon an examinable person in relation to the estate of the relevant person for examination in relation to the administration.

- (1AA) For the purposes of subsection (1):

examinable person, in relation to an estate of the relevant person, means:

- (a) a person who is believed to be indebted to the estate; or
- (b) a person who may be able to give information about the relevant person or the examinable affairs of the relevant person; or
- (c) a person who has possession of books that may relate to:
 - (i) the relevant person; or
 - (ii) the examinable affairs of the relevant person; or

- (iii) the estate; or
- (d) the executor under the relevant person’s will; or
- (e) the administrator under letters of administration or court order;
of the relevant person’s estate, or a part of that estate.

23 Paragraph 81(1B)(b)

Repeal the paragraph, substitute:

- (b) relate to:
 - (i) the relevant person; or
 - (ii) the examinable affairs of the relevant person; or
 - (iii) the estate of the relevant person.

24 Subsection 81(11AA)

Repeal the subsection.

25 Subsection 81(12)

Before “relevant person” (wherever occurring), insert “estate of the”.

26 Subsection 81(14)

Omit “person, other than the relevant person,”, substitute “person”.

27 Subsection 82(1)

Omit all the words from and including “a bankrupt” to the end of the subsection, substitute “the estate of a deceased debtor was subject at the day of the order for the administration of the estate, or to which the estate may become subject because of an obligation incurred before that day, are provable in the administration of the estate”.

28 Subsection 82(1A)

Omit “bankrupt under a maintenance agreement or maintenance order before the date of the bankruptcy”, substitute “deceased debtor under a maintenance agreement or maintenance order during the person’s lifetime and before the date of the order for the administration of the deceased debtor’s estate”.

29 Paragraph 82(8)(b)

Omit “discharge of the bankrupt”, substitute “end of the administration of the deceased debtor’s estate”.

30 Section 87

Omit “debtor had not become a bankrupt”, substitute “estate of the deceased debtor had not become subject to administration under Part XI”.

31 Section 88

Omit “A payment made by a debtor to a creditor before the debtor became a bankrupt and representing in part principal and in part interest”, substitute:

A payment that:

- (a) is made to a creditor by;
 - (i) the deceased debtor before the person's death; or
 - (ii) the deceased debtor's estate before the date of the order for the administration of the estate; and
- (b) represents in part principal and in part interest;

32 Section 95

Omit "person was, at the time when he or she became a bankrupt", substitute "deceased debtor whose estate is being administered under Part XI was, at the time of the debtor's death".

33 Subsection 104(1)

Omit "bankrupt", substitute "legal personal representative of the deceased debtor".

34 At the end of section 104

Add:

- (4) In this section:

legal personal representative, of a deceased debtor, means:

- (a) the executor under the deceased debtor's will; or
- (b) the administrator under letters of administration or court order; of the deceased debtor's estate, or a part of that estate.

35 Paragraph 109(1)(a)

After "petitioning creditor", insert "or the trustee of the deceased debtor's estate".

36 Paragraph 109(1)(b)

Repeal the paragraph.

37 Subsection 109A(1)

Repeal the subsection, substitute:

- (1) If:
 - (a) a contract of employment with a person who has since died and whose estate is being administered under Part XI was subsisting immediately before the day of the person's death; or
 - (b) a contract of employment with the trustee, in the trustee's capacity as trustee, of an estate that is being administered under Part XI was subsisting immediately before the day of the order for the administration; 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:
 - (c) in the case that paragraph (a) applies:
 - (i) by the person; and
 - (ii) on the day;

- mentioned in that paragraph; or
- (d) in the case that paragraph (b) applies:
- (i) by the trustee; and
 - (ii) on the day;
- mentioned in that paragraph.

38 Subsection 109A(2)

After “trustee” (wherever occurring), insert “or legal personal representative”.

39 At the end of section 109A

Add:

(5) In this section:

legal personal representative, of a deceased debtor, means:

- (a) the executor under the deceased debtor’s will; or
- (b) the administrator under letters of administration or court order; of the deceased debtor’s estate, or a part of that estate.

40 Section 110

Repeal the section.

41 Section 114

Omit “becomes a bankrupt”, substitute “dies, and the debtor’s estate becomes subject to administration under Part XI,”.

42 Paragraph 117(1)(a)

Omit “a bankrupt”, substitute “a deceased debtor”.

43 Paragraph 117(1)(b)

Omit “which he or she”, substitute “which the deceased debtor”.

44 Paragraph 117(1)(b)

Omit “(whether before or after he or she became a bankrupt)”, substitute “at any time”.

45 Subsection 117(1)

Omit “the bankrupt”, substitute “the deceased debtor”.

46 Subsection 117(1)

Omit “in the trustee”, substitute “in the trustee of the deceased debtor’s estate being administered under Part XI”.

47 Paragraph 118(1)(a)

Omit “the presentation of a petition, or after the presentation of a petition, against a”, substitute “the making of an order under Part XI, or after the making of such an order, for the administration of the estate of a deceased”.

48 Subparagraph 118(1)(a)(ii)

Omit “and”.

49 Paragraph 118(1)(b)

Repeal the paragraph.

50 Subsection 118(1)

Omit “the bankrupt”, substitute “the deceased debtor”.

51 Subsection 118(3)

Omit “a bankrupt”, substitute “a deceased debtor”.

52 Subsection 118(3)

Omit “bankruptcy”, substitute “administration of the estate”.

53 Subsection 118(4)

Repeal the subsection, substitute:

(4) Where:

(a) a creditor has, in pursuance of subsection (1), paid to the trustee of the estate of a deceased debtor the proceeds of the sale of property or other moneys that were received as a result of execution having been issued by the creditor, or on the creditor’s behalf, against property of the deceased debtor or of the attachment by the creditor, or on the creditor’s behalf, of a debt due to the deceased debtor; and

(b) that property or debt would not have been property divisible amongst the creditors of the deceased debtor if the estate of the deceased debtor had become subject to administration under Part XI immediately before the execution was issued or the debt was attached, as the case may be;

the trustee must pay those proceeds or other moneys to the legal personal representative of the deceased debtor or to a person authorised by the legal personal representative in writing for the purpose.

54 Subsection 118(9)

Repeal the subsection, substitute:

(9) Subject to subsection (10), if a creditor has, within 6 months before the making of an order under Part XI, or after the making of such an order, for the administration of the estate of a deceased debtor obtained a charge or charging order against property of the deceased debtor, the charge or charging order, as the case may be, is void as against the trustee of the estate of the deceased debtor.

55 Subsection 118(10)

Omit “a debtor” (wherever occurring), substitute “a deceased debtor’s estate”.

56 Subsection 118(10)

Omit “the debtor”, substitute “the deceased debtor”.

57 Paragraphs 118(11)(a) and (b)

Omit “who, after the sale, becomes a bankrupt”, substitute “who dies and whose estate becomes, or of a deceased debtor’s estate that becomes, after the sale, subject to an administration order under Part XI”.

58 Subsection 118(11)

Omit “of the bankrupt”.

59 Subsection 118(12)

Insert:

legal personal representative, of a deceased debtor, means:

- (a) the executor under the deceased debtor’s will; or
- (b) the administrator under letters of administration or court order; of the deceased debtor’s estate, or a part of that estate.

60 Subsection 119(1)

Omit “against a debtor”, substitute “for an order for the administration of a deceased debtor’s estate”.

61 Paragraphs 119(1)(a) and (b)

Omit “debtor” (wherever occurring), substitute “estate”.

62 Subsection 119(2)

Omit “the reference to the Court of a debtor’s petition against a debtor”, substitute “the presentation to the Court of a petition by a person administering the estate of a deceased debtor for an order for the administration of the estate”.

63 Paragraphs 119(2)(a) and (b)

Omit “debtor” (wherever occurring), substitute “estate”.

64 Subsection 119(3)

Omit “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”, substitute “a petition has been given under subsection (1) or”.

65 Subsection 119(3)

Omit “the debtor” (wherever occurring), substitute “the estate”.

66 Subsection 119(4)

Omit “against a debtor”, substitute “for an order for the administration of a deceased debtor’s estate”.

67 Paragraphs 119(4)(a) and (b)

Omit “debtor” (wherever occurring), substitute “estate”.

68 Subsection 119(5)

Omit “the reference to the Court of a debtor’s petition against a debtor”, substitute “the presentation to the Court of a petition by a person administering the estate of a deceased debtor for an order for the administration of the estate”.

69 Paragraphs 119(5)(a) and (b)

Omit “debtor” (wherever occurring), substitute “estate”.

70 Subsection 119(6)

Omit “against a debtor” (first occurring), substitute “for an order for the administration of a deceased debtor’s estate”.

71 Subsection 119(6)

Omit “the reference to the Court of a debtor’s petition against a debtor”, substitute “the presentation to the Court of a petition by a person administering the estate of a deceased debtor for an order for the administration of the estate”.

72 Subsection 119(6)

Omit “the debtor” (wherever occurring), substitute “the estate”.

73 Subsection 119(7)

Omit “a debtor”, substitute “a deceased debtor’s estate”.

74 Subsection 119(7)

Omit “the debtor becomes a bankrupt”, substitute “the estate is administered under Part XI”.

75 Subsection 119A(1)

Omit “has become a bankrupt”, substitute “has died, and the debtor’s estate has become subject to administration under Part XI,”.

76 Paragraphs 119A(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the sheriff must deliver or pay to the trustee:
 - (i) any property of the estate in the sheriff’s possession under a process of execution issued by or on behalf of a creditor; and
 - (ii) any proceeds of the sale of property of the estate or other moneys in the sheriff’s possession, being proceeds of the sale of property sold,

- whether before or after the debtor died, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor or estate, whether before or after the debtor died, in pursuance of any such process; and
- (iii) any moneys in the sheriff's possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the estate; or
- (b) the registrar or other officer of the court must pay to the trustee:
- (i) any proceeds of the sale of property of the estate or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the debtor died, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the estate; and
 - (ii) any moneys in court that have been paid into court, whether before or after the debtor died, in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the estate;

77 Subsection 119A(5)

Repeal the subsection.

78 Paragraph 119A(6)(a)

Omit “bankrupt”, substitute “deceased debtor”.

79 Paragraph 119A(6)(b)

Omit “bankrupt”, substitute “estate”.

80 Subsection 119A(7)

Omit “a bankrupt”, substitute “the estate of a deceased debtor”.

81 Subsection 122(1)

Omit “insolvent (the *debtor*)”, substitute “insolvent and who subsequently dies (the *deceased debtor*)”.

82 Subsection 122(1)

Omit “in the debtor’s bankruptcy”, substitute “of the deceased debtor’s estate being administered under Part XI”.

83 Paragraph 122(1)(b)

Repeal the paragraph, substitute:

- (b) was made in the period beginning 6 months before the presentation of the petition for an order for the administration of the estate and ending immediately before the day of the order.

84 Subsection 122(1A)

Omit “by the debtor”, substitute “by the deceased debtor before the debtor’s death”.

85 Paragraphs 122(1A)(a) and (b)

Before “debtor”, insert “deceased”.

86 Paragraph 122(1A)(b)

Before “debtor’s”, insert “deceased”.

87 Paragraph 122(2)(b)

After “debtor”, insert “or the estate of the deceased debtor”.

88 Subsection 122(4A)

After “debtor” (wherever occurring), insert “or the estate of the deceased debtor”.

89 Subsection 123(1)

Omit “becomes a bankrupt”, substitute “has died, and the debtor’s estate has become subject to administration under Part XI”.

90 Paragraphs 123(1)(a), (b) and (c)

After “debtor”, insert “before the debtor died”.

91 Paragraph 123(1)(e)

Omit “before the day on which the debtor became a bankrupt”, substitute “on or before the day on which the debtor died”.

92 Subsection 123(4)

Before “debtor”, insert “deceased”.

93 Subsection 123(4)

Omit “became a bankrupt”, substitute “died”.

94 Subsection 123(6)

Omit “a debtor becomes”, substitute “a deceased debtor before the debtor’s death became”.

95 Subsection 123(6)

Before “debtor” (second and third occurring), insert “deceased”.

96 Subsection 124(1)

Omit “becomes, or has become, a bankrupt”, substitute “has died, and the person’s estate has become subject to administration under Part XI”.

97 Paragraph 124(1)(a)

After “made”, insert “on or”.

98 Paragraph 124(1)(a)

Omit “becomes a bankrupt”, substitute “dies”.

99 Paragraph 124(1)(b)

Omit “on or”.

100 Paragraph 124(1)(b)

Omit “became a bankrupt”, substitute “died”.

101 Subsection 125(1)

Omit “an undischarged bankrupt”, substitute “deceased and that the person’s estate is being administered under Part XI”.

102 Section 126

Repeal the section.

103 After subsection 127(1)

Insert:

(1A) In the application of Part XI to this section, the reference in subsection (1) to the date on which a person became bankrupt is taken to be a reference to the date on which administration of a deceased debtor’s estate commenced.

104 Paragraphs 134(1)(a), (aa), (ab) and (da)

Omit “bankrupt”, substitute “estate of the deceased debtor”.

105 Paragraph 134(1)(da)

Omit “in the bankruptcy”, substitute “in the administration of the deceased debtor’s estate”.

106 Paragraph 134(1)(e)

Omit “bankrupt” (wherever occurring), substitute “deceased debtor’s estate”.

107 Paragraph 134(1)(f)

Omit “in the bankruptcy”, substitute “in the administration of the deceased debtor’s estate”.

108 Paragraph 134(1)(g)

Omit “bankrupt”, substitute “deceased debtor”.

109 Paragraph 134(1)(h)

Repeal the paragraph, substitute:

(h) deal with property to which the estate of the deceased debtor is beneficially entitled as tenant in tail in the same manner as the legal personal representative of the deceased debtor could deal with it if the estate were not being administered under Part XI;

110 Paragraph 134(1)(i)

Omit “bankrupt”, substitute “deceased debtor”.

111 Paragraph 134(1)(m)

Omit “the bankrupt” (first occurring), substitute “the legal personal representative of the deceased debtor”.

112 Subparagraph 134(1)(m)(i)

Omit “the bankrupt”, substitute “the estate of the deceased debtor”.

113 Subparagraph 134(1)(m)(ii)

Omit “bankrupt’s” (wherever occurring), substitute “estate’s”.

114 Subparagraph 134(1)(m)(iii)

Omit “bankrupt”, substitute “estate”.

115 Paragraph 134(1)(m)

Omit “bankrupt’s services, make such allowance to the bankrupt”, substitute “services of the legal personal representative of the deceased debtor, pay such remuneration to the legal personal representative”.

116 Paragraph 134(1)(ma)

Repeal the paragraph, substitute:

- (ma) pay such remuneration out of the estate of the deceased debtor as the trustee thinks fit to the legal personal representative of the deceased debtor.

117 Paragraphs 134(1)(n) and (o)

Omit “the bankrupt”, substitute “the estate of the deceased debtor”.

118 Subsection 134(1A)

Omit “An allowance made to the bankrupt”, substitute “Remuneration paid to the legal personal representative of the deceased debtor”.

119 At the end of section 134

Add:

- (4) In this section:

legal personal representative, of a deceased debtor, means:

- (a) the executor under the deceased debtor’s will; or
(b) the administrator under letters of administration or court order;
of the deceased debtor’s estate, or a part of that estate.

120 Paragraph 138(1)(a)

Omit “a bankrupt”, substitute “an estate of a deceased debtor”.

121 Paragraphs 138(1)(b), (c) and (d)

Omit “bankrupt”, substitute “estate”.

122 Subsection 139ZL(6)

Omit “bankrupt”, substitute “legal personal representative of the deceased debtor”.

123 At the end of section 139ZL

Add:

(11) In this section:

legal personal representative, of a deceased debtor, means:

- (a) the executor under the deceased debtor’s will; or
- (b) the administrator under letters of administration or court order;
of the deceased debtor’s estate, or a part of that estate.

124 Subsection 139ZQ(5)

Omit “bankrupt”, substitute “legal personal representative of the deceased debtor”.

125 Subsection 139ZQ(10)

Insert:

legal personal representative, of a deceased debtor, means:

- (a) the executor under the deceased debtor’s will; or
- (b) the administrator under letters of administration or court order;
of the deceased debtor’s estate, or a part of that estate.

126 Paragraph 143(a)

Omit “bankrupt’s statement of”, substitute “statement of a deceased debtor’s”.

127 Section 146

Omit “a bankrupt”, substitute “the legal personal representative of a deceased debtor”.

128 Section 146

Omit “his or her affairs” (wherever occurring), substitute “the deceased debtor’s affairs”.

129 Section 146

Omit “bankrupt” (second occurring), substitute “legal personal representative”.

130 Paragraph 156A(1)(a)

Before “debtor” (first occurring), insert “deceased”.

131 Paragraphs 156A(1)(a) and (3)(a)

Omit “debtor becomes a bankrupt”, substitute “deceased debtor’s estate is administered under Part XI”.

132 Paragraph 156A(3)(a)

Omit “estate of the bankrupt”, substitute “estate”.

133 Subsection 277B(2) (after table item 2)

Insert:

2A subsection 74(2) 1 penalty unit

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

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

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

| | |
|--|--|
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) /sub-subparagraph(s) |
| C[x] = Compilation No. x | pres = present |
| Ch = Chapter(s) | prev = previous |
| def = definition(s) | (prev...) = previously |
| Dict = Dictionary | Pt = Part(s) |
| disallowed = disallowed by Parliament | r = regulation(s)/rule(s) |
| Div = Division(s) | reloc = relocated |
| ed = editorial change | renum = renumbered |
| exp = expires/expired or ceases/ceased to have effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = <i>Legislation Act 2003</i> | Sch = Schedule(s) |
| LIA = <i>Legislative Instruments Act 2003</i> | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given effect | SLI = Select Legislative Instrument |
| (md not incorp) = misdescribed amendment cannot be given effect | SR = Statutory Rules |
| mod = modified/modification | Sub-Ch = Sub-Chapter(s) |
| No. = Number(s) | SubPt = Subpart(s) |
| | <u>underlining</u> = whole or part not commenced or to be commenced |

Endnote 3—Legislation history

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
|--|---------------------------|----------------------------|---|
| Bankruptcy Regulations 2021 | 19 Mar 2021 (F2021L00261) | 1 Apr 2021 (s 2(1) item 1) | |
| Bankruptcy Amendment (Service of Documents) Regulations 2022 | 5 Apr 2022 (F2022L00528) | 6 Apr 2022 (s 2(1) item 1) | — |

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|-----------------|-------------|--|---|
| Bankruptcy Amendment (Discharge from Bankruptcy) Act 2023 | 94, 2023 | 22 Nov 2023 | Sch 1 (items 20–27, 29): 23 Nov 2023 (s 2(1) item 1) | Sch 1 (items 27, 29) |

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---------------------|
| Part 1 | |
| s 2 | rep LA s 48D |
| Part 13 | |
| Division 2 | |
| s 75 | ed C1 |
| s 76 | am No 94, 2023 |
| Part 16 | |
| Division 1 | |
| s 102 | am F2022L00528 |
