

BANKRUPTCY REGULATIONS 2021

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister to the Attorney-General

under the *Bankruptcy Act 1966*.

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Bankruptcy Regulations 2021* (the Regulations) address the sunseting of the *Bankruptcy Regulations 1996* on 1 April 2021, and remake them in substantially the same form.

The *Bankruptcy Act 1966* (the Act) regulates Australia's personal insolvency system and provides a framework to allow people in severe financial stress to discharge unmanageable debts while providing for the realisation of a debtor's available assets for distribution to affected creditors.

Section 315 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The purpose of the Regulations is to give form to many administrative requirements of the Act. Accordingly, they are procedural in nature and are essential for the efficient administration of bankruptcies, debt agreements and other formal insolvency options governed by the Act.

CONSULTATION

Consistent with the requirements of the *Legislation Act 2003*, the Regulations have been informed by close collaboration with Australian Financial Security Authority (AFSA), and a public consultation process. Stakeholders including the Australian Taxation Office, along with key insolvency practitioner, creditor and consumer advocacy organisations made submissions on an exposure draft of the Regulations. AFSA, as the personal insolvency regulator, is supportive of the Regulations.

REGULATION IMPACT STATEMENT

The *Sunsetting Legislative Instruments Guidance Note*, issued by the Office of Best Practice Regulation, stipulates that agencies can self-assess the performance of an instrument. The Attorney-General's Department has assessed that the Regulations are operating effectively and efficiently and that a Regulation Impact Statement is not required.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Bankruptcy Regulations 2021

This Legislative Instrument (the Regulations) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Bankruptcy Regulations 2021* (the Regulations) address the sunset of the *Bankruptcy Regulations 1996* on 1 April 2021, and remake them in substantially the same form.

The *Bankruptcy Act 1966* (the Act) regulates Australia's personal insolvency system and provides a framework to allow people in severe financial stress to discharge unmanageable debts while providing for the realisation of a debtor's available assets for distribution to affected creditors.

The Regulations give form to many administrative requirements of the Act. Accordingly, they are procedural in nature and are essential for the efficient administration of bankruptcies, debt agreements and other formal insolvency options governed by the Act.

Human rights implications

The impact of the Regulations on the following human rights has been considered:

- the rights of equality and non-discrimination
- the right to a fair trial
- the presumption of innocence
- the right to privacy and reputation, and
- the right to security of the person and freedom from arbitrary detention.

Right to equality and non-discrimination

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) states that '[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Certain provisions in the Regulations seek to promote equality and non-discrimination by ensuring people of diverse backgrounds are provided more flexible means of engaging with bankruptcy

processes. In particular, certain provisions make the bankruptcy system more accessible for people with a disability, or those who speak a language other than English.

For example, sections 20 and 55 of the Regulations provide that another person may sign relevant documents on behalf of a debtor where that debtor is unable to read or sign the documents due to:

- blindness or low vision
- illiteracy or partial illiteracy
- insufficient familiarity with the English language, or
- physical incapacity.

In this way, the Regulations provide flexibility, making bankruptcy processes more accessible for debtors of diverse backgrounds, thereby promoting equality and non-discrimination before the law.

The right to a fair trial

Article 14 of the ICCPR includes the right to a fair trial. Specifically, article 14(1) provides that ‘everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’ and article 14(3) provides for minimum guarantees in a fair trial. The right to a fair trial is engaged by laws that regulate the rules of evidence in courts or tribunals, or provide for special procedures for witnesses to give evidence.

The Regulations contain a number of provisions that provide for the use of evidentiary certificates, including in relation to offences which can be dealt with by the issue of an infringement notice. Evidentiary certificates allow a third party to provide the court with documents which are deemed to be admissible in court as prima facie evidence of the matters contained within them.

The provisions in the Regulations which provide for evidentiary certificates include:

- Subsection 70(3) - which deems a certificate given by the trustee of a personal insolvency agreement – stating that no dividend is payable to creditors – to be prima facie evidence of the matters stated in that certificate. Subsection 70(3) also permits the certificate to be tendered in evidence without further proof.
- Section 85 – which deems an extract of information from the National Personal Insolvency Index to be admissible in any proceedings as prima facie evidence of the matters contained in that extract.
- Section 95 – which allows the Inspector-General in Bankruptcy to sign a certificate in relation to an infringement notice (for example, a certificate stating that the debtor has failed to pay the infringement notice penalty). That certificate would serve as prima facie evidence of the matters contained in it, at a prosecution hearing for the infringement offence.

- Section 104 – which deems a certificate, purporting to be signed by the Inspector-General in Bankruptcy, verifying that a debtor’s statement of affairs is in the approved form, to be prima facie evidence of the matters in that certificate.

The use of evidentiary certificates has the potential to limit the fairness of a trial. An evidentiary certificate allows third parties to provide the court with evidence—without appearing in court and therefore without being challenged about that evidence. The *Guide to Framing Commonwealth Offences* states that evidentiary certificates should be used rarely:

Evidentiary certificate provisions are generally only suitable where they relate to formal or technical matters that are not likely to be in dispute but that would be difficult to prove under the normal evidential rules, and should be subject to safeguards.

The evidentiary certificate provisions contained in the Regulations aim to address the legitimate objective of improving the efficiency of court proceedings, and avoiding the need for further enquiry into the matters contained in the certificates. Any potential limitations on the right to a fair trial entailed by evidentiary certificates is reasonable, necessary and proportionate to this objective.

Firstly, they have been limited to use in situations where the person issuing the certificate has first-hand knowledge of the matters contained in it – for example the Inspector-General or the trustee – who would have already comprehensively investigated the issue at hand.

Secondly, the certificates’ contents are matters of fact not law, and are procedural and non-controversial in nature. Finally, the relevant provisions include safeguards, as they explicitly deem the evidentiary certificates to be prima facie evidence of the matters within them (rather than conclusive evidence), and do not prevent evidence to the contrary being adduced.

Presumption of innocence

Article 14 of the ICCPR also includes the presumption of innocence. Specifically, article 14(2) provides that ‘everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.’ This right to be presumed innocent is potentially limited by criminal offences that require the accused to prove or establish the absence of an element of an offence. Strict liability offences do this: they provide that the prosecution does not have to prove the mental elements of intention, knowledge, recklessness or negligence in order to charge a person with committing the offence.

The Regulations potentially limit the right to be presumed innocent as they create strict liability offences in sections 39, 41, 44, 52, 53, 62, 66, 67, 68, 70, 72 and 74.

The creation of strict liability offences pursues the legitimate objective of ensuring these contraventions can be prosecuted, which is necessary to ensure the integrity of the bankruptcy regulatory regime. The imposition of strict liability is justified for the relevant offences, because it would be difficult to prove the requisite mental element (for example, intent) for those offences. For example, Subsection 53(1) of the Regulations provides that if the trustee of a debtor's estate finalises the administration of the estate, the trustee must give the Official Receiver written notice of the finalisation within five business days. The imposition of strict liability is necessary for this offence, because it would be difficult to prove that the trustee intended not to give the required notice to the Official Receiver.

The infringement on this right is limited, because the penalties imposed for the strict liability offences are minor, with most imposing only one or two penalty units (currently \$110 and \$222 respectively). The exception is the offence in subsection 39(3), which imposes a maximum of 10 penalty units for a person discharged from bankruptcy who fails to give notice to the trustee about certain changes to their circumstances.

Thus, whilst the creation of strict liability offences may limit the right to be presumed innocent, the limitation is reasonable, necessary and proportionate to the legitimate aim of efficiently regulating, and upholding the integrity of, the bankruptcy system.

Prohibition on interference with privacy

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks.

Laws that affect privacy should be precise, and not give decision-makers too much discretion in authorising interferences with privacy. They should provide proper safeguards against arbitrary interference. To avoid being considered arbitrary, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.

Relevantly for the Regulations, the prohibition on interference with privacy and attacks on reputation may be engaged by legislation that involves:

- the collection, storage, security, use, disclosure or publication of personal information
- the regulation of information held on a public register, or
- authorising the compulsory occupation or acquisition of a home.

This right to privacy is impacted by two measures within the Regulations, namely the establishment of the National Personal Insolvency Index, and the realisation of a debtor's home for the repayment of their debts.

I. The National Personal Insolvency Index

Part 13 of the Regulations establishes the National Personal Insolvency Index (the Index): a publicly available electronic record of some personal insolvency proceedings in Australia. The Index provides information about individuals who have been subject to proceedings under the Act from August 1928, including those subject to bankruptcies, debt agreements, personal insolvency agreements, and 'Part XI administrations' (known as bankrupt deceased estates). Any person can access the information of the Index, for a fee.

Part 13 of the Regulations prescribes the types of information which are to be recorded on the Index in relation to a debtor, including their name, date of birth, residential address, occupation, any previous names and aliases, and details about the insolvency proceeding they are involved in.

While the storage of this personal information on the publicly available Index might interfere with a person's privacy, it aims to achieve the legitimate objective of providing notification of bankruptcy information to the public at large. This public notification is important because it:

- facilitates the determination of a person's eligibility to hold public office in certain circumstances
- enables people to know whether a person they are dealing with (or contemplating dealing with) commercially is an undischarged bankrupt, or subject to some other formal personal insolvency administration
- provides information to credit providers about a person's credit-worthiness, and
- informs regulatory agencies or professional bodies about a person's bankruptcy status where this is relevant to their ability to be employed or licensed in certain professions.

The limitation on the right to privacy is reasonable, necessary and proportionate to achieve this aim. Part 13 is sufficiently precise, stipulates exactly which decision-makers have the power to interfere with a debtor's privacy, and circumscribes the scope of that power. Part 13 only confers these powers to government bodies: the Inspector-General in Bankruptcy and the Official Receiver. It also sets out in precise detail the types of information to be recorded on the Index, and how it is to be collected: it confers very little discretion on the relevant decision-makers.

The Regulations contain appropriate safeguards against arbitrary interference with a person's privacy. In particular, section 80 contains a mechanism for applying for personal information to not be entered into the Index, or to be removed from the Index for personal safety considerations. If a debtor or

bankrupt believes that publishing their address on the Index may jeopardise their safety, they may apply to have the address suppressed.

As such, while the requirement to enter personal information about debtors on the Index may interfere with the right to privacy, the limitation is reasonable, necessary and proportionate to achieve the legitimate aim of creating a transparent credit system in which consumers and creditors can transact with confidence.

II. Acquisition of personal property, including the home

As mentioned, the right to freedom from interference with privacy may be engaged by policies which authorise the compulsory occupation or acquisition of a home. This right might be impacted by the Regulations, which give administrative form to the Act's system for realising a debtor's property and distributing it to that debtor's various creditors.

Section 58 of the Act provides that, upon bankruptcy, a debtor's divisible property vests in the trustee. That property can then be sold to repay a debtor's creditors. Depending on a number of factors, the debtor's home may be acquired and sold by the trustee for this purpose.

This limitation on the freedom from interference with a person's privacy is necessary to achieve the legitimate goal of ensuring creditors receive an equitable distribution of the bankrupt person's assets. Without this mechanism to realise a person's home for the repayment of a bankrupt's debt, lenders may not have the confidence to provide credit to consumers, which would place downward pressure on the economy.

The interference with the right to privacy is limited – while a trustee may acquire a debtor's home to realise their debt, Division 3 of the Regulations prescribes certain personal property which is *not* available for the payment of debts. This exempt property includes (for example) household furniture, beds, washing machines, computers, telephones, personal property with sentimental value, tools of trade, and a vehicle for personal use (up to a specified value). By quarantining certain goods considered to be household essentials, the Regulations aim to ensure that a bankrupt is able to continue living according to current social standards. This safeguard balances the interests of creditors in recouping their debts, with the rights of bankrupts.

While the Regulations give form to a system which allows bankruptcy trustees to acquire a bankrupt person's home, this limitation on the right to freedom from interference with a person's privacy is justified. It is reasonable, necessary and proportionate to achieving the legitimate aim of supporting a bankruptcy system which facilitates the repayment of creditors.

The right to security of the person and freedom from arbitrary detention

Article 9 of the ICCPR requires that persons not be subject to arrest and detention, except as provided for by law, and provided that neither the arrest nor the detention is arbitrary. The right applies to all forms of detention where people are deprived of their liberty. This right may be engaged by policies and laws which grant a power of arrest.

The Regulations may impact this right to freedom from arbitrary detention, as certain provisions relate to arrest powers created by the Act. For example:

- Section 78 of the Act permits a Court to issue a warrant for the arrest of a debtor in certain circumstances, including where they have absconded to avoid paying their debts, they have destroyed or concealed property or books relating to their examinable affairs, or they have failed to comply with a Court order. Section 23 of the Regulations provides that an arresting officer must immediately notify a Court Registrar if a person is arrested under a warrant issued under section 78 of the Act.
- Subsection 264B(1) of the Act permits a Court to issue an arrest warrant for a debtor who, despite a Court summons, fails to attend before the Court. Section 87 of the Regulations provides that, where it would be impracticable to immediately bring that apprehended debtor before the Court, the person executing the warrant must notify the Court Registrar of an alternative day and time to bring the debtor before the Court.

These provisions do not create the power to arrest a debtor, but instead place limits upon the person executing an arrest warrant. As such, sections 23 and 87 of the Regulations promote the right to freedom from arbitrary arrest and detention.

Conclusion

The Regulations are compatible with human rights because they promote the rights to equality and non-discrimination, and place limits on the Act's ability to interfere with a person's freedom from arbitrary arrest and detention. To the extent that the Regulations may limit certain human rights, those limitations are reasonable, necessary and proportionate.

NOTES ON SECTIONS

Part 1 – Preliminary

Section 1 – Name

Section 1 provides that the title of the Regulations is the *Bankruptcy Regulations 2021*.

Section 2 – Commencement

Section 2 provides for the commencement of provisions of the Regulations, as set out in the table. Table item 1 provides that the whole of the Regulations commence on 1 April 2021.

Section 3 – Authority

Section 3 provides that the Regulations are made under the *Bankruptcy Act 1966*.

Section 4 – Definitions

The note to section 4 provides a non-exhaustive list of expressions used in the Regulations that are defined in the Act. The purpose of the note is to facilitate understanding of terms used throughout the Regulations, including ‘approved form’, ‘the Court’, ‘registered trustee’ and ‘Registrar’.

Section 4 provides definitions of the following terms used in the Regulations.

Act

The term ‘Act’ is defined as the *Bankruptcy Act 1966*.

Charge period

The term ‘charge period’ is defined as having the same meaning as in the *Bankruptcy (Estate Charges) Act 1997*.

Contribution assessment period

The term ‘contribution assessment period’ (CAP) is defined as having the meaning given by section 139K of the Act. This definition is relevant to several calculations made under the Regulations, including the calculation of fringe benefits and income contributions.

Section 139K defines a CAP, in relation to a bankrupt as a period that:

- begins on the day the bankrupt becomes a bankrupt or an anniversary of that day during the bankruptcy, and
- ends one year after that day or anniversary, or if the bankrupt is discharged or the bankruptcy is annulled within that year, upon the discharge or annulment.

Controlling trustee

The term ‘controlling trustee’ is defined as having the meaning given by Part X of the Act.

Current condition

The term ‘current condition’ is defined as having the meaning given by section 5-10 of Schedule 2 to the Act.

Estate charge

The term ‘estate charge’ is defined as an interest charge or a realisations charge.

FBTA Act

The term 'FBTA Act' is defined to mean the *Fringe Benefits Tax Assessment Act 1986* as in force at the beginning of 1 July 1992. This definition is relevant to section 35 of the Regulations and Schedule 2 to the Regulations which modify the application of the Fringe Benefits Tax Assessment Act for the purposes of the definition of 'income' in the Act.

Fees and Remuneration Determination

The term 'Fees and Remuneration Determination' is defined to mean the determination in force under subsection 316(1) of the Act. Section 316(1) of the Act permits the Minister to make legislative instruments determining the amounts of fees and of remuneration of the Official Trustee.

Index

The term 'Index' is defined as the National Personal Insolvency Index that is established under section 73 of the Regulations.

Infringement notice

The term 'infringement notice' is defined as an infringement notice given under section 90 of the Regulations.

Infringement notice provision

The term 'infringement notice provision' is defined as meaning an offence of a kind referred to in the table in subsection 277B(2) of the Act.

Interest charge

The term 'interest charge' is defined as having the same meaning as in Part XV of the Act. Part XV of the Act defines interest charge as meaning a charge imposed by Part 2 of the *Bankruptcy (Estate Charges) Act 1997*.

Late payment penalty

The term 'late payment penalty' is defined as having the same meaning as in Part XV of the Act. Part XV of the Act defines late payment penalty as meaning a penalty payable under subsection 281(1) of that Act.

Legal practitioner

The term 'legal practitioner' is defined as a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of the High Court or the Supreme Court of a State or Territory.

Preliminary remuneration and expenses

This is a new definition which is included in the Regulations to clarify the fees and expenses a trustee can be paid for carrying on business in accordance with a section 50 order under the Act. This covers the time period after a bankruptcy notice is issued or creditor's petition presented, but before a debtor becomes bankrupt.

Subsection 50(1) of the Act sets out that a court can, prior to a debtor becoming bankrupt, make any order or direction in relation to the debtor's property, including an order that the trustee take control of the debtor's property. Subsection 50(2) specifies that after a court makes an order under subsection 50(1), they can summon the debtor or another examinable person in relation to the debtor for examination.

Section 4 inserts a definition for a trustee's 'preliminary remuneration and expenses' in relation to a section 50 order. Paragraph (a) of the definition outlines what can be paid in terms of remuneration for work done in accordance with an order of the court under subsection 50(1) of the Act. This clarifies that the entitlement to remuneration arises from, and is determined by, the subsection 50(1) court order itself.

Paragraph (b) of the definition relates to the expenses incurred by the trustee (i) in carrying out the court direction or order under subsection 50(1) of the Act, or (ii) in examining a debtor or examinable person as a result of a summons by the court under subsection 50(2) of the Act.

Section 15 of the Regulations, titled ‘Preliminary remuneration and expenses of trustee’, incorporates this definition of the trustee’s preliminary remuneration and expenses in the context of a creditor’s entitlement to a refund of excess funds, or obligation to pay an additional amount to the trustee.

Realisations charge

The term ‘realisations charge’ is defined as having the same meaning as in Part XV of the Act. Part XV defines realisations charge as meaning a charge imposed by Part 3 of the *Bankruptcy (Estate Charges) Act 1997*.

Regulated debtor

The term ‘regulated debtor’ is defined as having the meaning given by section 5-15 of Schedule 2 to the Act.

Part 2 – Administration

Section 5 – Disclosure of information by Inspector-General

Paragraph 12(4)(b) of the Act permits the Inspector-General to disclose information to prescribed professional disciplinary bodies if satisfied that the information will enable or assist the body to exercise its powers or perform its functions.

Section 5 prescribes the following professional disciplinary bodies for the purposes of paragraph 12(4)(b) of the Act:

- Chartered Accountants Australia and New Zealand
- CPA Australia
- the Australian Restructuring Insolvency and Turnaround Association;
- the Institute of Public Accountants
- the New South Wales Bar Association
- the Law Society of New South Wales
- the Victorian Legal Services Commissioner
- the Victorian Legal Services Board
- the Bar Association of Queensland
- the Queensland Law Society
- the Legal Practice Board of Western Australia
- the Law Society of South Australia
- the Legal Profession Conduct Commissioner of South Australia
- the Law Society of Tasmania
- the Law Society of the Australian Capital Territory, and
- the Law Society Northern Territory.

Section 6 – Prescribed rate of interest on moneys held in Common Fund

Section 6 prescribes the rate of interest on moneys held in the Common Fund for the purposes of section 20J of the Act, which provides for the circumstances in which an estate or fund is entitled to be paid interest on the moneys held by the Official Trustee. The prescribed interest rate is 7% per year.

Part 3 – Courts

Section 7 – Prescribed countries

Section 7 prescribes the following countries for the purposes of subsection 29(5) of the Act:

- Jersey
- Malaysia
- Papua New Guinea
- Singapore
- Switzerland, and
- the United States of America.

Subsection 29(5) of the Act defines a ‘prescribed country’ as including a country prescribed by the regulations. Under paragraph 29(2)(a) of the Act, in all bankruptcy matters, the Australian Court must act in aid of and be auxiliary to courts with bankruptcy jurisdiction in prescribed countries.

Part 4 – Proceedings in connection with bankruptcy

Division 1 – Bankruptcy notices

Section 8 – Application for bankruptcy notice

Section 8 provides the requirements for an application to the Official Receiver for the issue of a bankruptcy notice. A bankruptcy notice is a formal demand for payment based on a final judgment or order. If a debtor fails to comply with a bankruptcy notice within the time specified for compliance, they are committing an act of bankruptcy.

Subsection 8(1) provides that section 8 sets out the requirements for a creditor with a final judgment or order against a debtor to make an application to an Official Receiver for a bankruptcy notice.

Subsection 8(2) provides that an application for a bankruptcy notice must be in the approved form. The approved form is included in the Regulations at Schedule 1.

Subsection 8(3) provides that the application must specify the final judgment or final order or each of the final judgments or final orders to which the application for a bankruptcy notice relates.

Subsection 8(4) sets out the documents that must be included in an application for a bankruptcy notice. Paragraph 8(4)(a) specifies that if the final judgment or order specified in the application is an arbitral award that is taken to be a final order obtained by the applicant against the debtor in accordance with subparagraph 40(3)(a)(i) of the Act, the following documents must be included in the application:

- a copy of the award which has been certified as a true copy by an officer of the Court who has compared the copy with the original, or a copy of the award that has been certified as a true copy by the arbitrator who made the award, and
- a sealed or certified copy of the order giving leave to enforce the award.

Paragraph 8(4)(b) specifies that for all other final judgments or final orders, at least one of the following documents must be included in the application:

- a copy of the sealed and certified judgment or order,
- a certificate of the judgment or order sealed by the court that made the judgment or order, or signed by an officer of the court that made the judgment or order, or
- a copy of the entry of the judgment or order certified as a true copy of that entry and sealed by the court that made the judgment or order, or signed by an officer of the court that made the judgment or order.

Note 1 clarifies that the relevant provision regarding the form of bankruptcy notices is section 9 and that the approved form is set out in Schedule 1.

Note 2 clarifies that a fee is payable to the Official Receiver for making an application for a bankruptcy notice under this section. This fee is provided for in the Fees and Remuneration Determination.

Section 8 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 9 – Form of bankruptcy notices

Section 9 provides for the form of bankruptcy notices.

Subsection 9(1) provides that the form of bankruptcy notice set out in Schedule 1 of the Regulations is prescribed for the purposes of subsection 41(2) of the Act.

Subsection 9(2) provides that a bankruptcy notice must follow Form 1 in respect of its format, including, for example, bold or italic typeface, underlining and notes.

Subsection 9(3) provides that subsection (2) is not to be taken as expressing an intention contrary to section 25C of the *Acts Interpretation Act 1901*. Section 25C of the Acts Interpretation Act provides that, where an Act prescribes a form, strict compliance with the form is not required and substantial compliance is sufficient, unless the contrary intention appears.

Section 10 – Service of bankruptcy notices

Subsection 10(1) provides that a bankruptcy notice must be served on the debtor within either:

- the six month period beginning the day that the Official Receiver issues the bankruptcy notice, or
- any additional period that the Official Receiver determines in writing.

Subsection 10(2) clarifies that if a bankruptcy notice is served on the debtor outside of the period mentioned subsection 10(1), it is deemed to be invalid.

Section 10 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 10A – Prescribed statutory minimum

Section 10A provides that, 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.

Section 5 of the Act prescribes a statutory minimum bankruptcy threshold of \$5000 unless a greater amount is prescribed by the Regulations. The statutory minimum bankruptcy threshold is the amount of debt required to be owed to a creditor, before that creditor can initiate involuntary bankruptcy proceedings against a debtor.

Section 11 – Inspection of bankruptcy notices

Subsection 11(1) limits the people who may inspect a bankruptcy notice lodged with the Official Receiver. It provides that, subject to subsection (2), the only persons who may inspect a bankruptcy notice are a person specified in the notice; a party to the proceeding to which the notice relates; or a

legal practitioner acting for a person specified in the notice or a party to the proceeding to which the notice relates.

Subsection 11(2) provides that if a creditor's petition is presented on the basis that the debtor has committed an act of bankruptcy by failing to comply with a bankruptcy notice, that bankruptcy notice then becomes open for public inspection.

Section 11 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 12 – Judgment or order in foreign currency

Section 12 sets out the requirements for a bankruptcy notice, where the relevant final judgment or final order is in a foreign currency.

Subsection 12(1) provides that section 12 applies in relation to a bankruptcy notice issued by the Official Receiver if the bankruptcy notice includes a final judgment or final order that is expressed in an amount of foreign currency. Section 12 applies whether or not the judgment or order was also expressed in an amount of Australian currency.

Subsection 12(2) provides that a bankruptcy notice must include the following information:

- a statement that the debtor must pay either the amount of the foreign currency or the equivalent amount of Australian currency
- the conversion calculation for the equivalent amount of Australian currency, and
- a statement that the conversion of the amount of foreign currency into the equivalent amount of Australian currency has been made in accordance with section 12 of the Regulations.

Subsection 12(3) provides that the equivalent amount of Australian currency, for the purposes of paragraph 12(2)(ii), must be calculated using the exchange rate for the foreign currency published by the Reserve Bank of Australia. The relevant exchange rate is the rate published two business days before the application for the bankruptcy notice is made.

Section 12 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Division 2 – Petitions

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

Section 13 provides that a creditor who presents a petition under Division 2 of Part IV of the Act, which governs the presentation, requirements and consequences of a creditor's petition, must provide the following to an Official Receiver:

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

Section 13 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 14 – Control of debtor's property before sequestration

Section 14 provides that if a Court gives a direction or makes an order under subsection 50(1) of the Act, which permits the taking control of a debtor's property before the debtor becomes bankrupt, the

creditor who applied under subsection 50(1A) for the Court to make that direction must serve the following documents:

- a copy of the application
- a copy of any affidavit filed in support of the application, and
- a certified copy of the direction or order.

The documents must be served on both the trustee who the Court has directed to take control of the debtor's property, and the Official Receiver. The applicant creditor must serve the documents within one business day after the Court gives the direction or makes the order.

Section 14 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 15 – Preliminary remuneration and expenses of trustee

Section 15 provides for the situation where a creditor deposits an amount estimated to cover the trustee's preliminary remuneration and expenses (as defined in section 4) for work done in relation to a section 50 order under the Act, and that amount is either too little or too much to cover the eventual expenses and remuneration incurred. The aim of the section is to ensure as far as possible that the trustee receives the correct amount to cover the actual remuneration and expenses incurred by them in fulfilling the section 50 order.

Subsection 15(1) provides that the section applies if:

- a creditor applies under subsection 50(1A) of the Act for the Court to make a direction in relation to a debtor
- 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
- in accordance with the above two points, the creditor deposits an amount with the trustee to cover the initial remuneration and expenses of the trustee in relation to the debtor. This initial amount is known as the 'first amount'.

Subsection 15(2) provides that – in certain circumstances – a creditor is entitled to a refund for any part of the first amount deposited with the trustee (plus any 'additional amount' deposited under subsection 15(4)) that exceeds the eventual remuneration and expenses incurred by the trustee. The circumstances in which the creditor is entitled to a refund of the excess amount deposited are:

- if 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 property to another person
- if the debtor's property has a sequestration made against it
- if the creditor's petition is dismissed (if the petition was presented in relation to the debtor)
- if the debtor's petition relating to the debtor is accepted by the Official Receiver, and
- if a debtor's proposal is accepted (when in relation to a debt agreement under section 185EC of the Act).

Subsection 15(3) provides the trustee must pay a refund payable under subsection 15(2).

Subsection 15(4) describes the circumstances in which an 'additional amount' (on top of the first amount) deposited with the trustee should be included in the calculation of how much of a refund a creditor may be entitled to. Subsection 15(4) provides that the additional amount should be used to calculate the amount of refund if:

- both of the following apply:
 - the trustee requests that the creditor deposits the additional amount with the trustee, and
 - the creditor deposits the additional amount with the trustee; or

- all of the following apply:
 - the Court is satisfied that the initial amount is insufficient to cover the initial remuneration and expenses of the trustee
 - the Court directs, under subsection 50(1) of the Act, the creditor to deposit the additional amount with the trustee, and
 - the creditor deposits the amount with the trustee.

Section 15 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 16 – Application for damages where petition dismissed

Section 16 provides for the possibility of damages being payable by the creditor to the debtor where an order has been made under subsection 50(1) of the Act, and the creditor's petition upon which that order was based is subsequently dismissed.

Subsection 16(1) provides that section 16 applies if:

- a creditor’s petition in relation to a debtor is presented to the Court
- the Court, under subsection 50(1) of the Act, directs a trustee to take control of the debtor’s property or makes any other order in relation to the property, and
- the Court then dismisses the creditor’s petition.

Subsection 16(2) provides that within 15 business days after the petition is dismissed, and after receiving an application from the debtor, the Court may order the creditor to pay the debtor an amount equal to the damage the Court assesses as resulting from acts or omissions of the trustee in carrying out the section 50(1) order.

Section 16 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 17 — Prescribed modifications of applied provisions

Section 17 imports and modifies certain aspects of section 81 of the Act (relating to summoning a person for examination to assist in the discovery of a bankrupt’s property), so that those modified sections apply in respect of a person who is summoned under subsection 50(2) of the Act.

Section 17 modifies section 81 of the Act for the purposes of subsection 50(5) of the Act. Subsection 50(5) of the Act stipulates that, for the purpose of the examination of a person summoned under subsection 50(2) relating to a trustee taking control of a debtor’s property before sequestration, subsections 81(2) to (17) of the Act apply (with any modifications prescribed by the regulations), as if:

- a sequestration order had been made against the debtor when the Court gave the direction under subsection 50(1) of the Act
- the examination were being held under section 81 of the Act, and
- a reference in those subsections to a creditor were a reference to a person who has a debt that would be provable in the debtor’s bankruptcy if a sequestration order had been made.

Section 17 provides that for the purposes of subsection 50(5) of the Act, section 81 of the Act is modified in the following ways:

- by omitting from subsection (2) ‘An’ and replacing it with ‘Subject to subsection (2A), an’
- by inserting after subsection (2) a subsection noting:
 - ‘(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.’

- by omitting from subsection (9) ‘is the trustee’ and replacing it with ‘has been directed to take control of the property of the relevant person’
- by omitting subsection (10A), and
- by omitting subsection (14) and replacing it with 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.’

Section 18 – Acceptance of debtor’s declaration

Section 18 provides that the Official Receiver must give a copy of the signed copy of the debtor’s declaration if:

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

A failure to comply with the requirements of this section does not affect the validity of the debtor’s declaration.

Section 18 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 19 – Prescribed information to be supplied by Official Receiver to debtor

Subsection 19(1) provides that the following information is considered to be prescribed for the purposes of subsections 54D(1), 55(3A), 56B(5) and 57(3A) of the Act:

- information about alternatives to bankruptcy
- information about the consequences of bankruptcy
- information about sources of financial advice and guidance to persons facing or contemplating bankruptcy
- information about a debtor’s right to choose whether the bankruptcy is initially administered by a registered trustee or the Official Trustee, and
- a statement that 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.

Subsection 19(2) provides that the information as provided above must be factual and objective.

Section 20 – Presentation of debtor’s petition

Section 20 provides for another person to sign a debtor’s petition on behalf of the debtor in certain circumstances. It is intended to provide flexibility, and make the process more accessible for debtors who are unable to read the relevant material or sign the debtor’s petition for certain reasons.

Subsection 20(1) applies if a debtor intends to present a petition under section 55, 56B or 57 of the Act and the debtor is:

- unable to read the relevant material because the debtor is blind or has low vision, is illiterate or partially illiterate, or is insufficiently familiar with the English language, or
- is unable to sign because of a physical incapacity.

Subsection 20(2) provides that in the circumstances outlined above, the petition may be signed on behalf of the debtor. The person who signs on behalf of the debtor must also sign a statement noting:

- where the debtor is blind or has low vision, or is illiterate or partially literate – that the person has read the material to the debtor

- where the debtor is insufficiently familiar with the English language – that the person has interpreted the material to the debtor in an appropriate language, or
- where the debtor is unable to sign because of a physical incapacity – that the person believes the debtor has read and understood the relevant material.

Subsection 20(3) defines the term ***relevant material*** as having the same meaning as the petition and information prescribed under section 19 of the Regulations.

Section 20 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 21 – Debtor’s petition – filing of a trustee’s consent

Section 21 provides for the situation where a ‘consent to act’ as trustee instrument (under subsection 156A(1) of the Act) is in force in relation to the estate of a debtor (or two or more debtors), and those debtors present a debtor’s petition to the Official Receiver under sections 55, 56B or 57 of the Act.

Section 21 provides that in that scenario, the debtor’s petition presented must also include the original, or a clearly legible copy, of the consent to act instrument.

Section 21 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Subsection 22(1) provides that for the purposes of subsection 56C(2) of the Act, if the Official Receiver refers a debtor’s petition to the Court, the Official Receiver must give notice to members of the partnership who did not present the petition. Subsection 22(1) provides that the notice must:

- be in writing
- state that the petition has been referred to a court specified in the notice, and
- specify the day, time and place of hearing the petition.

Subsection 22(2) provides that the Official Receiver must give the notice to members at least 5 business days before the day of the hearing.

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

Section 23 – Arrest of debtor or bankrupt

Section 78 of the Act permits a Court to issue a warrant for the arrest of a debtor or bankrupt in certain circumstances, including where they have absconded to avoid paying their debts, they have destroyed or concealed property, or books relating to their examinable affairs, or they have failed to comply with a Court order.

Section 23 provides that an arresting officer must immediately notify a Court Registrar if a person is arrested under a warrant issued under section 78 of the Act.

Section 23 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Part 6 – Administration of property

Division 1 – Proof of debts

Section 24 – Proof of debt in foreign currency

Subsection 24(1) specifies that section covers the situation where a creditor lodges a proof of a debt in a bankruptcy under section 84 of the Act; and the debt is an amount of foreign currency.

Subsection 24(2) provides that the proof of debt must include:

- a statement of the amount of foreign currency, the equivalent amount of Australian currency and the conversion calculation for the amount of Australian currency, and
- a statement noting that the conversion of foreign currency into the equivalent Australian currency has been made under the requirements of section 24.

Subsection 24(3) provides that the equivalent amount of Australian currency is the amount determined by using the exchange rate for the foreign currency published by the Reserve Bank of Australia two days before the date of the bankruptcy.

Section 24 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Division 2 – Order of payment of debts

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

Subsection 25(1) provides, for the purposes of paragraph 109(1)(a) of the Act, the order a bankrupt’s trustee must utilise the proceeds of the bankrupt’s property to pay any relevant debts. The table under subsection 25(1) specifies the order in which those debts (which include costs, charges, expenses and remuneration) should be paid.

Subsection 25(2) provides that for the purposes of item 7 of the table, a reference to a person presenting a petition is taken to include a person whose application or petition has not proceeded because the debtor’s petition presented by the bankrupt has been accepted.

Section 26 – Maximum amount payable to employee

Section 26 provides, for the purposes of paragraph 109(1)(e) of the Act, a method for determining the prescribed maximum amount due to, or in respect of, an employee of a bankrupt. The section provides different methods for determining these values depending on the financial year in which the date of bankruptcy commences.

Paragraph 26(a) provides that, where the date of the bankruptcy is in a financial year specified in the table, the maximum amount payable to the employee is specified in the corresponding row of that table. Each figure of the table corresponds to the figure that was applicable at that time under the *Bankruptcy Regulations 1996* (Cth).

Paragraph 26(b) provides that, where the date of bankruptcy is in the financial year beginning on 1 July 2020, the maximum amount payable to a bankrupt’s employee is \$4600. This sets a new baseline figure.

Paragraph 26(c) provides a method for calculating future prescribed amounts. It provides that, where the date of bankruptcy is in the financial year beginning on 1 July 2021 or a later financial year, the

maximum amount payable should be calculated by indexing \$4600 in accordance with section 114 of the Regulations and rounding down to the nearest multiple of \$50.

Division 3 – Property available for payment of debts

Section 27 – Household property that is not available for payment of debts

Under paragraph 116(2)(b) of the Act, the regulations can prescribe certain household property which is not divisible amongst creditors for the payment of a bankrupt's debts. Section 27 prescribes this exempt household property, to ensure that a bankrupt can retain items considered to be household essentials according to current social and living standards. This list has been updated to accord with modern standards of living.

Subsection 27(1) provides that for the purposes of subparagraph 116(2)(b)(i) of the Act, the items listed under this subsection are prescribed as being household property that is not available for payment of debts. These items include:

- all items listed under subsection 27(2)
- the property covered by subsection 27(3), to the extent that it is reasonably appropriate for a household. Determining whether each item of property in 27(3) should be unavailable for the payment of debts involves a subjective assessment by the trustee, taking into account the criteria set out in subsection 27(4)
- property (including recreational and sports equipment) of a kind that is reasonably necessary for the domestic use of a household. Determining whether property falls under this category (and should therefore be unavailable for the payment of debts) involves a subjective assessment by the trustee, taking into account current social standards and the criteria set out in subsection 27(4).

Subsection 27(5) provides that subsection 116(1) of the Act – which describes the types of property that are divisible amongst a bankrupt's creditors – extends to antique items.

Subsection 27(6) specifies that, for the purposes of subsection 27(5), an item is considered an antique item only if a substantial part of its market value is attributable to its age or historical significance.

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

Section 28 provides that, for the purposes of subparagraph 116(2)(ba)(ii) of the Act, personal property with sentimental value is not available for payment of debts. Section 28 prescribes non-monetary sporting items, cultural items and military or academic awards as being personal property with sentimental value.

Section 29 – Tools that are not available for payment of debts

Subparagraph 116(2)(c)(i) of the Act provides that property that is used by the bankrupt in earning income by personal exertion ('tools'), up to a certain value prescribed in the Regulations, is not available for the payment of a bankrupt's debts.

Section 29 provides, for the purposes of subparagraph 116(2)(c)(i) of the Act, methods for calculating the maximum value of tools which the bankrupt can retain. If the bankrupt has tools exceeding this maximum value, that excess value will be divisible amongst creditors for the payment of debts. Section 29 provides different methods for determining these values depending on the financial year in which the date of bankruptcy commences.

Paragraph 29(a) provides that where the date of the bankruptcy is in a financial year specified in the table, the maximum value of tools the bankrupt can retain is specified in the corresponding row of

that table. Each figure of the table corresponds to the figure that was applicable at that time under the *Bankruptcy Regulations 1996*.

Paragraph 29(b) provides that where the date of bankruptcy is in the financial year beginning on 1 July 2020, the maximum value of tools the bankrupt can retain is \$3800. This sets a new baseline figure.

Paragraph 29(c) provides a method for calculating future prescribed amounts. It provides that, where the date of bankruptcy is in the financial year beginning on 1 July 2021 or a later financial year, the maximum value of tools the bankrupt can retain should be calculated by indexing \$3800 in accordance with section 114 of the Regulations and rounding down to the nearest multiple of \$50.

Section 30 – Motor vehicles that are not available for payment of debts

Subparagraph 116(2)(ca) of the Act provides that property that is used by a bankrupt primarily as a means of transport (ie. a motor vehicle), up to a certain aggregate value prescribed in the Regulations, is not available for the payment of a bankrupt's debts.

Section 30 provides, for the purposes of subparagraph 116(2)(ca) of the Act, methods for calculating this maximum aggregate value of a motor vehicle which the bankrupt can retain. Section 30 provides different methods for determining these values depending on the financial year in which the date of bankruptcy commences.

Paragraph 30(a) provides that where the date of the bankruptcy is in a financial year specified in the table, the maximum aggregate value of the motor vehicle is specified in the corresponding row of that table. Each figure of the table corresponds to the figure that was applicable at that time under the *Bankruptcy Regulations 1996*.

Paragraph 30(b) provides that where the date of bankruptcy is in the financial year beginning on 1 July 2020, the maximum aggregate value of the motor vehicle is \$8100. This sets a new baseline figure.

Paragraph 30(c) provides a method for calculating future prescribed amounts. It provides that, where the date of bankruptcy is in the financial year beginning on 1 July 2021 or a later financial year, the maximum aggregate value of the motor vehicle should be calculated by indexing \$8100 in accordance with section 114 of the Regulations and rounding down to the nearest multiple of \$50.

Division 4 – Undervalued transactions

Section 31 – Transfers exempt from being void against trustee

Section 31 provides that, for the purposes of paragraph 120(2)(d) of the Act, a transfer is exempt from being void against the trustee where the costs of recovering the transferred property would likely exceed the value of the property to the bankrupt's creditors.

Subsection 120(1) of the Act stipulates that certain property transfers by a person who later becomes bankrupt are void(able) against the trustee. Paragraph 120(2)(d) of the Act allows the Regulations to carve out exceptions to this rule - allowing the Regulations to make valid a transfer which would otherwise be void against the trustee. Section 31 makes an otherwise void transaction valid where the costs of recovering the transferred property would likely exceed the value of the property to the bankrupt's creditors. This applies if for example, the trustee would need to adopt unnecessarily expensive means to recover the transferred property. In carving out this exception, section 31 clarifies that it is not necessary for a trustee to challenge a transaction to which subsection 120(1) of the Act would otherwise apply, on the basis that in their opinion it is not economic to do so.

Division 5 – Realisation of property

Section 32 – Disclaimer of onerous property

Subsections 133(1) and (1A) of the Act provide that a trustee may, under certain circumstances, disclaim property which would be particularly onerous to sell or realise. Subsection 32(1) of the Regulations provides the requirements with respect to which a notice of disclaimer under subsections 133(1) or (1A) of the Act must comply.

Subsection 32(2) prescribes the persons to whom a trustee - who gives a notice of disclaimer under subsection 133(1) of (1A) of the Act - must also give notice to in relation to disclaimers of property or disclaimers of a contract.

Subsection 32(3) provides that a notice of disclaimer under subsection 133(1) or (1A) of the Act is still valid even if subsections 32(1) and 32(2) are not complied with.

Section 32 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Division 6 – Definition of income

Section 33 – Fringe benefits – modifications of the FBT Act

Section 139L of the Act defines ‘income’ for the purposes of the compulsory income contribution regime established under Division 4B of Part VI of the Act. Subparagraph 139L(1)(a)(v) of the definition of income in the Act provides, in part, that income includes the value of a benefit that:

- A. is provided in any circumstances by any person (the provider) to the bankrupt, and
- B. is a benefit within the meaning of the FBT Act, as in force at the beginning of 1 July 1992 being that value as worked out in accordance with the provisions of the FBT Act but subject to any modifications of any provisions of the FBT Act made by the regulations under the Bankruptcy Act.

Accordingly, subsections 33(1) and (2) provide that the Regulations will make modifications, including through Schedule 2, to valuation provisions in the FBT Act for the purposes of the above-quoted extract from the definition of income in subparagraph 139L(1)(a)(v) of the Act.

Subsections 33(3) and (4) modify, for bankruptcy purposes, eight expressions used in the FBT Act. Some terms used in the FBT Act such as ‘year of tax’, ‘taxable value of a benefit’, and ‘declaration date’, are not relevant for the purposes of the Act. The FBT Act accordingly must be modified to introduce terminology relevant to a bankruptcy context.

The eight modifications are:

- A reference in the FBT Act to a year of tax is taken to be a reference to the contribution assessment period (CAP). A CAP is defined in section 139K of the Act to be a period which begins on the start of a person's bankruptcy and ends on the anniversary of that commencement. Each further one year period until the person is discharged from bankruptcy is also a CAP.
- A reference in the FBT Act to the taxable value of a benefit is to be a reference to the value of that benefit for the purposes of the Act. Where a bankrupt receives a benefit, including one of a kind which would be a fringe benefit under the FBT Act if it were provided to a person by his or her employer, its value must be included by the trustee of the bankrupt's estate in the bankrupt's assessed income for the CAP in which the bankrupt enjoyed the benefit.
- A reference in the FBT Act to the declaration date, which is the date of lodgement by an employer of a return of the employer's fringe benefits taxable amount, is taken to be a

reference to the date that occurs 21 days after the end of a CAP in relation to a bankrupt. Section 139U of the Act provides that within 21 days after the end of a CAP, the bankrupt must give to the trustee a statement of his or her income for the completed CAP, and a statement indicating what income the bankrupt expects to derive during the next CAP.

- A reference in the FBTA Act to a declaration to be given to an employer is taken to be a reference to a declaration to be given to a trustee for bankruptcy purposes.
- A reference in the FBTA Act to a form approved by the Commissioner of Taxation is to be taken, for bankruptcy purposes, to be a reference to a form approved by the Inspector-General in bankruptcy under section 6D of the Act.
- A reference in the FBTA Act to an employer or to the employer is taken as a reference to any person other than the bankrupt.
- A reference in the FBTA Act to an employee or to the employee is taken to be a reference to a bankrupt, or to the bankrupt, as the case requires.
- A reference in the FBTA Act to the employment of the employee or to an associate of the employee, however expressed, is disregarded.

Subsection 33(5) provides the circumstances in which modifications to the provision of a fringe benefit under subsections 33(2) (3) and (4) do not apply.

Section 34 – Superannuation contributions

Section 139L of the Act defines ‘income’ for the purposes of the compulsory income contribution regime established under Division 4B of Part VI of the Act. The income of a bankrupt is used to assess their liability to pay income contributions. Subparagraph 139L(1)(b)(v) of the Act allows the Regulations to prescribe payments or amounts which are *not* to be considered a bankrupt’s income.

Section 34 prescribes a method for calculating the superannuation contributions and payments made to a bankrupt which are *not* to be considered the bankrupt’s income under subparagraph 139L(1)(b)(v) of the Act.

Subsection 34(1) first stipulates that any superannuation contributions or payments made in accordance with legislation or an enterprise agreement are not to be considered income for the purposes of calculating a bankrupt’s liability to pay income contributions.

Subsection 34(2) then provides that any superannuation contributions received *in excess* of those required by law or an enterprise agreement *are* to be considered income, and should count towards the calculation of a bankrupt’s income contribution liability.

In practice, under section 34 a trustee should first ascertain what percentage of a bankrupt’s assessable income (with reference to annualised ordinary time earnings) was paid into their superannuation. When making the calculation, the trustee should do this with reference to the CAP, rather than a ‘year’. The trustee should then compare that percentage, to the mandatory superannuation guarantee charge percentage. Any contributions in excess of that mandatory amount should be considered income under section 139L of the Act.

Subsection 34(3) provides definitions for individual industrial agreement; ordinary time earnings; relevant superannuation guarantee charge percentage and shortfall component.

Section 35 – Family assistance and social security payments

Section 35 provides that payments paid under family assistance or social security laws are not considered an income of the bankrupt.

Division 7 – Contributions by bankrupt

Section 36 – Contribution assessment – income of dependant

Section 36 prescribes the amount of income derived by a person during a CAP under the definition of **dependant** in section 139K of the Act. It provides a method for determining the maximum income a person can earn before they are classified as a bankrupt's 'dependant' when conducting a bankrupt's contributions assessment. It aims to simplify this process, by providing clear methods for determining the prescribed income amount for dependants at different points in time.

Section 36 clarifies that the trustee should calculate the income likely to be derived by a person over a CAP (rather than a financial year or calendar year). In determining the relevant income threshold, trustees should use the amount which is applicable at the time the income is derived.

Paragraph 36(a) provides that for CAPs beginning between 5 May 2003 and 30 June 2003, a person who earns up to \$2500 will be considered a bankrupt's dependant.

Paragraph 36(b) provides that, for CAPs beginning in a financial year specified in the table, the maximum income a person can derive before ceasing to be a bankrupt's dependant is specified in the corresponding row of the table. Each figure of the table corresponds to the figure that was applicable in the final quarter of each financial year under the *Bankruptcy Regulations 1996*.

Paragraph 36(c) provides that, where the date of bankruptcy is in the financial year beginning on 1 July 2020, the maximum income a person can derive before ceasing to be a bankrupt's dependant is \$3741. This sets a new baseline figure.

Paragraph 36(d) provides a method for calculating future prescribed amounts. It provides that where the date of bankruptcy is in the financial year beginning on 1 July 2021 or a later financial year, the maximum income a person can derive before ceasing to be a bankrupt's dependant should be calculated by indexing \$3741 in accordance with section 114 of the Regulations, as if the contribution assessment were that financial year. This move to annual indexation marks a departure from the current method of quarterly indexation used under the *Bankruptcy Regulations 1996*. The change is made for simplicity and consistency with the other indexation provisions in the Regulations which all use annual indexation in accordance with section 114.

Section 37 – Contributions by bankrupt – modes of payment

Subsection 37(1) provides that this section applies in relation to a contribution that a bankrupt is liable to pay to the trustee or wishes to pay to the trustee.

Subsection 37(2) provides the ways in which a bankrupt can pay the contribution to the trustee, which includes by bank draft, cheque, money order or postal order; by deposit or transfer; or by any other method authorised in writing by the trustee.

Subsection 37(3) provides that if the bankrupt pays the contribution by cheque, payment is taken to occur when the cheque is cleared and the amount is credited to the relevant account.

Subsection 37(4) provides that the trustee may, by providing written notice to the bankrupt, vary or withdraw an authorisation for the bankrupt to pay a contribution in a certain way.

Subsection 37(5) provides that the trustee may reimburse the trustee from the bankrupt's estate if the trustee incurs delivery or postal charges in relation to the receipt or processing of a contribution.

Section 37 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 38 – Contributions where bankrupt dies

Subsection 38(1) provides that this section applies if a bankrupt is liable to pay a contribution to the trustee of the bankrupt's estate in respect of a CAP and the bankrupt subsequently dies during the period.

Subsection 38(2) provides that no refund is payable in relation to any part of a contribution already paid by the bankrupt, or on behalf of the bankrupt.

Subsection 38(3) provides that if the contribution remains unpaid, the deceased bankrupt's estate is liable to pay only the portion of the contribution which was payable up to the bankrupt's death.

Section 38 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 39 – Discharged bankrupt to give information if contribution unpaid

Section 39 imposes an obligation on a discharged bankrupt (who had outstanding income contributions to pay immediately before they were discharged), to notify the trustee of any changes to their particulars.

Subsection 39(1) provides that this section applies if:

- a person is discharged from a bankruptcy
- the person was liable to pay a contribution to the trustee of the person's estate immediately before being discharged
- the person has not paid the contribution, and
- a change (as provided in subsection 39(1)(d)) occurs to the person discharged from the bankruptcy.

Subsection 39(2) provides that the person discharged from a bankruptcy must give the trustee written notice of the change within two business days after the change occurs.

Subsection 39(3) provides that a person discharged from bankruptcy commits an offence if the person fails to give notice to the trustee as required in subsection 39(2). The penalty for failing to give notice is 10 penalty units.

Subsection 39(4) provides that an offence under subsection 39(3) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the person discharged from a bankruptcy committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that a bankrupt intended to contravene the requirement to provide notice to the trustee. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Subsection 39(5) provides that if a person assumes a different name or an additional name then this constitutes a change in name.

Section 39 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

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

Section 139ZL of the Act provides that where a bankrupt is liable to pay to the trustee a contribution, the Official Receiver may issue a written notice requiring a person to make the payment. Section 40 exempts money that is protected under the law of the Commonwealth, State or Territory from being included in such a notice. Protected money is taken to mean money or property that is protected, under the Commonwealth or State or Territory law, from assignment, attachment, charging, execution or garnishment.

Section 40 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Subsections 41(1)-(2) require an employer of a bankrupt who has received a notice under 139ZL of the Act to notify the trustee in writing if the bankrupt ceases to be employed by them. The ex-employer must give notice in writing to the trustee of the date the bankrupt ceased their employment with them. The notice must be given within 15 business days of the cessation of the employment.

Subsection 41(3) provides that if the bankrupt commences employment with a new employer, the bankrupt must provide the trustee written notice of the new employer’s name and postal address, the address of the bankrupt’s place of employment and the amount of the bankrupt’s average weekly income from the employment. This subsection provides that the bankrupt must provide the written notice within 15 business days after commencing this employment.

Subsection 41(4) provides that a person commits an offence if the relevant person fails to give written notice in accordance with subsection 41(2) (about ceasing employment) and 41(3) (about commencing employment). The penalty for failing to provide notice is two penalty units.

Subsection 41(5) provides that an offence under subsection 41(4) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that an employer or bankrupt intended to contravene the requirement to provide notice to the trustee. Being able to prosecute these contraventions is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 41 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Division 9 – Distribution of property

Section 42 – Minimum amount of dividend

Subsection 140(9) of the Act provides that, where a dividend to a creditor would be less than \$10, or such larger amount as is prescribed by the Regulations, the trustee need not pay that dividend. Section 42 prescribes \$50 as that larger amount.

Section 43 – Manner of declaring final dividend

Subsection 145(3) of the Act imposes certain obligations on the trustee to give notice to creditors prior to declaring a final dividend. Such notice must be provided in the prescribed manner.

Section 43 prescribes this manner, providing that in order to declare a final dividend, notice must be served on each person to whom notice must be given under subsection 145(3) of the Act.

Part 7 – Discharge and annulment

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

Section 149B of the Act allows the trustee or Official Receiver to file a notice of objection to the discharge of a bankrupt. Subsection 149D(1) of the Act sets out the grounds on which the notice of objection may be made, including that the bankrupt is outside of Australia (paragraphs 149D(1)(a) and (h) relate).

Subsections 44(1) and (2) provide that if an objection is made on the grounds in either paragraph 149D(1)(a) or (h) of the Act, and the bankrupt returns to Australia and the registered trustee becomes aware of such return, the registered trustee must notify the Official Receiver.

Subsection 44(2) requires the registered trustee, within five business days of becoming aware that the bankrupt has returned to Australia, to give notice in writing to the Official Receiver of the bankrupt's return. The notice must also state the date on which the bankrupt returned, or the date on which the trustee became aware that the bankrupt had returned.

Subsection 44(3) provides that a registered trustee who is required to give notice under subsection 44(2) but fails to do so commits an offence. The penalty for failing to provide notice is one penalty unit.

Subsection 44(4) provides that an offence under subsection 44(3) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that a registered trustee intended to contravene the requirement to provide notice to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 44 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 45 – Grounds of objection – failure to provide complete and accurate information

Paragraph 149D(1)(d) of the Act prescribes that failing to provide a trustee with information about a bankrupt's income (when requested to do so in writing by the trustee) constitutes a ground of objection to discharge.

Section 45 provides that a bankrupt is taken to have failed to comply with a request to provide information (under paragraph 149D(1)(d) of the Act) if the bankrupt provides incomplete or inaccurate information.

Section 45 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Section 46 requires the Inspector-General to advise the Official Receiver if their decision to either review or refuse to review an objection to a discharge is varied or set aside by the Administrative Appeals Tribunal under section 149Q of the Act. The notice must be in writing, and given within two business days of the Inspector-General being notified of the decision of the AAT.

Section 46 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Part 8 – Trustees

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

Section 47 – Filing consent to act as trustee with the Official Receiver

Section 47 prescribes the timing requirements for filing a ‘consent to act’ as trustee instrument under section 156A of the Act. The aim of section 47 is to encourage these instruments to be filed contemporaneously with the debtor’s petition or creditor’s petition. This helps to avoid any ‘gaps’ between a debtor becoming bankrupt, and their chosen trustee becoming the trustee of their estate. It is desirable to avoid this gap because if a debtor becomes bankrupt before their consent to act instrument takes effect, there will be an interim period in which the Official Trustee will automatically become the trustee of the estate (by virtue of section 160 of the Act). This may lead to the Official Trustee incurring expenses, and creating administrative burden when the estate must be transferred to the chosen trustee once the consent to act instrument takes effect.

Specifically, section 47 requires an instrument under subsection 156A(1) of the Act to be filed

- a) on or before the day that a debtor presents their debtor’s petition, or
- b) in the case of a sequestration order – before the day on which the Court makes a sequestration order.

Section 47 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Section 48 provides that, where a registered trustee becomes the trustee of an estate or of joint and separate estates (under subsection 156A(3) of the Act) the Official Receiver may give the registered trustee a certificate of appointment.

Section 48 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Section 49 – Ineligibility of certain persons to act as controlling trustee

Subsection 49(1) prescribes – for the purposes of subsection 188(2A) of the Act - the circumstances under which a trustee or solicitor is ineligible to act as a controlling trustee in relation to a debtor. This subsection does not apply to the Official Trustee or a registered trustee. These circumstances include, for example, that the person is or was convicted of an offence involving fraud or dishonesty in the last 10 years.

Paragraph 49(1)(f) provides that a person is ineligible to act as controlling trustee if they (i) are not a full member of the Australian Restructuring Insolvency and Turnaround, and (ii) have not satisfactorily completed a ‘course in insolvency approved by the Inspector-General’. Subsection 49(2) stipulates that such a course can be approved by the Inspector-General by notice published on the Australian Financial Security Authority’s website.

Subsection 49(3) provides that the Inspector-General may make a determination in relation to a person if the person is, or has been, a controlling trustee and the Inspector-General is satisfied that

the person has failed to properly exercise the powers of a controlling trustee, or the person has failed to cooperate with the Inspector-General in an inquiry or investigation. Note that a determination under subsection 49(3) is not a legislative instrument, as it does not determine or alter the content of the law, but merely applies it in a particular case.

Subsection 49(4) provides the obligations of the Inspector-General towards a person that the Inspector-General intends to make a determination in relation to. These obligations need to be satisfied before the determination is made.

Subsection 49(5) provides that if the Inspector-General makes a determination under subsection 49(3), the Inspector-General must give the person a written notice stating that the determination has been made under subsection 49(3) and provide the reasons for the determination.

Section 50 – Review by Tribunal of determination

Section 50 provides that applications may be made to the Administrative Appeals Tribunal for a review of a determination made by the Inspector-General under subsection 49(3).

Section 51 – Official Trustee to perform duties of controlling trustee

Section 51 provides that, where a person has been authorised under subsection 188(1) of the Act to be the controlling trustee of a debtor's estate, and the person becomes ineligible to act as a controlling trustee by virtue of subsection 49(1), the Official Trustee must perform the duties of a controlling trustee unless and until the debtor authorises another person to be the controlling trustee.

Section 51 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Section 52 – Notice of removal of trustee of estate

Subsection 52(1) provides that if the Court makes an order under Schedule 2 to the Act that a person cease to be the trustee of a regulated debtor's estate, the applicant for the order must:

- give a written notice to the Official Receiver that includes the name of the old trustee; the fact that the Court has ordered the old trustee to cease to be the trustee the name of a newly appointed trustee (if any) and the day on which the order takes effect, and
- do the above within two business days after the day the order is made.

Subsection 52(2) provides that subsection 52(1) does not apply if the applicant is the Inspector-General.

Subsection 52(3) provides that if the creditors of a regulated debtor remove the old trustee of the debtor's estate, the person appointed by the creditors as trustee of the estate must:

- give a written notice to the Official Receiver that includes the name of the old trustee; the fact that the creditors have removed the old trustee and the day on which the removal takes effect, and
- do the above within two business days after the day of the person's appointment.

Subsection 52(4) provides that subsection 52(3) does not apply if the person appointed is the Official Trustee.

Subsection 52(5) provides that a person commits an offence if the person is required to give notice as per subsection 52(1) or 52(3) and fails to do so. The penalty for failing to provide notice is one

penalty unit. Subsection 52(6) provides that an offence under subsection 52(5) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that the new creditor intended to contravene the requirement to provide notice to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 52 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 53 – Notice of finalisation of administration

Subsection 53(1) provides that if the trustee of a regulated debtor’s estate finalises the administration of the debtor’s estate, the trustee must give the Official Receiver written notice of the finalisation within five business days after the day of finalisation. This requirement is not imposed on the Official Trustee.

Subsection 53(2) provides that a person who is required to provide this notice, but fails to do so, commits an offence. The penalty for failing to provide notice is one penalty unit.

Subsection 53(3) provides that an offence under subsection 53(2) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that a trustee intended to contravene the requirement to provide notice to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 53 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Part 9 – Debt agreements

Section 54 – Prescribed information to be supplied to debtor

Paragraph 185C(2D)(b) of the Act stipulates that, when a debtor gives a debt agreement proposal to the Official Receiver, it must be accompanied by a certificate signed by the proposed administrator stating that they have given the debtor the information prescribed by the regulations.

Subsection 54(1) prescribes the information which the proposed debt agreement administrator must provide to the debtor, including information about alternatives to debt agreements; the consequences of making a debt agreement proposal; sources of financial advice and guidance, and a statement that giving a debt agreement proposal to the Official Receiver constitutes an act of bankruptcy.

Subsection 54(2) provides that the information in subsection 54(1) must be factual and objective.

Section 55 – Presentation of debt agreement proposal

Section 55 provides for another person to sign a debt agreement proposal on behalf of the debtor in certain circumstances. It is intended to provide flexibility, and make the process more accessible for debtors who are unable to read the relevant material or sign the debtor’s petition for certain reasons.

Subsection 55(1) provides that this section applies if a debtor intends to give the Official Receiver a debt agreement proposal and the debtor is:

- unable to read the relevant material because the debtor is blind or has low vision, is illiterate or partially illiterate, or is insufficiently familiar with the English language, or

- is unable to sign because of a physical incapacity.

Subsection 55(2) provides that a debt agreement proposal may be signed on behalf of the debtor by another person. The person signing on behalf of the debtor must sign a statement confirming:

- where the debtor is blind or has low vision, or is illiterate or partially literate – that the person has read the material to the debtor
- where the debtor is insufficiently familiar with the English language – that the person has interpreted the material to the debtor in an appropriate language, or
- where the debtor is unable to sign because of a physical incapacity – that the person believes the debtor has read and understood the relevant material.

Subsection 55(3) provides the definition for relevant material is taken to mean the debt agreement proposal and also the information prescribed by section 54.

Section 55 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Paragraph 186C(2)(e) of the Act requires a person to have the qualifications and experience prescribed by the regulations in order to be approved and registered as a debt agreement administrator. Section 56 prescribes these qualifications, including for example certain certificates issued by registered providers, certain degrees or diplomas, or membership of the Chartered Accountants Australia and New Zealand or CPA Australia Ltd.

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

Paragraphs 186C(3)(d) and (5)(d) of the Act state that the Regulations may prescribe the maximum amount of notified estate charges which an applicant can owe before their application to become a registered debt agreement administrator will be refused. Section 57 prescribes the permissible amount of owed notified estate charges to be \$500.

Part 10 – Personal insolvency agreements

Section 58 – Modifications of Part X of the Act – joint debtors

Section 187A of the Act applies Part X of the Act in relation to joint debtors, whether partners or not. Part X of the Act concerns arrangements between debtors and creditors where there is no bankruptcy of the debtor. Section 187A also allows for the making of regulations to tailor the application of Part X of the Act.

Section 58 provides that the manner in which Part X of the Act is modified is as specified in Part 1 of Schedule 3 of these Regulations.

Section 59 – Information to be given to debtor about personal insolvency agreements

Subsection 59(1) prescribes the information to be given to a debtor, by their controlling trustee, about personal insolvency agreements (for the purposes of subsections 188(2AA) and (2AB) of the Act).

Subsection 59(2) provides that the information must be factual and objective.

Subsection 59(3) provides that a person (a registered trustee or solicitor) authorised by a debtor to take control of the debtor's property must not consent to exercise the powers given by that authority until the debtor has given the person a signed acknowledgment that the debtor has received and read the prescribed information.

Subsection 59(4) provides that where the Official Trustee is the person authorised by a debtor to take control of the debtor's property (under subsection 188(1) of the Act), the Official Receiver must not give the debtor a written approval under paragraph 188(2)(aa) of the Act unless the debtor has provided a signed acknowledgment to the Official Trustee that they have received and read the prescribed information.

Section 59 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 60 – Signing authority by another person on behalf of debtor

Section 60 prescribes the circumstances within which another person can sign – on behalf of the debtor - an authority naming a trustee, registered trustee or the Official Trustee as the debtor's controlling trustee. It is intended to provide flexibility, and make the process more accessible for debtors who are unable to read the relevant material or sign the debtor's petition for certain reasons.

Subsection 60(1) applies if a debtor intends to sign an authority under subsection 188(1) of the Act, and the debtor is:

- unable to read the relevant material because the debtor is blind or has low vision, is illiterate or partially illiterate, or is insufficiently familiar with the English language, or
- is unable to sign because of a physical incapacity.

Subsection 60(2) provides that in the circumstances outlined above, the authority may be signed on behalf of the debtor. The person who signs on behalf of the debtor must also sign a statement noting:

- where the debtor is blind or has low vision, or is illiterate or partially literate – that the person has read the material to the debtor
- where the debtor is insufficiently familiar with the English language – that the person has interpreted the material to the debtor in an appropriate language, or
- where the debtor is unable to sign because of a physical incapacity – that the person believes the debtor has read and understood the relevant material.

Subsection 60(3) provides that the definition of **relevant material** means the information prescribed under section 59 and the acknowledgement prescribed under subsection 59(3).

Section 60 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 61 – Documents under section 188 of the Act

Subsection 61(1) provides that section 61 applies if a debtor, under section 188 of the Act, signs an authority that names and authorises a person and the person is a registered trustee or solicitor and the person consents to exercise the powers given by the authority.

Subsection 61(2) provides that the person authorised in subsection 61(1) must sign a consent in accordance with the approved form within two business days after signing the consent. The authorised person is then required to give a copy of the signed consent to the Official Receiver.

Subsection 61(3) provides that the authorised person must, when the person calls a meeting of the debtor's creditors, also give a copy of the proposal for dealing with the debtor's affairs to the Official Receiver and also to each creditor.

Section 61 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Section 62 requires a controlling trustee to give a copy of any special resolution passed at a meeting of creditors (in relation to a personal insolvency agreement) to the Official Receiver, within five business days after the resolution is passed. The controlling trustee is also required to provide the Official Receiver written notice of the particulars specified in subsection 62(3).

Subsection 62(4) provides that subsection 62(2) does not apply if the controlling trustee is the Official Trustee.

Subsection 62(5) provides that a person commits an offence if the person is required to give notice and a copy of a resolution under subsection 62(2) and fails to do so. The penalty for failing to give notice and a copy of a resolution is one penalty unit.

Subsection 62(6) provides that an offence under subsection 62(5) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that a controlling trustee intended to contravene the requirement to provide notice to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 62 relies on the 'necessary or convenient' regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Section 210 of the Act provides that Part VIII of the Act applies in relation to a debtor's controlling trustee as if the debtor were a bankrupt and the controlling trustee were the trustee of the bankrupt's estate. Part VIII of the Act is a comprehensive code concerning trustees' activities under the Act. Section 210 of the Act also allows for the making of regulations to tailor the provisions of Part VIII in their application to controlling trustees.

Section 63 provides that those modifications are specified in Part 2 of Schedule 3 of these Regulations.

Section 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

Subsection 211(1) of the Act provides that sections 77, 77A, 77C, 77D, 77E, 77F, 78 (other than paragraphs 78(1)(a), (b) and (c)) and 81 of the Act apply in relation to a debtor's controlling trustee as if the debtor were a bankrupt and the controlling trustee were the trustee of the bankrupt's estate.

Section 64 provides that, for the purposes of subsection 211(1) of the Act, a provision in Division 1 of Part V of the Act applies, in the way modified by Part 3 of Schedule 3 of the Regulations, to a debtor whose property is subject to control under Division 2 of Part X of the Act.

Section 65 – Notification of personal insolvency agreements

Section 65 provides that for the purposes of subsection 218(3) of the Act, the manner in which a trustee must notify creditors that a personal insolvency agreement has been entered into is notice in writing.

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

Subsection 66(1) provides that if a Court makes a sequestration order, the applicant for the order must give a copy of the order to the Official Receiver within two business days after the order is made.

Subsection 66(2) provides that subsection 66(1) does not apply in relation to the Official Trustee or the Inspector-General.

Subsection 66(3) provides that a person commits an offence if the person is required to give a copy of an order to the Official Receiver and fails to do so. The penalty for failing to give a copy of an order to the Official Receiver is one penalty unit.

Subsection 66(4) provides that an offence under subsection 66(3) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that an applicant intended to contravene the requirement to provide notice to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 66 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Subsection 67(1) provides that if a Court makes an order setting aside a personal insolvency agreement or terminating a personal insolvency agreement, the applicant for the order must give a copy of the order to the Official Receiver within two business days after the order is made.

Subsection 67(2) provides that subsection 67(1) does not apply in relation to the Official Trustee, the Inspector-General, or a registered trustee.

Subsection 67(3) provides that a person commits an offence if the person is required to give a copy of an order to the Official Receiver and fails to do so. The penalty for failing to give a copy of an order to the Official Receiver is one penalty unit.

Subsection 67(4) provides that an offence under subsection 67(3) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that an applicant intended to contravene the requirement to provide notice to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 67 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 68 – Termination of personal insolvency agreement by trustee

Subsection 68(1) provides that if a personal insolvency agreement is terminated, the trustee of the agreement must give written notice of the termination to the Official Receiver within two business days after the termination takes effect.

There is a note under subsection 68(1) to the effect that, under subsection 222A(2) of the Act, 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.

Subsection 68(2) provides that subsection 68(1) does not apply if the trustee of the agreement is the Official Trustee.

Subsection 68(3) provides that a person commits an offence if the person is required to give notice and fails to do so. The penalty for failing to give notice is one penalty unit.

Subsection 68(4) provides that an offence under 68(3) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that the trustee intended to contravene the requirement to provide notice to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 68 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

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

Subsection 231(1) of the Act states that sections 77, 77A, 77AA, 77C, 77D, 77E, 77F, 78 (other than paragraphs 78(1)(a), (b) and (c)) and 81 of the Act apply (with the prescribed modifications) in relation to a debtor who has executed a personal insolvency agreement as if the debtor were bankrupt, and the trustee of the agreement were the trustee of their bankrupt estate.

Subsection 69(1) provides that, for the purpose of subsection 231(1) of the Act, those modifications to be applied to debtors who have executed personal insolvency agreements are contained in Part 4 of Schedule 3 of the Regulations.

Subsection 231(3) of the Act states that subsection 58(4) and sections 60, 61, 62, 82 to 118, 127 to 130 and 133 to 139H, Subdivisions I and J of Division 4B of Part VI and sections 140 to 147 of the Act apply (with the prescribed modifications) in relation to a personal insolvency agreement as if a sequestration order had been made against the debtor as a result of a creditor’s petition, and as if the trustee of the agreement were the trustee in the debtor’s bankruptcy.

Subsection 69(2) provides that, for the purpose of subsection 231(1) of the Act, those modifications to be applied to debtors who have executed personal insolvency agreements are contained in Part 5 of Schedule 3 of the Regulations.

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

Subsection 70(1) provides that the trustee must give the debtor a signed certificate if the trustee of a personal insolvency agreement is satisfied that the divisible property of the debtor has been realised and no dividend is payable to the creditor.

Subsection 70(2) provides that the trustee must give the certificate to the debtor within 5 business days after becoming satisfied under subsection 70(1).

Subsection 70(3) provides that a certificate signed by the trustee under subsection 70(1) is prima facie evidence of the matters stated in it and may be tendered as evidence without further proof.

Subsection 70(4) provides that if the trustee gives a certificate to the debtor, the trustee must give a copy of the certificate to the Official Receiver within 5 business days after giving the certificate.

Subsection 70(5) provides that subsection 70(4) does not apply if the trustee is the Official Trustee.

Subsection 70(6) provides that a person commits an offence if the person is required to give a copy of a certificate to the Official Receiver and fails to do so. The penalty for failing to give a copy of the certificate to the Official Receiver is one penalty unit.

Subsection 70(7) provides that an offence under subsection 70(6) is an offence of strict liability. This means the prosecution does not have to prove intention, knowledge, recklessness or negligence in stating that the relevant person committed an offence. The imposition of a strict liability offence is justified as it would be difficult to prove that a trustee intended to contravene the requirement to provide the certificate to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 70 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Part 11 – Administration of estates of deceased persons in bankruptcy

Section 71 – Modifications of the Act – administration of estates of deceased persons

Subsection 248(1) of the Act applies a number of provisions of the Act to proceedings under Part XI of the Act and the administration of estates of deceased persons under that Part. The subsection allows for the making of regulations to modify the applied provisions.

Section 71 provides for those modifications, as listed in Schedule 4 of the Regulations.

Part 12 – Unclaimed dividends or money

Section 72 – Statement where money paid to the Commonwealth

Subsection 254(2) of the Act requires a trustee to pay certain unclaimed moneys and dividends into the Consolidated Revenue Fund.

Subsection 72(1) requires the trustee, if they pay money to the Commonwealth under section 254 of the Act, to give a statement to the Official Receiver which sets out the names and addresses of the trustee, the bankrupt or debtor (including if the debtor is deceased), and each person who is entitled to the money paid to the Commonwealth. This statement must be given to the Official Receiver at the time of payment.

Subsection 72(2) clarifies that the Official Trustee is not required to give a statement under subsection 72(1).

Subsection 254(2A) of the Act requires the Official Trustee, an Official Receiver or a registered trustee to pay money that is under its control pursuant to an interim control order into the Consolidated Revenue Fund in particular circumstances.

Subsection 72(3) requires a registered trustee, if they pay money to the Commonwealth under subsection 254(2A) of the Act, to give a statement to the Official Receiver which sets out the names and addresses of the payer (whether the Official Trustee, Official Receiver or registered trustee), and

each person who is entitled to the money or part of the money paid to the Commonwealth. This statement must be given to the Official Receiver at the time of payment.

Subsection 72(4) provides that failing to give the statement to an Official Receiver under either subsections 72(1) or (3) is an offence, attracting one penalty unit. Subsection 72(5) provides that an offence against subsection 72(4) is an offence of strict liability. The imposition of a strict liability offence is justified as it would be difficult to prove that a person intended to contravene the requirement to provide a statement to the Official Receiver. Being able to prosecute this contravention is necessary to ensure the integrity of the bankruptcy regulatory regime.

Section 72 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Part 13 – National Personal Insolvency Index

Division 1 – General

Section 73 – Establishment and maintenance of the National Personal Insolvency Index

Subsection 73(1) establishes an electronic index to be known as the National Personal Insolvency Index (the Index), for the purposes of the definition of National Personal Insolvency Index in subsection 5(1) of the Act. Subsection 5(1) of the Act permits the establishment of the Index under the Regulations.

Subsection 73(2) provides that the Inspector-General has responsibility for the operation of the Index.

Subsection 73(3) provides that the Inspector-General has control of access to the Index.

Subsection 73(4) requires the Official Receiver to maintain the Index on behalf of the Inspector-General.

Section 74 – Information in the Index

Section 74 provides that Division 2 of Part 13, which governs information that must be entered on the Index, has effect subject to Division 3 of Part 13.

Division 3 governs information that is not to be entered on the Index and information that must be removed from the Index.

Division 2 – Information to be entered in the Index

Division 2 outlines the information to be entered in the Index. It is broken down into different sections each with their own table, to make clear where the source of the obligation to enter information into the Index comes from: whether it is being created by the section itself, whether it is being drawn from provisions of the Act or proposed Regulations, or whether it has been triggered by a certain event.

Section 75 – Documents that must be given to Official Receiver

Section 75 firstly requires certain people to provide documents to the Official Receiver, and secondly requires the Official Receiver to enter specified information about those documents in the Index. These obligations are created by the table in subsection 75(3) itself – they cannot be found in other provisions through the Act or proposed Regulations.

Subsection 75(1) explains how to read the table contained in subsection 75(3). It specifies that the person specified in column 2 of the table is required to give a copy of each document specified in column 1 to the Official Receiver, within the timeframe specified in column 2.

Subsections 75(2) and 75(3) then impose on the Official Receiver an obligation to enter the information specified in column 3 – about the relevant document/s – on the Index.

Section 76 – Documents given to Official Receiver in accordance with the Act

Section 76 requires the Official Receiver – upon receiving certain documents – to enter specified information about those documents in the Index. The table in subsection 76(2) serves as a consolidated list of requirements from the Act.

Subsection 76(1) explains how to read the table contained in subsection 76(2). It specifies that if a document or a copy of a document specified in column 1 of the table is given to the Official Receiver, the Official Receiver must enter the information specified in column 2 – about the relevant document – on the Index.

Subsection 76(2) creates exceptions in certain situations to the requirement for the Official Receiver to enter information in the Index. Paragraph 76(2)(a) specifies that in the case of a debtor's petition mentioned in item 3, 4 or 5 of the table, the Official Receiver is only required to enter information about those documents into the Index if the Official Receiver accepts the petition. Paragraph 76(2)(b) specifies that in the case of a debt agreement proposal mentioned in item 12 of the table, the Official Receiver is only required to enter information about those documents into the Index if the Official Receiver accepts the debt agreement proposal for processing.

Section 77 – Documents given to Official Receiver in accordance with this instrument

Section 77 specifies that if a document or a copy of a document specified in column 1 of the table is given to the Official Receiver, the Official Receiver must enter the information specified in column 2 – about the relevant document/s – on the Index. The table in section 77 serves as a consolidated list of requirements from the Regulations.

Section 78 – Information about specified events

Section 78 creates a consolidated list of events which trigger an obligation for the Official Receiver to enter certain information into the Index. The list of events and corresponding notification requirements have been compiled from provisions contained throughout the Act and Regulations. Section 78 specifies that, if an event in column 1 of the table occurs, the Official Receiver must enter in the Index the information specified in column 2. The note under section 78 provides a reminder that a number of provisions in the Act require the Official Trustee to enter information in the Index when certain events occur, and sets out these provisions.

Section 79 – Information about certain debtors

Section 79 creates an obligation for the Official Receiver to enter specific information about certain debtors in the Index. Subsection 79(2) sets out which debtors the section covers, and subsection 79(1) sets out the types of information about those debtors which must be entered in the Index. Subsection 79(3) specifies that where the relevant debtor is deceased, the information to be entered in the Index is that which is applicable at the time immediately before the debtor's death.

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

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

Subsection 80(1) provides for the circumstances in which a debtor or bankrupt can apply to the Inspector-General for information about the debtor or bankrupt to be removed, corrected or not entered on the Index.

In particular, a person can apply for information:

- not to be entered on the Index on the ground that entry on the Index would jeopardise, or be likely to jeopardise, the person's safety (paragraph 80(1)(a))
- to be removed from the Index on the ground that its inclusion jeopardises, or is likely to jeopardise, the person's safety, or is inaccurate or misleading, (paragraph 80(1)(b)), or
- to be corrected on the Index on the ground that it is inaccurate or misleading (paragraph 80(1)(c)).

It is intended that this provision only be used in limited circumstances and that applications be targeted at the specific information that may jeopardise a person's safety or that is inaccurate or misleading.

Subsection 80(2) requires an application under subsection 80(1) to specify the ground that is relied on and include full particulars in support of the ground.

Subsection 80(3) requires the Inspector-General to, as soon as practicable, decide the application and give written notice to the applicant of the decision, reasons for the decision and the applicant's right to apply for Administrative Appeals Tribunal review under section 81.

Subsection 80(4) provides that an application cannot be made to remove a person's name or date of birth from the Index. This item is intended to ensure that the Index contains accurate records of all personal insolvency proceedings in Australia, in recognition of the public interest in personal insolvencies.

Section 81 – Application to Administrative Appeals Tribunal

Section 81 provides for review by the Administrative Appeals Tribunal of a decision made by the Inspector-General under paragraph 80(3)(a) refusing to grant an application for information to be removed, corrected or not entered on the Index.

Section 82 – Removal from the Index of information relating to debt agreement

Section 82 provides for information about debt agreements to be removed from the Index after a specified period. The purpose of this provision is to ensure that, in contrast to bankruptcies, debt agreements are only recorded on the Index for a limited time. This reflects the fact that entering into a debt agreement is an alternative to bankruptcy which attracts different consequences.

Subsection 82(1) provides that if a debt agreement ends after the discharge of obligations under the agreement (under section 185N of the Act), the Official Receiver must remove the information relating to that debt agreement from the Index. The information must be removed within one month of the later of five years after the day the debt agreement was made, or the day on which the debt agreement ends.

Subsection 82(2) provides that if a debt agreement is terminated by acceptance of a proposal, court order, six months arrears default or by the bankruptcy of the debtor (under sections 185P, 185Q, 185QA or 185R respectively) the Official Receiver must remove the information relating to that debt agreement from the Index. The information must be removed within one month of the later of five years after the day the debt agreement was made, or two years after the day the debt agreement is terminated.

Subsection 82(3) provides that if an order is made under section 185U of the Act declaring all of a debt agreement void, the Official Receiver must remove the information relating to that debt agreement from the Index. The information must be removed within one month of the later of five years after the day the debt agreement was made, or two years after the day the order declaring the debt agreement void was made.

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

Section 83 provides for information about debt agreement proposals to be removed from the Index after a specified period. The Official Receiver must remove information relating to a debt agreement proposal from the Index within one year after the day on which any of the following events occurs:

- the proposal is withdrawn by a debtor
- the proposal is not accepted by creditors under section 185EC of the Act
- the Official Receiver cancels their acceptance of the proposal for processing under section 185ED of the Act, or
- the proposal lapses under section 185G of the Act.

The purpose of this provision is to ensure that, in contrast to bankruptcies, debt agreement proposals are only recorded on the Index for a limited time. This reflects the fact that making a proposal for a debt agreement is an alternative to entering bankruptcy which attracts different consequences.

Division 4 – Other matters

Section 84 – Inspection of the Index

As the Index is intended to be a publicly available record of personal insolvency proceedings in Australia, section 84 establishes procedures for public inspection of the Index.

Subsection 84(1) provides for inspection of the Index by the Official Receiver, on the application of a person. In particular, a person may make a written application requesting that an Official Receiver inspect the Index and provide an extract of the material specified in the application.

Subsection 84(2) provides that the Official Receiver:

- must inspect the Index (if the applicant has paid the relevant fee under the Fees and Remuneration Determination) and must give the requested extract to the applicant, or advise the applicant in writing that the requested extract is not entered on the Index, within 10 business days of receiving the application, or
- may give the applicant a list of Index search agents who may be able to inspect material entered in the Index for the applicant.

Subsection 84(3) provides for inspection of the Index by a person granted access by the Inspector-General. After paying the applicable fee under the Fees and Remuneration Determination, the person who has been granted access to the Index may inspect material entered in the Index or obtain an extract of material entered in the Index. Subsection 84(4) provides that a person is not required to have paid the applicable fee under subsection 84(3) prior to inspecting the Index if the person has an alternative arrangement with the Inspector-General about payment. In practice, this occurs in circumstances where a frequent searcher of the Index has set up an account with the Australian Financial Security Authority.

Subsection 84(5) provides that the Inspector-General may specify conditions that apply to the use of information entered in the Index or the use of an extract of material entered in the Index.

Section 85 – Information extracted from the Index to be evidence

Section 85 provides that an extract of information in the Index is admissible in court proceedings as prima facie evidence of the matters in the extract. The purpose of this provision is to improve the efficiency of court proceedings by allowing for an evidentiary certificate to confirm technical matters of fact in relation to information in the Index. The provision does not prevent evidence to the contrary from being adduced.

Section 86 – Immunity from defamation

Subsection 86(1) provides the Inspector-General (and any officer acting at the direction or with the authority of the Inspector-General) with immunity from actions for defamation that arise out of publication of material, or extracts of material, from the Index.

Subsection 86(2) provides that an officer has immunity from actions for defamation that arise out of publication of material, or extracts of material, from the Index if the publication was done by the officer in good faith and in the course of their duty.

Subsection 86(3) provides immunity from defamation to a person who provided material for entry on the Index if the publication was done in good faith and in the performance of a function or duty under the Regulations or any other law of the Commonwealth. This immunity extends to actions for defamation arising out of publication of the material by way of:

- the person providing the material for inclusion on the Index
- the material being published in the Index, and
- extracts of the material being published in the Index.

Subsection 86(4) provides that subsections 86(2) and (3) do not limit the general immunity from defamation under subsection 86(1).

Subsection 86(5) provides that the immunity of the Inspector-General or another officer under this section extends to the Commonwealth and the Official Trustee.

Subsection 86(6) provides that this section does not limit any other ground of defence that may be raised in defamation proceedings arising out of publication of material, or extracts of material, from the Index.

Part 14 – Offences under the Act

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

Section 87 – Apprehension under a warrant–notification to Registrar in certain cases

Section 87 provides for circumstances where a warrant has been executed under subsection 264B(1) of the Act for the apprehension of a person, but it is impracticable to immediately bring that apprehended person before the court.

Subsection 87(2) provides that, in those circumstances, the person executing the warrant must notify the Registrar – as soon as reasonably practicable – of the apprehension and of a day and time when they consider it will be practical for the apprehended person to be brought before the Court, the Registrar or a Magistrate.

Section 88 – Registrar to act on notification-direction to person executing warrant

Section 88 creates certain obligations on a Registrar who receives a notification under subsection 87(2). Subsection 88(1) requires the Registrar, as soon as reasonably practicable, to:

- determine a day, time and place for the apprehended person to be brought before the Court, Registrar or magistrate, and
- direct the person who gave the notification to bring the apprehended person before the Court, Registrar or magistrate in accordance with that determination.

Subsection 88(2) requires the time and day determined under paragraph 88(1)(a) to be the earliest that the Registrar believes to be reasonably practicable.

Subsection 88(3) requires a person – who has been directed under paragraph 88(1)(b) to bring the apprehended person before the Court etc – to comply with that direction.

Division 2 – Infringement notices

Section 89 – Purpose and operation of this Division

Section 89 outlines that the purpose of Division 2 of Part 14 is to establish an infringement notice scheme, as an alternative to prosecution, for an infringement notice provision. Offences which can be dealt with by the issue of an infringement notice appear in the table in subsection 277B(2) of the Act. Division 2 of Part 14 contains detailed provisions for the operation of this scheme.

Section 90 – When an infringement notice may be given

Section 90 outlines the circumstances in which an infringement notice may be given to a person. Subsection 90(1) provides that an Inspector-General may give a person an infringement notice if they believe on reasonable grounds that a person has contravened an infringement notice provision. Subsection 90(2) requires the infringement notice to be given within 12 months after the day on which the contravention is alleged to have taken place. Subsection 90(3) provides that a single infringement notice must only relate to a single contravention of a single provision, unless subsection 90(4) applies.

Subsection 90(4) provides that the Inspector-General may give a person a single infringement notice relating to multiple contraventions of a single provision, if:

- the provision requires the person to do something within a certain time period or before a certain time
- the person fails or refuses to do that thing within that period
- the failure or refusal occurs on more than one day, and
- each contravention is constituted by the failure or refusal on one of those days.

This subsection is intended to ease administrative burden on the Inspector-General by stipulating that, where a person repeatedly fails or refuses to fulfil a particular obligation on time over multiple days, the Inspector-General can issue a single infringement notice for those multiple contraventions, rather than having to issue multiple infringement notices.

Section 91 – Matters to be included in an infringement notice

Subsection 91(1) sets out the matters which must be included in an infringement notice that is given to a person. The mandatory content is intended to ensure that the recipient has sufficient information to understand the nature of the notice, the provision within the Act that they have allegedly breached, what the person must do in relation to the notice (including that the notice must be paid within 20 business days after the day the notice is given), and the potential consequences of a failure to comply. The 20 day period allowed for payment balances the need for a reasonable period of time to pay the penalty with the requirement for prompt enforcement.

Subsection 91(2) provides for the scenario where the notice relates to more than one alleged contravention (as described by subsection 90(4)). The subsection provides that in this case, the ‘amount payable’ stated in the notice should be the sum of the amount worked out in accordance with subsection 277B(2) of the Act for each alleged contravention.

Section 92 – Extension of time to pay amount

Subsection 92(1) provides that a person given an infringement notice may apply to the Inspector-General for an extension of time in which to pay the penalty specified in the notice. Subsection 92(2) specifies that, if the extension application is made within the period referred to in paragraph 91(1)(h), the Inspector-General *may*, in writing, grant that extension. It is intended that the Inspector-General has discretion as to whether to grant this extension or not. The Inspector-General may grant this extension before or after the end of the initial 20 day period.

Subsection 92(3) clarifies that if an extension is granted, any reference in Division 2 of Part 14 to the period referred to in paragraph 91(1)(h) is taken to be a reference to that extended period.

Subsection 92(4) provides that, if the Inspector-General does not grant the extension, any reference in Division 2 of Part 14 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 last day of the initial period referred to in paragraph 91(1)(h), or
- the day that is seven days after the person was given notice of the Inspector-General’s decision not to grant the extension of time.

This is intended to ensure that a person who has applied for, and been denied an extension, still has a reasonable time to pay the penalty after becoming aware that the extension was not granted.

Subsection 92(5) provides that the Inspector-General may extend the period more than once under subsection 92(2).

Section 93 – Withdrawal of an infringement notice

Section 93 provides a mechanism for the Inspector-General to withdraw an infringement notice.

Subsection 93(1) provides that a person who has been given an infringement notice may make written representations to the Inspector-General seeking the withdrawal of the notice.

Subsection 93(2) provides that the Inspector-General may withdraw an infringement notice whether or not the person who has received the infringement notice has made written representations seeking the withdrawal.

Subsection 93(3) sets out the factors which the Inspector-General must, and may take into account in making their decision of whether or not to withdraw an infringement notice.

Subsection 93(4) requires notice of the withdrawal of the infringement notice to be given to the person. The notice must include particulars such as the person’s name and address, the day the infringement notice was given, the infringement notice’s identifying number, that the infringement is withdrawn, and that the person may be prosecuted in a court for the alleged contravention.

Subsection 93(5) provides that – if the Inspector-General withdraws the infringement notice after the penalty specified in it has been paid – the Commonwealth must refund the amount paid to the person who paid it.

Section 94 – Effect of payment of amount

Subsection 94(1) provides that where a person given an infringement notice pays the penalty within the period specified, such payment discharges any liability of the person and that person cannot be

prosecuted for the same offence. Additionally, payment of the infringement notice cannot be considered an admission of guilt or liability, and the person is not regarded as having been convicted of the alleged offence.

Subsection 94(2) clarifies that subsection 94(1) does not apply if the infringement notice has been withdrawn.

Section 95 – Evidentiary certificates

Subsection 95(1) provides that the Inspector-General may sign a certificate that states that:

- an infringement notice penalty was not fully paid in time
- an extension of time to pay an infringement notice was refused or granted
- if an extension was granted, an infringement notice penalty was not fully paid within the extension period, or
- an infringement notice was withdrawn on a day specified in the certificate.

Subsection 95(2) provides that a certificate under subsection 95(1) is prima facie evidence of the matters specified in it at a hearing of a prosecution for an offence alleged in an infringement notice.

Subsection 95(3) specifies that a certificate purported to be signed by the Inspector-General is taken to have been signed by the Inspector-General unless the contrary is proved.

Section 96

Section 96 provides that Division 2 of Part 14 does not:

- mean that an infringement notice must be issued for an alleged contravention of an infringement notice provision
- affect the liability of a person for an alleged contravention if they don't comply with the notice
- prevent the giving of two or more infringement notices to a person for an alleged contravention, or
- limit a court's discretion to determine the amount of penalty to be imposed if a person is found to have contravened an infringement notice provision.

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

Section 97 – Purpose of Part

Section 97 provides that Part 15 is made for the purposes of section 286 of the Act. Section 286 of the Act provides that the regulations may include provisions dealing with the collection and recovery of the interest charge, realisations charge or late payment penalty.

Section 98 – Mode of payment

Section 98 specifies the mode by which payment of an estate charge or late payment penalty may be made to the Inspector-General. The list of payment modes has been updated to reflect current practices, and includes payment by direct debit, electronic transfer, cheque, or any other means that the Inspector-General approves in writing.

Section 99 – Overpayments to be refunded or offset

Section 99 provides that if there is an overpayment of an estate charge or late payment penalty, the amount of the overpayment may be:

- refunded to the person who made the payment, or

- offset against the estate charge or late payment penalty payable by the person, unless the person has directed otherwise by written notice to the Inspector-General.

Section 100 – Information to accompany payment of interest charge

Section 100 provides that any payment of an interest charge must be accompanied by the approved form containing any information required by that form. Subsection 100(2) specifies that this section does not apply to the Official Trustee.

Section 101 – Information to accompany payment of realisations charge

Section 101 provides that any payment of a realisations charge must be accompanied by the approved form containing any information required by that form. Subsection 101(2) specifies that this section does not apply to the Official Trustee.

Part 16 – Miscellaneous

Division 1 – Matters relating to documents

Section 102 – Service of documents

Section 102 establishes the methods for service of documents under the Act or the Regulations.

This section provides that, unless the contrary intention appears, if a document is required or permitted by the Act or Regulations to be given to, sent to or served on a person, the document may be:

- sent by courier to the person's last known address, or
- marked with the person's name and any document exchange number and left at a document exchange where the person maintains a document exchange facility.

The Note clarifies that the methods of service under section 28A of the *Acts Interpretation Act 1901* also apply to the Act and Regulations. This includes personal service, service by post and service by electronic communication.

This section does not apply to service of documents on the Inspector-General, Official Receiver or the Official Trustee, which is dealt with in section 103.

Subsection 102(2) specifies that, in the absence of evidence to the contrary, the document is taken to have been received by, or served on the person when the document is delivered to that address or document exchange.

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

Section 103 establishes the methods for providing documents to the Inspector-General, the Official Receiver or the Official Trustee.

Subsection 103(1) provides that, unless the contrary intention appears, section 103 applies where the Act or Regulations require or permit a document to be given to, sent to, filed or lodged with the Inspector-General, the Official Receiver or the Official Trustee.

Subsection 103(2) provides that a document must be posted, delivered, sent by email or sent through the website of the Australian Financial Security Authority to the office of the Inspector-General or Official Receiver as the case may be.

Subsection 103(3) provides that where this section applies to the provision of documents, the document is taken to be received, filed or lodged only when the document is actually received by, or on behalf of, the Inspector-General or the Official Receiver.

Section 104 – Proof of statement of affairs

Section 104 provides that, if the Inspector-General has signed a certificate stating that the form of statement of affairs that is attached to the certificate was the approved form (at a particular time) for the purposes of section 6A of the Act, this certificate is admissible in any proceedings as prima facie evidence of the matters in it. The purpose of this provision is to improve the efficiency of court proceedings by allowing for an evidentiary certificate to confirm technical matters of fact in relation to the approved statement of affairs form. The provision does not prevent evidence to the contrary from being adduced.

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

Section 107 provides that the Inspector-General or an Official Receiver is not required to pay fees for making an application to the Court or filing a document in the Court in relation to proceedings under the Act, the Regulations, or the Insolvency Practice Rules. In practice, the Inspector-General or Official Receiver would request the fee to be waived pursuant to this section when making an application or filing documents.

Division 2 – Matters relating to fees

Section 106 – Payment of fees

Subsection 106(1) provides that the Official Receiver is not required to deal with a request, application or document unless the applicable fee under the Fees and Remuneration Determination has been paid in relation to the making of the request or application, or the presentation or lodgement of the document.

Subsection 106(2) provides that the Official Receiver is not required to do a matter or thing pursuant to a request, application or document unless the applicable fee under the Fees and Remuneration Determination has been paid in relation to the doing of the matter or thing.

For example, if a creditor made an application to an Official Receiver for the issue of a bankruptcy notice, the Official Receiver would not have to deal with or decide the application until the creditor had paid the applicable fee. However, the Official Receiver may choose to deal with or otherwise act on a request, application or document even if the applicable fee has not been paid. This is common in circumstances where there is an alternative agreement about payment, such as an arrangement under which fees payable by a registered trustee are paid monthly in arrears.

The purpose of this section is to enable the Official Receiver to recoup their costs, charges and expenses before being required to act on a request, application or document. This is important to ensure the effectiveness of the Australian Financial Security Authority's cost recovery regime.

Section 107 – Official Trustee's entitlement to interim remuneration

Overview

Section 107 provides for the Official Trustee's entitlement to interim remuneration by reference to the Fees and Remuneration Determination (the Determination).

The Official Trustee is entitled to be remunerated for work done as trustee of a bankrupt estate. This remuneration is paid from the amounts realised during the administration of the bankrupt estate. The purpose of section 107 is *not* to establish the Official Trustee's entitlement to this remuneration (that

is achieved by section 163 of the Act and the Determination), but rather to clarify when the entitlement arises and consequently when the value of that remuneration is calculated.

This is important because administrations continue over multiple years, and the rates of remuneration may change from time to time when the Determination is updated. For example, the 20% of realised balance referred to in section 3.04 of the current Determination has not changed since the first Determination was published in 2006, but the time costing rate has increased since that time, from \$50 per 15 minutes to \$62.50 per 15 minutes or part thereof.

According to current practice, the Official Trustee calculates and draws its remuneration at the end of an administration (or at the time the administration is transferred to a registered trustee, if any funds are available at that time). At that point, the Official Trustee needs to be able to identify the correct remuneration rate applying to the work it has undertaken. This rate will generally depend on the time at which amounts have been received or funds realised, from which the remuneration can be recovered.

In summary, section 107 provides that the Official Trustee's entitlement to remuneration arises when the Official Trustee first acts or performs certain work. The remuneration is:

- payable from time to time when the amount is received or as the funds are realised
- based on the amount received or the realised balance at the time, and
- calculated at the rate applicable at the time the amount is received or the funds are realised.

Note that the reference to 'interim' remuneration is not a reference to 'interim' work being performed before a person becomes bankrupt (for example pursuant to section 50 of the Act). Instead, the reference to 'interim' remuneration is intended to describe the remuneration that the Official Trustee is entitled to be paid during the course of the administration as amounts are received into the estate, rather than at the completion of the administration.

Time at which entitlement to remuneration arises

Subsection 107(1) clarifies the time at which the Official Trustee's entitlement to remuneration arises for performing certain types of work. In particular, it specifies that the entitlement to remuneration arises when the Official Trustee:

- under paragraph 107(1)(a) - performs or first acts in accordance with sections 3.03, 3.04, 3.07 or 3.08 of the Determination, which refer to the Official Trustee performing work:
 - in relation to carrying on business or taking control of property under section 50 of the Act (section 3.03 of the Determination)
 - in relation to compositions or arrangements with creditors (section 3.04)
 - as controlling trustee (section 3.07)
 - in relation to personal insolvency agreements (section 3.08)
- under paragraph 107(1)(b) - is appointed to be an administrator for a debt agreement made under section 185H of the Act, as described in section 3.06 of the Determination
- under paragraph 107(1)(c) - first acts in accordance with subsection 3.09(1) of the Determination, by acting as trustee of 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
- under paragraph 107(1)(d) - performs work as described in subsection 3.09(2) or clause 3.10 of the determination, which refer to the Official Trustee:
 - transferring the administration of the estate to, or being replaced by, a registered trustee before the bankruptcy is annulled under section 153A or 153B of the Act; or replacing a Registered Trustee for work as trustee of 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.
 - performing work in place of a registered trustee or debt agreement administrator

Time at which remuneration is payable, and rate to be applied

Subsection 107(2) specifies that for the types of work referred to in paragraphs 107(1)(a), (b) and (d), remuneration is payable to the Official Receiver in respect of an amount received by the Official Trustee when the amount is received, and at the rate applicable when the amount is received.

Subsection 107(3) provides that where the Official Trustee performs work mentioned in section 3.08 of the Determination in relation to a personal insolvency agreement (relating to a debtor who has signed an authority under section 188 of the Act), the Official Trustee is entitled to be paid an amount equal to the expenses occurred by the Official Trustee. That amount should be paid out of the estate of the debtor.

Subsection 107(4) provides that where the Official Trustee performs work mentioned in section 3.09 of the Determination in relation to a bankrupt's estate, or a deceased person with a Part XI administration on foot, the Official Trustee is entitled to be paid an amount equal to the expenses occurred by the Official Trustee. That amount should be paid out of the estate of the bankrupt or the deceased person.

Section 108 – Reimbursement of Official Trustee for expenses

Section 108 provides for the Official Trustee to be reimbursed for any out-of-pocket expenses that they incurred when performing certain personal insolvency work. In particular, section 108 provides that if the Official Trustee performs work of the kind mentioned in the following sections of the Fees and Remuneration Determination:

- section 3.03 – in relation to carrying on the business of a debtor or taking control of a debtor's property under section 50 of the Act, before a sequestration order is made (subsection 110(1)) of the Regulations
- section 3.04 – in relation to a composition or scheme of arrangement with creditors under Division 6 of Pt IV of the Act (subsection 110(2))
- section 3.08 – in relation to administering a personal insolvency agreement under Part X of the Act (subsection 110(3)), or
- section 3.09 – in relation to the administration of an estate of a bankrupt or the administration of the estate of a deceased person pursuant to an order under Part XI of the Act (subsection 110(4))

then the Official Trustee is entitled to be reimbursed an amount equal to the amount of expenses that they incurred in performing the work. The amount is payable out of the estate of the debtor, bankrupt or deceased person as relevant.

Section 109 – Fee for inspecting notes and transcript of evidence

Section 109 provides that the prescribed fee for inspecting the notes and transcript of evidence of an examination of a person under section 81 of the Act is \$20. The fee is prescribed for the purposes of paragraph 81(17)(b) of the Act.

Section 110 – Fee for making request for consent to leave Australia

Section 110 provides that a fee is payable by a bankrupt in order to make a request to the Official Trustee for consent to leave Australia (under paragraph 272(1)(c) of the Act). Paragraph 272(1)(c) of the Act requires a bankrupt to seek the consent of their trustee, whether a registered trustee or the Official Trustee, before leaving Australia during the bankruptcy. However, a fee is only payable pursuant to this section if the bankruptcy is being administered by the Official Trustee. The fee is payable to the Official Trustee and is contained in the Fees and Remuneration Determination.

Section 111 – Waiver or remission of fees by Inspector-General

Section 111 establishes the process by which the Inspector-General may waive or remit a fee payable under various sections of the Regulations and the Fees and Remuneration Determination.

Subsection 111(1) empowers the Inspector-General to waive or remit a fee payable under various sections of the Regulations and the Fees and Remuneration Determination, on the grounds of undue hardship or other exceptional circumstances in comparison to hardship arising in the normal course of bankruptcy.

Subsection 111(2) provides that decision to waive the fee must be notified in writing to the person concerned and to the officer to whom the fee otherwise would be payable. That notice must also include the reasons for the decision (subsection 111(3)).

Subsection 111(4) sets out the relevant provisions covered by this section. The fees payable under the following provisions could therefore be waived or remitted by the Inspector-General:

- section 109 of the Regulations (fee for inspecting notes and transcript of evidence)
- item 1, 2, 3, 4, 9, 13, 14 or 15 of the table in section 2.01 of the Fees and Remuneration Determination (inspection of particular documents under the Act and exercise of powers under the Act by an Official Receiver), and
- section 2.02 or 2.03 of the Fees and Remuneration Determination (inspecting or obtaining extracts of material in the Index and giving information entered in the Index).

Section 112 – Review of decision of the Inspector-General

Section 112 provides for review by the Administrative Appeals Tribunal of a decision made by the Inspector-General under subsection 111(1) of the Regulations, refusing to waive or remit the whole or part of a fee that is payable by a person.

Division 3 – Other matters

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

Section 113 requires a trustee who takes possession of property under the Act, to promptly either:

- make, sign and date an inventory of the property
- take photographs of the property, or
- make video recordings of the property.

The trustee must give a copy of these things to any person who has custody of the property or of part of the property.

Section 113 relies on the ‘necessary or convenient’ regulation-making power, contained in paragraph 315(1)(b) of the Act.

Section 114 – Indexation

Section 114 establishes the method for indexing amounts under the Regulations.

In particular, subsection 114(1) provides that, at the start of each financial year on or after 1 July 2021, a dollar amount expressed to be indexed under section 114 of the Regulations will be replaced by an amount worked out by multiplying the indexation factor for the indexation year with the dollar amount for the previous year.

Subsection 114(2) provides a formula for working out the indexation factor, which is calculated by dividing the Consumer Price Index for the March quarter immediately before the indexation year (known as the reference quarter) with the Consumer Price Index for the March quarter before the reference quarter (known as the base quarter).

Subsection 114(3) provides that an indexation factor is to be calculated to three decimal places.

Subsection 114(4) provides that if an indexation factor calculated in accordance with subsection (2) is less than one, the indexation factor is increased to one.

Subsection 114(5) provides that calculations made under subsection (2) must be made using the index numbers published for the most recently published index reference period and must be made disregarding index numbers that are published in substitution for previously published index numbers.

Part 17 – Application, saving and transitional provisions

Section 115 – Things done under the *Bankruptcy Regulations 1996*

Section 115 clarifies that things done under the *Bankruptcy Regulations 1996* should continue to be valid and have effect as though they were done under this instrument. In particular, subsection 115(1) provides that if a thing was done for a particular purpose under the *Bankruptcy Regulations 1996* as in force immediately before those Regulations were repealed, and the thing could be done for that purpose under this instrument, the thing has effect as if it had been done under this instrument.

Subsection 115(2) specifies that the saving provision of subsection 115(1) should apply to notices, applications or other instruments being given or made under the *Bankruptcy Regulations 1996*.

Section 116 Taxable value of car fringe benefits

Section 116 is a saving provision clarifying that, despite the repeal of the *Bankruptcy Regulations 1996*, item 3 of Schedule 4 to those Regulations should continue to apply in relation to a CAP if an assessment under section 139W of the Act was made for that CAP before the *Bankruptcy Regulations 1996* were repealed.

Item 3 of Schedule 4 to the *Bankruptcy Regulations 1996* modified section 9 of the FBTA Act to ensure it applied appropriately in the bankruptcy context. It provided a method for calculating the taxable value of a car fringe benefit by the application of a specific formula.

In 2014, that formula was updated and simplified in the FBTA Act. Item 3 of Schedule 2 to these Regulations replicates that change in formula, and ensures that going forward, trustees use the same method for calculating car fringe benefits in the bankruptcy context, as in the FBTA Act.

The saving provision in section 116 provides that the old formula should be used for any contribution assessments undertaken in relation to a CAP before the *Bankruptcy Regulations 1996* were repealed.

Schedule 1 – Forms

Subsection 9(1) provides that a bankruptcy notice should be in the approved form, which is prescribed in Schedule 1 of the Regulations.

Schedule 1 contains that prescribed Bankruptcy Notice form, for use by persons applying to the Official Receiver for the issue of a bankruptcy notice in relation to a debtor. The form includes space for an applicant to enter certain information, including:

- the name/s of debtors to which the application relates
- the names of the applicant creditor/s
- the total debt amount owing

- (if applicable) the amount of debt converted into foreign currency using the Reserve Bank of Australia exchange rate
- the timeframe within which the debtor is required to settle the debt
- the payment details, and
- the schedule of post-judgment interest calculation.

The form also includes a range of important information for the debtor, including the consequences of not complying with the Bankruptcy Notice, how to apply for an extension to comply, and how to apply to set the Bankruptcy Notice aside.

Schedule 2 – Modifications of the FBTA Act

As described in section 33 of the Regulations, Schedule 2 sets out the manner in which the FBTA Act is to be modified in its application to the bankruptcy context. The purpose of Schedule 2 is to enable the calculation of fringe benefits (provided to the bankrupt), which are to be included in the assessment of a bankrupt's income during a CAP. Schedule 2 modifies the FBTA Act, to ensure that its valuation rules work appropriately when applied in a bankruptcy context. Accordingly, the following sections of the FBTA Act are modified in the manner described below.

Item 1 – Subsection 7(1), (2), (3) and (4)

Item 1 modifies subsections 7(1), (2), (3) and (4) of the FBTA Act by repealing those subsections and substituting them with a new subsection (1). Unmodified section 7 of the FBTA Act provides for the calculation of the value of a car benefit received by a person and which has been provided by the person's employer. Item 1 modifies section 7 of the FBTA Act to the effect that no employment relationship need exist between the bankrupt and the car benefit provider, for the value of that benefit to be income for the purposes of the Act.

Item 2 – Subsections 8(1) and (2)

Item 1 omits subsections 8(1) and (2) of the FBTA Act, to ensure that a car benefit cannot be an exempt benefit when provided to a bankrupt.

Item 3 – Section 9

Item 3 modifies section 9 of the FBTA Act by repealing that section and substituting it with a new section 9. Unmodified section 9 of the FBTA Act provides a method for calculating the taxable value of a car fringe benefit by the application of a formula. In 2014, this formula was updated and simplified: the differential rates for the statutory fraction used to calculate car benefits was replaced with a flat rate of 20%, regardless of the number of kilometres travelled. Item 3 replicates this change to ensure trustees use the same method for calculating car fringe benefits in the bankruptcy context, as in the FBTA Act.

Accordingly, item 3 modifies section 9 of the FBTA Act by providing a formula for calculating the taxable value of a car fringe benefit, in which the 20% rate, the base value of the car, and the number of days during the year in which the car benefit was provided are multiplied. The product is then divided by the number of days in the CAP. From this amount is deducted any amount that the recipient of the car benefit has expended in relation to the car.

Item 3 also modifies section 9 of the FBTA Act by omitting sub-subparagraph 9(2)(e)(ia)(B) which, for FBT purposes, enables the recipient of a car fringe benefit to give documentary evidence of his or her expenses in relation to the car to his or her employer. This sub-subparagraph is not necessary in the bankruptcy context, as a bankrupt is required to supply information relating to any expenses he or

she has incurred in relation to a car provided to him or her in a form approved by the Inspector-General.

Item 3 also inserts an example of how to apply this formula into modified paragraph 9(2)(d) of the FTBA Act.

Item 4 – Sections 10 to 12

Item 4 repeals sections 10 to 12 of the FBT Act, as they are not applicable in the bankruptcy context for the reasons set out below.

Section 10 of the FBT Act enables an employer to elect an alternative basis, called the cost basis, to the statutory formula set out in section 9 of the FTBA Act on which the taxable value of car fringe benefits provided by the employer will be calculated. This alternative method of calculation will not be available in determining the value of a car benefit for the purposes of assessing a bankrupt's income during a CAP, and item 4 therefore modifies the FBT Act for bankruptcy purposes by the deletion of section 10.

Section 10 of the FBT Act also entitles an employer to a reduction in the operating cost of a car on account of business journeys undertaken by the car only where log books and odometer records are maintained. As the operating cost method of assessing the value of a car fringe benefit is not going to be used for bankruptcy purposes, section 10A is unnecessary, and so it is repealed.

Sections 10B, 10C, 11 and 12 of the FBT Act all also relate to the operating costs method of calculating the value of car benefits. As this method will not be available in the bankruptcy context, item 4 repeals all of these sections of the FBT Act.

Item 5 – Subsection 13(1)

Item 5 omits the words in subsection 13(1) of the FBT Act 'or the operating cost of a car for the purposes of section 10'. It does so because the operating cost method of ascertaining the value of a car fringe benefit is not going to be used for bankruptcy purposes.

Item 6 – Subsection 22A

The FBT Act creates a category of benefit called 'expense payment benefits' and draws a distinction between 'in-house' and 'external' expense payment benefits. This distinction is not necessary in the bankruptcy context. Item 6 therefore omits section 22A of the FBT Act, which provides a mechanism for assessing the value of 'in-house' expense payment benefits.

Item 7 – Subsection 23

Section 23 of the FBT Act provides that the taxable value of external expense payment fringe benefits is the full amount of the payment made by the provider of the benefit in the discharge of the recipient's liability, whether the payment is made directly to the person in whose favour the liability arises, or is made by way of reimbursement to the recipient. Where the recipient makes a contribution to the payment of the expense in question, that payment does not increase the value of the benefit. This formula is to be used in valuing all expense payment benefits received by a bankrupt for the purposes of assessing the bankrupt's income during a CAP. Item 7 modifies section 23 to remove the word 'external' so that the formula applies to all expense payment benefits received by a bankrupt, and also to avoid drawing a distinction between in-house and external benefits for bankruptcy purposes.

Item 8 – Section 26

The FBTA Act draws a distinction between remote and non-remote area housing benefits and each is treated differently for tax purposes. It is not necessary for bankruptcy purposes to draw such a distinction. For the purpose of assessing the income of the bankrupt during the CAP, the formula for assessing the value of non-remote area housing benefits is applied to all housing benefits received by bankrupts. Item 8 replaces section 26 of the FBTA Act with modified section 26 which provides that the value of a housing fringe benefit in relation to a CAP is the portion of the market value of the recipient's current housing right that exceeds the recipient's rent.

Item 9 - Sections 28 to 29A

Sections 28, 29 and 29A of the FBTA Act are unnecessary for bankruptcy purposes, so item 9 omits these sections.

Item 10 – Section 31

Section 31 of the FBTA Act specifies the taxable value of living-away-from-home allowance fringe benefits. The taxable value of the benefit is the amount of the allowance less so much of it as is reasonable to compensate for the cost of accommodation away from home and for increased expenditure on food. Item 10 adds subsection 31(2) which defines the term ‘deducted home consumption expenditure’ in relation to the ‘exempt food component’ of a living-away-from-home allowance. The ‘deducted home consumption expenditure’ is to be taken to be an amount of \$42 per week for a person 12 years of age or more and \$21 for a person less than 12 years old. This is the same as the ‘statutory food amount’ specified in section 136 of the FBTA Act. The item also includes an example to show how the value of a living-away-from-home allowance benefit is to be calculated.

Items 11 - 12 – Section 32

Section 32 of the FBTA Act provides that, where air transport is provided to an employee of an airline operator or an employee of a travel agency on a free or discounted basis, the provision of the transport and any incidental services is deemed to be a fringe benefit. Item 11 makes a technical drafting amendment to sub-subparagraph 32(b)(ii)(B) consequent upon the substantive amendment which is made by item 12 to omit paragraph 32(c) of the FBTA Act. That paragraph limits the benefit to air transport provided subject to standby restrictions that customarily apply in relation to the provision of airline transport to employees of the airline industry. Whether or not the bankrupt's stand-by travel rights are subordinate to those of other airline passengers is not to be relevant to the valuation of the benefit thus derived.

Item 13 – Section 36

A board fringe benefit arises where the provider provides a ‘board meal’ to the recipient. Section 36 of the FBTA Act sets out a formula for determination of the taxable value of a board benefit. Item 13 substitutes a modified section 36 containing a formula whereby the value of a board benefit is to be taken to be \$1 in relation to the year that began on 1 July 1992 or a CAP beginning on 1 July 1992. In subsequent years, the value of such a benefit is to be \$1 increased by the All Groups Consumer Price Index.

Item 14 – Section 37

Section 37 of the FBTA Act provides for a reduction of the taxable value of a board fringe benefit in circumstances, where the recipient would otherwise be entitled to an income tax deduction in relation to any expenditure incurred by the recipient. This reduction of value is not relevant for bankruptcy purposes, so item 14 omits section 37.

Item 15 – Division 11 of Part III

Item 15 omits Division 11 of Part III of the FBTA Act, which deals with property fringe benefits. The fringe benefits under the Division arise out of a disposal of the provider's interest in the property to the recipient. Any such property would be after-acquired property, which would vest in the trustee of the estate of the bankrupt.

Item 16 – Section 46

Section 46 of the FBTA Act sets down rules for determining in which year of tax residual fringe benefits (that is, benefits other than those falling in the specific categories of benefit which the FBTA Act creates), should be taxed. Item 16 substitutes a new section 46 with a provision for attributing residual fringe benefits received by a bankrupt over a period of two or more CAPs.

Under new modified section 46, where a residual fringe benefit is provided over two or more CAPs, the benefit will be subject to assessment for income contribution in each of the periods in which it was received.

Item 17 – Sections 48 and 49

The FBTA Act draws a distinction between ‘in-house’ and ‘external’ residual fringe benefits, and also between ‘period’ and ‘non-period’ residual benefits. All residual benefits are to be treated in the same manner for bankruptcy purposes and, accordingly, it is unnecessary to draw such distinctions. Item 17 therefore omits sections 48 and 49 of the FBTA Act, which sets out rules for determining the value of in-house, non-period residual benefits.

Item 18 – Section 50

Item 18 replaces section 50 of the FBTA Act with a modified section 50, for use in ascertaining the value of residual fringe benefits for bankruptcy purposes. The new modified section 50 provides that the value of a residual fringe benefit in relation to a CAP is the cost to the provider of providing the benefit, reduced by the amount of the recipient's contribution.

Item 19 – Section 51

Item 19 omits section 51 of the FBTA Act for the same reason as item 17 omits sections 48 and 49 of the FBTA Act.

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

Division 14 of Part III of the FBTA Act provides for the reduction of the taxable value of miscellaneous fringe benefits, a reduction irrelevant in a bankruptcy context. Division 14A of Part III deals with amortisation of remote area housing fringe benefits and is irrelevant in a bankruptcy context. Division 14B of Part III deals with reducible fringe benefits relating to remote area home ownership repurchase schemes and is irrelevant in a bankruptcy context. Item 20 therefore repeals Divisions 14, 14A and 14B of Part III of the FBTA Act.

Items 21 - 24 – Subsection 136(1)

Section 136 of the FBTA Act defines a large number of terms used in the Act. Items 21 to 24 amend section 136 of the FBTA Act to insert definitions necessary to enable the FBTA Act provisions to apply in a bankruptcy context and to provide some exemptions.

Item 21 inserts a definition of ‘contribution assessment period’. This term has the same meaning as it does under the Act.

Item 22 replaces the FBT Act definition of ‘family member’, a term which, in that Act is defined in relation to an employee. The modified definition defines family member in relation to a bankrupt, as well as in relation to an employee.

Item 23 modifies the FBT Act definition of ‘fringe benefit’ by substituting a new definition of that term. The new definition has two components. The first makes clear that a fringe benefit in relation to a bankrupt, means any benefit provided at any time during a contribution period. The second provides a number of exceptions to that general principle, being benefits the value of which will not constitute income for the purposes of section 139L of the Act.

Item 24 inserts a new modified subsection 136(1A) after subsection 136(1) in the FBT Act. In effect, the new subsection substitutes references to ‘the employee, or by a relative of the employee’ in parts of the subsection 136(1) definition of ‘fringe benefit’, with references to ‘the bankrupt’. This is a technical drafting modification to allow the FBT Act provisions being applied by the Regulations to work effectively in a bankruptcy context.

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

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

As described in section 58, Part 1 of Schedule 3 sets out the manner in which Part X of the Act is modified in its application to joint debtors (whether partners or not). Accordingly, the following sections of the Act are modified in the manner described below.

Items 1 - 2 – Section 187A

Items 1 and 2 modify section 187A of the Act by inserting five new modified subsections. Modified subsection 187A(2) provides that in the application of Part X to joint debtors, whether partners or not, the term ‘joint debtor’ is substituted for the term ‘debtor’ throughout the Part. Modified subsection 187A(2) also provides for some other associated substitutions, for example that references to ‘he or she’ in relation to a debtor should be read as ‘they’.

Modified subsection 187A(3) provides that subsection 187A(2) does not apply where specific modifications of Part X by the Bankruptcy Regulations otherwise require.

Modified subsection 187A(4) provides that a reference to joint debtors is taken to include a reference to any of the joint debtors.

Modified subsection 187A(5) provides that a reference to the affairs, or examinable affairs, of a debtor is to be read as a reference to the separate affairs, or separate examinable affairs, of a joint debtor.

Items 3 - 7 – Section 188

To make section 188 properly applicable in relation to joint debtors, whether partners or not, items 3 to 7 make certain amendments to section 188 to make it clear that each of the joint debtors, and not the joint debtors collectively, must desire that his or her affairs be dealt with under Part X for section 188 to operate in relation to joint debtors.

Items 8 - 10 – Section 188A

Section 188A of the Act, as modified by subsection 187A(2) above, would leave it unclear as to whether the obligation is on each of the debtors, or on the debtors collectively, to give the controlling trustee a statement of the debtors' affairs and a proposal for dealing with them under Part X. Therefore

items 8 to 10 modify section 188A to make it clear that each joint debtor must do those things individually.

Items 11 - 14 – Section 189AB

Items 11 to 14 modifies section 189AB of the Act by inserting new subsection 189AB(1A). This, and a modification to subsection 189AB(1), make it clear that the charge(s) as created by the modified subsection 189AB(1) and the new subsection (1A) is (are) over the joint property of the joint debtors and over the separate property of each joint debtor. Consequential modifications are made to subsections 189AB(2), (3) and (4).

Item 15 – Paragraph 189A(1)(a)

Item 15 modifies paragraph 189A(1)(a) so as to impose an obligation on the controlling trustee to prepare a report on the joint estates and on the separate estates of each of the joint debtors.

Item 16 – Subsection 219(2)

Item 16 makes a similar consequential modification to subsection 219(2), to ensure that both names of the joint debtors are included in the ‘prescribed official name’ of a trustee who may sue or be sued under section 219 of the Act.

Part 2 – Modifications of Part VIII of the Act-controlling trustees and trustee of personal insolvency agreements

As described in section 63, Part 2 of Schedule 3 sets out the manner in which Part VIII of the Act is modified in its application to the controlling trustee in relation to a debtor, as if the debtor were a bankrupt and the controlling trustee were the trustee of the estate of the bankrupt debtor. Accordingly, the following sections of the Act are modified in the manner described below.

Item 17 – before Division 1 of Part VIII - new section 154A

Item 17 modifies Part VIII of the Act by inserting new modified Division 1A which comprises new section 154A. That modified section provides that, in Part VIII in its application to Part X of the Act, a reference to a registered trustee is taken to include a reference to a controlling trustee and to a trustee of a personal insolvency agreement.

Item 18 – Section 156A

Section 156A of the Act, in its unmodified form, relates to the consent of a trustee to act as a trustee. Item 18 modifies section 156A by omitting the section. This is because any relevant application of Part VIII of the Act, in relation to the controlling trustee in relation to a debtor, would also be in the circumstances where there would be an arrangement between the debtor and creditors without sequestration and Part X of the Act applies. Sections 188 and 156A, which are contained within Part X of the Act, effectively require consent, making section 156A redundant in relation to the controlling trustee in relation to a debtor. As such, item 18 repeals this section.

Item 19 – Subsection 157(1)

Subsection 157(1) of the Act, in its unmodified form, concerns the appointment of a trustee when a debtor becomes bankrupt. Item 19 modifies subsection 157(1) so as to apply it to the circumstances of the debtor who is not a bankrupt. Accordingly, modified subsection 157(1) allows creditors to appoint a registered trustee when both the following contingencies apply:

- where the Official Trustee is the controlling trustee in relation to a debtor (under section 188 or 192 of the Act), or the trustee of a personal insolvency agreement (under Part X of the Act), and
- where the creditors wish to appoint in place of the Official Trustee either a registered trustee or a solicitor as the controlling trustee; or a registered trustee as the trustee of the personal insolvency agreement.

Item 20 – Section 158

Item 20 modifies section 158 to apply it to a debtor who is not bankrupt. Accordingly, modified section 158 provides that the creditors may appoint two or more controlling trustees jointly, or jointly and severally.

Item 21 – Section 159

Item 21 modifies section 159 by omitting it from the Act. This is because modified section 160 requires the Official Trustee to act as the trustee when the position of trustee is vacant. Also, under modified section 157, there is a procedure for the appointment of a registered trustee in place of the Official Trustee.

Item 22 – Section 160

Item 22 modifies section 160 of the Act by replacing it with new modified section 160 which provides that the Official Trustee is to act as a trustee under Part X during any period when that position otherwise would be vacant.

Item 23 – After section 161(1)

Item 23 modifies section 161 by inserting new modified subsection 161(1A) which provides that modified section 161 does not apply in relation to a trustee of a personal insolvency agreement.

Item 24 – Section 180

Item 24 modifies section 180 by limiting the reference to ‘trustee of an estate’ to a trustee other than a controlling trustee under Part X. The resignation procedure for a controlling trustee is provided for in subsection 192(1) of the Act.

Items 25 - 26 – Section 181A

Items 25 and 26 modify section 181A by replacing subsections 181A(1) and (4) with new subsections to ensure they apply to controlling trustees, and trustees of personal insolvency agreements.

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

As described in section 64, Part 3 of Schedule 3 sets out the manner in which Division I of Part V of the Act is modified in its application to a debtor whose property is subject to control under Division 2 of Part X of the Act (rather than a debtor who is bankrupt). Accordingly, the following sections of the Act are modified in the manner described below.

Item 27 – Section 77F

Item 27 repeals existing section 77F and substitutes a new section which enables the advances paid under sections 77D and 77E to be paid out of property subject to a personal insolvency agreement.

Item 28 – Subsection 81(1)

Item 28 replaces subsection 81(1) with a modified subsection, which enables the debtor whose property is subject to control to be summoned for examination before the Court or Registrar. A consequential amendment refers to the ‘controlling trustee’ rather than the ‘trustee of the relevant debtor’s estate’.

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

Item 29 – Section 77F

As described in subsection 69(1), Part 4 of Schedule 3 sets out a modification under subsection 231(1) of the Act, to provide that some of the information gathering and related powers in Division 1 of Part V of the Act are also available to trustees of personal insolvency agreements.

The amendment made by item 29 enables section 77F to apply in the context of a Part X administration. It operates to enable the advances paid under sections 77D and 77E to be paid out of property subject to a personal insolvency agreement.

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

As described in subsection 69(2) of the Regulations, Part 5 of Schedule 3 sets out modifications under subsection 231(3) of the Act in relation to personal insolvency agreements. The modifications which are made by items 30 to 50 are necessary to enable other provisions of the Act to operate effectively in relation to personal insolvency agreements.

Items 30 - 31 – Subsection 113(1)

Subsection 113(1) of the Act in its unmodified form provides for the complete discharge of an indenture of apprenticeship, or articles of agreement, for a person who was apprenticed to a debtor or was an articulated clerk to a debtor. Items 30 and 31 modify subsection 113(1) of the Act by removing references to debtor’s petitions, so as to make it applicable to personal insolvency agreements.

Item 32 – At the end of section 133

Item 32 inserts a new subsection at the end of section 133 of the Act, which deals with the disclaimer of onerous property. The new subsection 133(14) states that section 133 does not apply in relation to personal insolvency agreements.

Item 33 – After paragraph 134(1)(b)

Item 33 modifies subsection 134(1) of the act by adding new modified paragraph 134(1)(ba). This new paragraph empowers a trustee to carry on a debtor's business in accordance with an authorisation under new modified subsection 134(4) of the Act (see item 34 below).

Item 34 – At the end of section 134

Item 34 inserts new subsections 134(4), (5) and (6) at the end of section 134 of the Act, in order to ensure it applies appropriately to personal insolvency agreements.

New subsection 134(4) provides that, if a personal insolvency agreement assigns the debtor’s business to the trustee, the agreement may authorise the trustee to carry on a debtor's business and specify the period during which, and the conditions (if any) subject to which, the trustee may do so.

New subsection 134(5) provides that the creditors may vary or terminate an authority under subsection (4) by passing a special resolution at a meeting.

New subsection 134(6) clarifies that the section only extends to property which is subject to a personal insolvency agreement.

Item 35 – Subsection 136(1)

Item 35 modifies subsection 136(1) of the Act, regarding the right to pay off a mortgage, so as to make it applicable only to that property that is subject to both the mortgage and a personal insolvency agreement.

Item 36 – Subsection 137(1)

Item 36 modifies subsection 137(1) of the Act, regarding the right of trustee to inspect goods held as security, so as to make it applicable only to goods that are subject to a personal insolvency agreement.

Items 37 - 38 – Subsection 138(1)

Items 37 and 38 modify subsection 138(1) of the Act, regarding the limitation of a trustee's power in respect of copyright, patents etc, so as to make it applicable to personal insolvency agreements.

Items 39 - 42 – Section 139

Items 39 to 42 modify section 139 of the Act, regarding the protection of a trustee from personal liability in certain cases, so as to make it applicable to personal insolvency agreements. As such, minor amendments are made to paragraphs 139(1)(a) and (b), and subsections 139(2), (3) and (4).

Items 43 - 44 – Subsection 139ZJ

Items 43 to 44 modify section 139ZJ of the Act, which provides for the definition of bankrupt, to ensure that it is applicable to personal insolvency agreements. It provides that a reference to a bankrupt is to be read as a reference to a debtor (being a person who has executed a personal insolvency agreement).

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

Item 45 modifies paragraphs 139ZK(1)(e) and (f) of the Act, to ensure that those sections also apply to personal insolvency agreements.

Items 46 - 47 – Subsection 139ZL(1)

Items 46 to 47 modify subsection 139ZJ(1) of the Act, so that it applies to paying an amount under a personal insolvency agreement, rather than making income contributions during a bankruptcy.

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

Item 48 modifies paragraphs 139ZL(3)(a) and (b) of the Act, so that they apply to paying an amount under a personal insolvency agreement, rather than making income contributions during a bankruptcy.

Item 49 – Subsection 139ZQ(1)

Item 49 of the Act modifies subsection 139ZQ(1) of the Act, so that it applies to personal insolvency agreements (because of the applicability of sections 120 to 125 of the Act), rather than a bankruptcy under Division 3 of the Act.

Item 50 – Subsection 139ZR(3)

Item 50 modifies subsection 139ZR(3) of the Act, so that it applies to personal insolvency agreements under sections 120 to 125 of the Act.

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

As described in section 71, Schedule 4 modifies a number of provisions of the Act so that they apply appropriately to proceedings under Part XI of the Act and the administration of estates of deceased persons under that Part. Accordingly, the following sections of the Act are modified in the manner described below.

Item 1 – Section 49

Item 1 modifies Section 49 by substituting the term ‘deceased debtor's estate’ for the word ‘debtor’.

Items 2 - 14 – Section 50

Section 50 of the Act is modified by a number of alterations – made by items 2 to 14 - such as substituting the term ‘deceased debtor's estate’ for the term ‘debtor's property’. Item 14 inserts a new subsection - subsection 50(6) - to make it clear that the term ‘legal personal representative’ in relation to a deceased debtor means either the executor under the deceased debtor's will or the administrator under letters of administration or court order.

Items 15 – 17 – Section 73

Items 15 to 17 modify Section 73 of the Act, regarding the making of a composition or a scheme of arrangement, so as to make it applicable to the circumstances of the debtor being deceased. Item 17 inserts a new subsection - subsection 73(6) - to make it clear that the term ‘legal personal representative’ in relation to a deceased debtor means either the executor under the deceased debtor's will or the administrator under letters of administration or court order.

Item 18 – Section 74

Section 74 of the Act in its unmodified form provides that where a meeting of creditors accepts a proposal for a composition or scheme of arrangement put forward by a bankrupt, the bankruptcy is annulled on the date of acceptance. Item 18 modifies section 74 of the Act to make it applicable to the circumstances of the debtor being deceased. Modified subsection 74(1) provides that if a proposal to annul the administration of an estate is accepted by a special resolution of creditors, the administration of the estate is annulled on the day the special resolution is passed. Modified subsection 74(2) then requires the trustee of the estate, within two business days of annulment, to give the Official Receiver a certificate regarding certain details of the estate. Failure to do so constitutes an offence, which could be dealt with by the issue of an infringement notice. Modified subsection 74(3) provides that this offence is one of strict liability. Modified subsection 74(4) then, in turn, requires the Official Receiver to enter those matters on the Index.

Items 19 - 20 – Section 74A

Section 74A of the Act is modified by a number of alterations – made by items 19 and 20 - such as substituting the term ‘legal personal representative of the deceased debtor’ for the term ‘debtor’. Item

20 inserts a new subsection - subsection 74A(8) - to make it clear that the term 'legal personal representative' in relation to a deceased debtor means either the executor under the deceased debtor's will or the administrator under letters of administration or court order.

Item 21 – Section 75(2)

Item 21 repeals subsection 75(2) of the Act as it is not applicable in the context of a debtor being deceased.

Items 22 - 26 – Section 81

Items 22 to 26 make various modifications to section 81 of the Act, regarding the discovery of bankrupt's property etc., so as to make it applicable to the circumstances of the debtor being deceased.

Items 27 - 29 – Section 82

Items 27 to 29 make various modifications to section 82 of the Act, regarding debts provable in bankruptcy, so as to make it applicable to the circumstances of the debtor being deceased.

Item 30 – Section 80

Item 30 modifies section 87 of the Act, regarding deduction of discounts, so as to make it applicable to the circumstances of the debtor being deceased.

Item 31 – Section 88

Item 31 modifies section 88 of the Act, regarding the apportionment of principal and interest of payments made before bankruptcy, so as to make it applicable to the circumstances of the debtor being deceased.

Item 32 – Section 95

Item 32 modifies section 85 of the Act, regarding 'proof in respect of distinct contracts', so as to make it applicable to the circumstances of the debtor being deceased.

Items 33 - 34 – Section 104

Items 33 and 34 modify section 104 of the Act, regarding appeals against a decision of a trustee in respect of a proof of debt, so as to make it applicable to the circumstances of the debtor being deceased. Item 34 inserts a new subsection - subsection 104(4) - to make it clear that the term 'legal personal representative' in relation to a deceased debtor means either the executor under the deceased debtor's will or the administrator under letters of administration or court order.

Items 35 - 36 – Section 109

Items 35 and 36 modify section 109 of the Act, regarding priority payments, so as to make it applicable to the circumstances of the debtor being deceased.

Items 37 - 39 – Section 109A

Items 37 to 39 modify section 109A of the Act, regarding debts due to employees, so as to make it applicable to the circumstances of the debtor being deceased. Subsection 109A(5) is added to make it clear that the term 'legal personal representative' in relation to a deceased debtor means either the

executor under the deceased debtor's will or the administrator under letters of administration or court order.

Item 40 – Section 110

Item 40 repeals section 110 of the Act, as it is not applicable in the context of a debtor being deceased.

Item 41 – Section 114

Item 41 modifies section 114 of the Act, regarding the payment of liabilities etc. incurred under terminated deed etc. so as to make it applicable to the circumstances of the debtor being deceased. In particular, it acknowledges the relevant date is not when a debtor becomes bankrupt, but when – after their death – the debtor's estate becomes subject to administration under Part XI of the Act.

Item 42 - 46 – Section 117

Items 42 to 46 modify section 117 of the Act, regarding policies of insurance against liabilities to third parties, so as to make it applicable to the circumstances of the debtor being deceased.

Items 47 - 59 – Section 118

Items 47 to 59 modify section 118 of the Act, regarding execution by any creditor against the property of a debtor who becomes a bankrupt, so as to make it applicable to the circumstances of the debtor being deceased. In particular, paragraphs 118(11)(a) and (b) are modified to ensure that a purchaser of property at a sheriff's sale, or at forced sale by a creditor holding a charge over the property, acquires good title to it if the debtor either thereafter becomes bankrupt, or dies and the debtor's estate becomes bankrupt.

Items 60 - 74 – Section 119

Items 60 to 74 modify section 119 of the Act, regarding duties of Sheriff after receiving notice of presentation of petition etc., so as to make it applicable to the circumstances of the debtor being deceased.

Items 75 - 80 – Section 119A

Items 75 to 80 modify section 119A of the Act, regarding duties of Sheriff after receiving notice of bankruptcy etc., so as to make it applicable to the circumstances of the debtor being deceased.

Items 81 - 88 – Section 122

Items 81 to 88 modify section 122 of the Act, regarding avoidance of preferences, so as to make it applicable to the circumstances of the debtor being deceased.

Items 89 - 95 – Section 123

Items 89 to 95 modify section 123 of the Act, regarding protection of certain transfers of property against relation back etc., so as to make it applicable to the circumstances of the debtor being deceased.

Items 96 - 100 – Section 124

Items 96 to 100 modify section 124 of the Act, regarding protection of certain payments to bankrupt etc., so as to make it applicable to the circumstances of the debtor being deceased.

Item 101 - Section 125

Item 101 modifies section 125 of the Act, regarding certain accounts of undischarged bankrupts, so as to make it applicable to the circumstances of the debtor being deceased.

Item 102 - Section 126

Item 102 modifies section 126 of the Act, regarding dealings with undischarged bankrupt in respect of after acquired property, so as to make it applicable to the circumstances of the debtor being deceased.

Item 103 – After section 127

Item 103 inserts a new subsection - subsection 127(1A) - after subsection 127 of the Act. Subsection 127(1A) provides that the reference in subsection 127(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. This modification ensures that the section was applicable to the circumstances of the debtor being deceased.

Items 104 - 119 – Section 134

Items 104 to 119 modify section 134 of the Act, regarding powers exercisable at discretion of trustee, so as to make it applicable to the circumstances of the debtor being deceased. Subsection 134(4) is added to make it clear that the term 'legal personal representative' in relation to a deceased debtor means either the executor under the deceased debtor's will or the administrator under letters of administration or court order.

Items 120 - 121 – Section 138

Items 120 and 121 modify section 138 of the Act, regarding the limitation on trustee's power in respect of copyright, patents etc., so as to make it applicable to the circumstances of the debtor being deceased.

Items 122 - 123 – Section 139ZL

Items 122 and 123 modify section 139ZL of the Act, regarding the Official Receiver requiring persons to make payments, so as to make it applicable to the circumstances of the debtor being deceased. Subsection 139ZL(11) is added to make it clear that the term 'legal personal representative' in relation to a deceased debtor means either the executor under the deceased debtor's will or the administrator under letters of administration or court order.

Items 124 - 125 – Section 139ZQ

Items 124 and 125 modify section 139ZQ of the Act, regarding the Official Receiver requiring payment, so as to make it applicable to the circumstances of the debtor being deceased. Subsection 139ZQ(10) is modified to make it clear that the term 'legal personal representative' in relation to a deceased debtor means either the executor under the deceased debtor's will or the administrator under letters of administration or court order.

Item 126 – Paragraph 143(a)

Item 126 modifies paragraph 143(a) of the Act, regarding the provision to be made for creditors residing at a distance etc., so as to make it applicable to the circumstances of the debtor being deceased.

Items 127 - 129 - Section 146

Items 127 to 129 modify section 146 of the Act, regarding the distribution of dividends where bankrupt fails to file statement of affairs, so as to make it applicable to the circumstances of the debtor being deceased.

Items 130 - 132 – Section 156A

Items 130 to 132 modify section 156A of the Act, regarding consent to act as trustee, so as to make it applicable to the circumstances of the debtor being deceased.

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

Subsection 277B(2) of the Act includes a table which sets out offences which can be dealt with by the issue of an infringement notice. As shown above in item 18, these Regulations create a new offence where a trustee fails to give the required notice of a creditor's special resolution (regarding the annulment of the administration of an estate) to the Official Receiver.

Item 133 modifies section 277B(2) of the Act, by inserting a reference to this new offence in the infringement notice offence table contained in that section.