

2004-2005-2006

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Bankruptcy Legislation Amendment  
(Superannuation Contributions) Bill  
2006**

**No.     , 2006**

*(Attorney-General)*

**A Bill for an Act to amend the *Bankruptcy Act 1966*,  
and for other purposes**

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1     **A Bill for an Act to amend the *Bankruptcy Act 1966*,**  
2     **and for other purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Bankruptcy Legislation Amendment*  
6                     (*Superannuation Contributions*) Act 2006.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, Part 1	28 July 2006.	28 July 2006
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
4. Schedule 2, item 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
5. Schedule 2, items 2 to 4	The day after this Act receives the Royal Assent.	
6. Schedule 2, items 5 to 7	At the same time as the provision(s) covered by table item 4.	
7. Schedule 2, item 8	Immediately after the commencement of item 12 of Schedule 1 to the <i>Bankruptcy Legislation Amendment (Anti-avoidance) Act 2006</i> .	31 May 2006
8. Schedule 2, item 9	Immediately after the commencement of item 208 of Schedule 1 to the <i>Bankruptcy Legislation Amendment Act 1996</i> .	16 December 1996
9. Schedule 2, item 10	Immediately after the commencement of section 10 of the <i>Superannuation Industry (Supervision) Consequential Amendments Act 1993</i> .	1 July 1994
10. Schedule 2, items 11 to 19	The day after this Act receives the Royal Assent.	

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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### **3 Schedule(s)**

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

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2 **Schedule 1—Amendments relating to**  
3 **superannuation contributions**

4 **Part 1—Amendments commencing on 28 July 2006**

5 *Bankruptcy Act 1966*

6 **1 Paragraph 59(1)(e)**

7 Omit “or 122”, substitute “, 122, 128B or 128C”.

8 **2 Before section 115**

9 Insert:

10 **Subdivision A—General**

11 **3 Paragraph 116(2)(d)**

12 After “(5)”, insert “of this section and sections 128B and 128C”.

13 **4 Subsection 123(1)**

14 After “(inclusive)”, insert “and sections 128B and 128C”.

15 **5 Subsection 123(6)**

16 Omit “section 121”, substitute “sections 121, 128B and 128C”.

17 **6 At the end of Division 3 of Part VI**

18 Add:

19 **Subdivision B—Superannuation contributions**

20 **128A Simplified outline**

21 The following is a simplified outline of this Subdivision:

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| <ul style="list-style-type: none"><li>• This Subdivision enables the recovery of superannuation contributions made to defeat the bankrupt’s creditors.</li><li>• There are 2 types of recoverable contributions:</li></ul> |
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- (a) contributions made by a person who later becomes a bankrupt (see section 128B);
- (b) contributions made by a third party for the benefit of a person who later becomes a bankrupt (see section 128C).

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**128B Superannuation contributions made to defeat creditors—  
contributor is a person who later becomes a bankrupt**

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*Transfers that are void*

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- (1) A transfer of property by a person who later becomes a bankrupt (the *transferor*) to another person (the *transferee*) is void against the trustee in the transferor's bankruptcy if:
  - (a) the transfer is made by way of a contribution to an eligible superannuation plan; and
  - (b) the property would probably have become part of the transferor's estate or would probably have been available to creditors if the property had not been transferred; and
  - (c) the transferor's main purpose in making the transfer was:
    - (i) to prevent the transferred property from becoming divisible among the transferor's creditors; or
    - (ii) to hinder or delay the process of making property available for division among the transferor's creditors; and
  - (d) the transfer occurs on or after 28 July 2006.

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

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- (2) The transferor's main purpose in making the transfer is taken to be the purpose described in paragraph (1)(c) if it can reasonably be inferred from all the circumstances that, at the time of the transfer, the transferor was, or was about to become, insolvent.
- (3) In determining whether the transferor's main purpose in making the transfer was the purpose described in paragraph (1)(c), regard must be had to:
  - (a) whether, during any period ending before the transfer, the transferor had established a pattern of making contributions to one or more eligible superannuation plans; and

- 1 (b) if so, whether the transfer, when considered in the light of  
2 that pattern, is out of character.

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

- 5 (4) Subsections (2) and (3) do not limit the ways of establishing the  
6 transferor's main purpose in making a transfer.

7 *Rebuttable presumption of insolvency*

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

17 *Protection of successors in title*

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

21 *Meaning of transfer of property and market value*

- 22 (7) For the purposes of this section:  
23 (a) **transfer of property** includes a payment of money; and  
24 (b) a person who does something that results in another person  
25 becoming the owner of property that did not previously exist  
26 is taken to have transferred the property to the other person;  
27 and  
28 (c) the **market value** of property transferred is its market value at  
29 the time of the transfer.



1 **128C Superannuation contributions made to defeat creditors—**  
2 **contributor is a third party**

3 *Transfers that are void*

4 (1) If:

- 5 (a) a person (the *transferor*) transfers property to another person,  
6 (the *transferee*); and  
7 (b) the transfer is by way of a contribution to an eligible  
8 superannuation plan for the benefit of a person who later  
9 becomes a bankrupt (the *beneficiary*); and  
10 (c) the transferor did so under a scheme to which the beneficiary  
11 was a party; and  
12 (d) the property would probably have become part of the  
13 beneficiary's estate or would probably have been available to  
14 creditors if the property had not been transferred; and  
15 (e) the beneficiary's main purpose in entering into the scheme  
16 was:  
17 (i) to prevent the transferred property from becoming  
18 divisible among the beneficiary's creditors; or  
19 (ii) to hinder or delay the process of making property  
20 available for division among the beneficiary's creditors;  
21 and  
22 (f) the transfer occurred on or after 28 July 2006;  
23 the transfer is void against the trustee in the beneficiary's  
24 bankruptcy.

- 25 (2) For the purposes of paragraph (1)(b), disregard a benefit that is  
26 payable in the event of the death of a person.

27 *Showing the beneficiary's main purpose in entering into the*  
28 *scheme*

- 29 (3) The beneficiary's main purpose in entering into the scheme is  
30 taken to be the purpose described in paragraph (1)(e) if it can  
31 reasonably be inferred from all the circumstances that, at the time  
32 when the beneficiary entered into the scheme, the beneficiary was,  
33 or was about to become, insolvent.  
34 (4) In determining whether the beneficiary's main purpose in entering  
35 into the scheme was the purpose described in paragraph (1)(e),  
36 regard must be had to:
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**Schedule 1** Amendments relating to superannuation contributions  
**Part 1** Amendments commencing on 28 July 2006

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- 1 (a) whether, during any period ending before the scheme was  
2 entered into, the transferor had established a pattern of  
3 making contributions to one or more eligible superannuation  
4 plans for the benefit of the beneficiary; and  
5 (b) if so, whether the transfer, when considered in the light of  
6 that pattern, is out of character.

- 7 (5) For the purposes of paragraph (4)(a), disregard a benefit that is  
8 payable in the event of the death of a person.

9 *Other ways of showing the beneficiary's main purpose in entering*  
10 *into a scheme*

- 11 (6) Subsections (3) and (4) do not limit the ways of establishing the  
12 beneficiary's main purpose in entering into a scheme.

13 *Rebuttable presumption of insolvency*

- 14 (7) For the purposes of this section, a rebuttable presumption arises  
15 that the beneficiary was, or was about to become, insolvent at the  
16 time the beneficiary entered into the scheme if it is established that  
17 the beneficiary:

- 18 (a) had not, in respect of that time, kept such books, accounts  
19 and records as are usual and proper in relation to the business  
20 carried on by the beneficiary and as sufficiently disclose the  
21 beneficiary's business transactions and financial position; or  
22 (b) having kept such books, accounts and records, has not  
23 preserved them.

24 *Protection of successors in title*

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

28 *Meaning of transfer of property and market value*

- 29 (9) For the purposes of this section:  
30 (a) **transfer of property** includes a payment of money; and  
31 (b) a person who does something that results in another person  
32 becoming the owner of property that did not previously exist  
33 is taken to have transferred the property to the other person;  
34 and
-

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

3 **128D Time for making claims by trustee**

4 (1) An action under section 128B or 128C with respect to a transaction  
5 may be commenced by the trustee of a bankrupt's estate at any  
6 time.

7 (2) A section 139ZQ notice in relation to a transaction that, under  
8 section 128B or 128C, is void against the trustee of a bankrupt's  
9 estate must not be given before the commencement of Part 2 of  
10 Schedule 1 to the *Bankruptcy Legislation Amendment*  
11 *(Superannuation Contributions) Act 2006*.

12 (3) A section 139ZQ notice in relation to a transaction that, under  
13 section 128B or 128C, is void against the trustee of a bankrupt's  
14 estate may be given even if the transaction occurred before the  
15 commencement of Part 2 of Schedule 1 to the *Bankruptcy*  
16 *Legislation Amendment (Superannuation Contributions) Act 2006*.

17 **128N Definitions**

18 In this Subdivision:

19 *approved deposit fund* has the same meaning as in the  
20 *Superannuation Industry (Supervision) Act 1993*.

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

23 *eligible superannuation plan* means any of the following:

- 24 (a) a regulated superannuation fund;  
25 (b) an approved deposit fund;  
26 (c) an RSA;  
27 (d) a public sector superannuation scheme.

28 *public sector superannuation scheme* has the same meaning as in  
29 the *Superannuation Industry (Supervision) Act 1993*, but does not  
30 include a regulated superannuation fund.

31 *regulated superannuation fund* has the same meaning as in the  
32 *Superannuation Industry (Supervision) Act 1993*.

1                    *scheme* means:

- 2                    (a) any agreement, arrangement, understanding, promise or  
3                    undertaking, whether express or implied and whether or not  
4                    enforceable, or intended to be enforceable, by legal  
5                    proceedings; and  
6                    (b) any scheme, plan, proposal, action, course of action or course  
7                    of conduct, whether unilateral or otherwise.

8                    **7 Subparagraph 149A(2)(a)(i)**

9                    After “149D(1)(ab),”, insert “(ac), (ad),”.

10                   **8 After paragraph 149D(1)(ab)**

11                   Insert:

- 12                   (ac) any transfer is void against the trustee in the bankruptcy  
13                   because of section 128B;  
14                   (ad) any transfer is void against the trustee in the bankruptcy  
15                   because of section 128C;

16                   **9 Paragraph 250(1)(e)**

17                   Omit “or 122”, substitute “, 122, 128B or 128C”.

18                   **10 After subsection 302A(2)**

19                   Insert:

- 20                   (2A) This section does not apply to a provision that facilitates  
21                   compliance with:  
22                   (a) section 128B; or  
23                   (b) section 128C.

24                   **11 At the end of section 302AB**

25                   Add:

- 26                   (3) This section does not apply to a provision that facilitates  
27                   compliance with:  
28                   (a) section 128B; or  
29                   (b) section 128C.

30                   **12 Section 302B**

31                   Before “A provision”, insert “(1)”.

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1 **13 At the end of section 302B**

2 Add:

3 (2) This section does not apply to a provision that facilitates  
4 compliance with:

5 (a) section 128B; or

6 (b) section 128C.

7 ***Payment Systems and Netting Act 1998***

8 **14 Section 5 (paragraph (e) of the definition of *specified***  
9 ***provisions*)**

10 Omit “and 122”, substitute “, 122, 128B and 128C”.

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2 **Part 2—Amendments commencing on Proclamation**

3 ***Bankruptcy Act 1966***

4 **15 At the end of paragraphs 116(1)(a), (b) and (d)**

5 Add “and”.

6 **16 After paragraph 116(1)(d)**

7 Insert:

- 8 (e) money that is paid to the trustee of the bankrupt’s estate  
9 under an order under paragraph 128K(1)(b); and  
10 (f) money that is paid to the trustee of the bankrupt’s estate  
11 under a section 139ZQ notice that relates to a transaction that  
12 is void against the trustee under section 128C; and  
13 (g) money that is paid to the trustee of the bankrupt’s estate  
14 under an order under section 139ZU;

15 **17 Paragraph 116(2)(d)**

16 Omit “and 128C”, substitute “, 128C and 139ZU”.

17 **18 At the end of section 128A**

18 Add:

- 19 

<ul style="list-style-type: none"><li>• Superannuation accounts may be frozen for up to 180 days 20 pending the taking of recovery action under section 139ZQ or 21 139ZU.</li></ul>
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22 **19 After subsection 128B(5)**

23 Insert:

24 *Refund of contributions tax etc.*

25 (5A) If:

- 26 (a) as a result of subsection (1), a transfer made by way of a  
27 contribution to an eligible superannuation plan is void against  
28 the trustee in the transferor’s bankruptcy; and
-

- 1 (b) any of the following amounts was debited from the  
2 contribution:  
3 (i) an amount in respect of tax in respect of the  
4 contribution;  
5 (ii) a fee, or a charge, in respect of the contribution; and  
6 (c) in compliance with a section 139ZQ notice that relates to the  
7 transfer, the trustee of the eligible superannuation plan pays  
8 an amount to the trustee in the transferor's bankruptcy; and  
9 (d) the amount paid in compliance with the section 139ZQ notice  
10 exceeds the amount so debited;  
11 the trustee in the transferor's bankruptcy must pay to the trustee of  
12 the eligible superannuation plan an amount equal to the amount so  
13 debited.

14 **20 After subsection 128C(7)**

15 Insert:

16 *Refund of contributions tax etc.*

17 (7A) If:

- 18 (a) as a result of subsection (1), a transfer made by way of a  
19 contribution to an eligible superannuation plan is void against  
20 the trustee in the beneficiary's bankruptcy; and  
21 (b) any of the following amounts was debited from the  
22 contribution:  
23 (i) an amount in respect of tax in respect of the  
24 contribution;  
25 (ii) a fee, or a charge, in respect of the contribution; and  
26 (c) in compliance with a section 139ZQ notice that relates to the  
27 transfer, the trustee of the eligible superannuation plan pays  
28 an amount to the trustee in the beneficiary's bankruptcy; and  
29 (d) the amount paid in compliance with the section 139ZQ notice  
30 exceeds the amount so debited;  
31 the trustee in the beneficiary's bankruptcy must pay to the trustee  
32 of the eligible superannuation plan an amount equal to the amount  
33 so debited.

34 **21 After section 128D**

35 Insert:

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1 **128E Superannuation account-freezing notice**

2 *Scope*

- 3 (1) This section applies in relation to a member of an eligible  
4 superannuation plan if the Official Receiver has reasonable  
5 grounds to believe that:
- 6 (a) a transaction is void against the trustee of a bankrupt's estate  
7 under section 128B or 128C; and
  - 8 (b) either:
    - 9 (i) the whole or a part of the member's superannuation  
10 interest is attributable to the transaction; or
    - 11 (ii) the trustee of the bankrupt's estate has made an  
12 application for a section 139ZU order that relates to the  
13 transaction and the member's superannuation interest.

14 *Giving of freezing notice*

- 15 (2) The Official Receiver may, by written notice (a ***superannuation***  
16 ***account-freezing notice***) given to the trustee of the eligible  
17 superannuation plan, direct the trustee of the plan not to:
- 18 (a) cash or debit; or
  - 19 (b) permit the cashing, debiting, roll-over, transfer or forfeiture  
20 of;
- 21 the whole or any part of the superannuation interest except:
- 22 (c) for the purposes of complying with a notice under  
23 section 139ZQ; or
  - 24 (d) for the purposes of complying with an order under  
25 section 139ZU; or
  - 26 (e) for the purposes of charging costs against, or debiting costs  
27 from, the superannuation interest; or
  - 28 (f) for the purposes of giving effect to a family law payment  
29 split; or
  - 30 (g) in accordance with the written consent of the Official  
31 Receiver given under section 128H; or
  - 32 (h) for the purposes of complying with an order under paragraph  
33 128K(1)(b); or
  - 34 (i) for the purposes of complying with an order under subsection  
35 139ZT(2); or



- 1 (j) in such circumstances (if any) as are specified in the  
2 regulations.
- 3 (3) The superannuation account-freezing notice must set out the facts  
4 and circumstances because of which the Official Receiver  
5 considers that the Official Receiver has reasonable grounds to  
6 believe that:
- 7 (a) the transaction is void against the trustee of the bankrupt's  
8 estate under section 128B or 128C; and
- 9 (b) either:
- 10 (i) the whole or a part of the member's superannuation  
11 interest is attributable to the transaction; or
- 12 (ii) the trustee of the bankrupt's estate has made an  
13 application for a section 139ZU order that relates to the  
14 transaction and the member's superannuation interest.

15 *When Official Receiver may give freezing notice*

- 16 (4) The Official Receiver may give the superannuation  
17 account-freezing notice:
- 18 (a) if the Official Trustee is the trustee of the bankrupt's estate—  
19 on the initiative of the Official Receiver; or
- 20 (b) if a registered trustee is the trustee of the bankrupt's estate—  
21 on application by the registered trustee.

22 *When freezing notice comes into force*

- 23 (5) The superannuation account-freezing notice comes into force when  
24 the notice is given to the trustee of the eligible superannuation  
25 plan.

26 **128F Revocation of superannuation account-freezing notice**

27 *Revocation of freezing notice by Official Receiver*

- 28 (1) If a superannuation account-freezing notice is in force in relation to  
29 a member of an eligible superannuation plan, the Official Receiver  
30 may, by written notice given to the trustee of the plan, revoke the  
31 superannuation account-freezing notice.

**Schedule 1** Amendments relating to superannuation contributions  
**Part 2** Amendments commencing on Proclamation

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- 1 (2) The Official Receiver may revoke a superannuation  
2 account-freezing notice that relates to a member of an eligible  
3 superannuation plan:  
4 (a) if the Official Trustee is the trustee of the bankrupt's estate—  
5 on the initiative of the Official Receiver; or  
6 (b) if a registered trustee is the trustee of the bankrupt's estate—  
7 on application by the registered trustee; or  
8 (c) in any case—on application by the member.

9 *Revocation of freezing notice when section 139ZQ notice complied*  
10 *with etc.*

- 11 (3) If:  
12 (a) subparagraph 128E(1)(b)(i) applied in relation to a  
13 superannuation account-freezing notice given in relation to a  
14 member of an eligible superannuation plan; and  
15 (b) during the 180-day period after the superannuation  
16 account-freezing notice comes into force, a section 139ZQ  
17 notice is given in relation to the transaction referred to in  
18 paragraph 128E(1)(a);  
19 the superannuation account-freezing notice is revoked:  
20 (c) when the trustee of the plan complies with the section 139ZQ  
21 notice; or  
22 (d) when the section 139ZQ notice is revoked; or  
23 (e) when the Court sets aside the section 139ZQ notice.

24 *Revocation of freezing notice if no section 139ZQ notice given*  
25 *after 180 days*

- 26 (4) If subparagraph 128E(1)(b)(i) applied in relation to a  
27 superannuation account-freezing notice given in relation to a  
28 member of an eligible superannuation plan, the superannuation  
29 account-freezing notice is revoked if:  
30 (a) 180 days pass after the notice comes into force; and  
31 (b) no section 139ZQ notice has been given in relation to the  
32 transaction referred to in paragraph 128E(1)(a).

33 *Revocation of freezing notice when section 139ZU order complied*  
34 *with etc.*

- 35 (5) If:
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- 1 (a) subparagraph 128E(1)(b)(ii) applied in relation to a  
2 superannuation account-freezing notice given in relation to a  
3 member of an eligible superannuation plan; and  
4 (b) during the 180-day period after the superannuation  
5 account-freezing notice comes into force, a section 139ZU  
6 order is made in relation to the transaction referred to in  
7 paragraph 128E(1)(a) and in relation to the member's  
8 superannuation interest;  
9 the superannuation account-freezing notice is revoked:  
10 (c) when the trustee of the plan complies with the section 139ZU  
11 order; or  
12 (d) when the section 139ZU order is set aside on appeal.

13 *Revocation of freezing notice when application for section 139ZU*  
14 *order dismissed or withdrawn*

- 15 (6) If:  
16 (a) subparagraph 128E(1)(b)(ii) applied in relation to a  
17 superannuation account-freezing notice given in relation to a  
18 member of an eligible superannuation plan; and  
19 (b) during the 180-day period after the superannuation  
20 account-freezing notice comes into force:  
21 (i) the Court dismisses an application for a section 139ZU  
22 order in relation to the transaction referred to in  
23 paragraph 128E(1)(a) and in relation to the member's  
24 superannuation interest; or  
25 (ii) an application for a section 139ZU order in relation to  
26 the transaction referred to in paragraph 128E(1)(a) and  
27 in relation to the member's superannuation interest is  
28 withdrawn;  
29 the superannuation account-freezing notice is revoked.

30 *Revocation of freezing notice if no section 139ZU order made after*  
31 *180 days*

- 32 (7) If subparagraph 128E(1)(b)(ii) applied in relation to a  
33 superannuation account-freezing notice given in relation to a  
34 member of an eligible superannuation plan, the superannuation  
35 account-freezing notice is revoked if:  
36 (a) 180 days pass after the notice comes into force; and

- 1 (b) no section 139ZU order has been made in relation to the  
2 transaction referred to in paragraph 128E(1)(a) and in  
3 relation to the member's superannuation interest.

4 *Extension of 180-day period*

- 5 (8) The Court may, on application by the Official Receiver, extend, or  
6 further extend, the 180-day period referred to in subsection (5), (6)  
7 or (7).
- 8 (9) The Official Receiver may make an application under  
9 subsection (8):
- 10 (a) if the Official Trustee is the trustee of the bankrupt's estate—  
11 on the initiative of the Official Receiver; or
- 12 (b) if a registered trustee is the trustee of the bankrupt's estate—  
13 on application by the registered trustee.

14 **128G Copy of superannuation account-freezing notice to be given to**  
15 **trustee etc.**

- 16 (1) If the Official Receiver gives or revokes a superannuation  
17 account-freezing notice that relates to a member of an eligible  
18 superannuation plan:
- 19 (a) the Official Receiver must give 2 copies of the  
20 superannuation account-freezing notice or the revocation  
21 notice, as the case may be, to the trustee of the bankrupt's  
22 estate; and
- 23 (b) the trustee must give one of those copies to the member.
- 24 (2) A failure to comply with subsection (1) does not affect the validity  
25 of the superannuation account-freezing notice or the revocation  
26 notice, as the case may be.

27 **128H Consent of Official Receiver to the cashing etc. of a**  
28 **superannuation interest**

29 *Scope*

- 30 (1) This section applies if a superannuation account-freezing notice is  
31 in force in relation to a member's superannuation interest.

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*Consent*

- (2) The member may apply in writing to the Official Receiver for the Official Receiver to consent to the cashing, debiting, roll-over, transfer or forfeiture, in whole or in part, of the member's superannuation interest.
- (3) If an application is made under subsection (2), the Official Receiver may, by written notice given to the trustee of the eligible superannuation plan concerned, consent to the cashing, debiting, roll-over, transfer or forfeiture, in whole or in part, of the member's superannuation interest.
- (4) A consent under subsection (3) may be:
  - (a) unconditional; or
  - (b) subject to such conditions (if any) as are specified in the notice of consent.
- (5) If the Official Receiver gives a consent under subsection (3) in relation to a member's superannuation interest, the Official Receiver must give a copy of the consent to the member.

*Consultation*

- (6) Before giving a consent under subsection (3), the Official Receiver must consult the trustee of the bankrupt's estate.

*Review of decisions*

- (7) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Official Receiver refusing to give a consent under subsection (3).
- (8) The trustee of the bankrupt's estate may apply to the Administrative Appeals Tribunal for review of a decision of the Official Receiver giving a consent under subsection (3).

**128J Power of Court to set aside superannuation account-freezing notice**

- (1) If the Court, on application by:
  - (a) a person to whom a superannuation account-freezing notice has been given; or

**Schedule 1** Amendments relating to superannuation contributions  
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- 1 (b) the member whose superannuation interest is affected by a  
2 superannuation account-freezing notice; or  
3 (c) any other interested person;  
4 is satisfied that the Official Receiver did not have reasonable  
5 grounds to believe that:  
6 (d) the relevant transaction is void against the trustee of a  
7 bankrupt's estate under section 128B or 128C; and  
8 (e) either:  
9 (i) the whole or a part of the relevant member's  
10 superannuation interest is attributable to the transaction;  
11 or  
12 (ii) the trustee of the bankrupt's estate has made an  
13 application for a section 139ZU order that relates to the  
14 transaction and the relevant member's superannuation  
15 interest;  
16 the Court may make an order setting aside the notice.
- 17 (2) A superannuation account-freezing notice that has been set aside is  
18 taken not to have been given.

19 **128K Judicial enforcement of superannuation account-freezing**  
20 **notices**

- 21 (1) If the Court is satisfied that the trustee of an eligible  
22 superannuation plan has breached, or is proposing to breach, a  
23 superannuation account-freezing notice, the Court may, on  
24 application of the trustee of the relevant bankrupt's estate, make  
25 any or all of the following orders:  
26 (a) an order directing the trustee of the plan to comply with that  
27 notice;  
28 (b) an order directing the trustee of the plan to pay to the trustee  
29 of the relevant bankrupt's estate an amount not exceeding the  
30 money, or the value of the property, received as a result of  
31 the transaction referred to in paragraph 128E(1)(a);  
32 (c) any other order that the Court thinks appropriate.
- 33 (2) The Court may discharge or vary an order granted under this  
34 section.

- 1 (3) An order by the Court under paragraph (1)(b) is enforceable as if it  
2 were an order for the payment of money made by the Court when  
3 exercising jurisdiction otherwise than under this Act.

4 **128L Protection of trustee of eligible superannuation plan**

- 5 (1) No criminal or civil proceedings lie against the trustee of an  
6 eligible superannuation plan because of anything done (or not  
7 done) by the trustee in good faith:
- 8 (a) in compliance with a superannuation account-freezing notice;  
9 or
  - 10 (b) in connection with, or incidental to, the trustee's compliance  
11 with a superannuation account-freezing notice; or
  - 12 (c) in compliance with a section 139ZQ notice; or
  - 13 (d) in connection with, or incidental to, the trustee's compliance  
14 with a section 139ZQ notice; or
  - 15 (e) in compliance with a section 139ZU order; or
  - 16 (f) in connection with, or incidental to, the trustee's compliance  
17 with a section 139ZU order; or
  - 18 (g) in compliance with a subsection 139ZT(2) order; or
  - 19 (h) in connection with, or incidental to, the trustee's compliance  
20 with a subsection 139ZT(2) order; or
  - 21 (i) in compliance with a paragraph 128K(1)(b) order; or
  - 22 (j) in connection with, or incidental to, the trustee's compliance  
23 with a paragraph 128K(1)(b) order.
- 24 (2) Anything done (or not done) by the trustee of a regulated  
25 superannuation fund, or the trustee of an approved deposit fund, in  
26 good faith:
- 27 (a) in compliance with a superannuation account-freezing notice;  
28 or
  - 29 (b) in connection with, or incidental to, the trustee's compliance  
30 with a superannuation account-freezing notice; or
  - 31 (c) in compliance with a section 139ZQ notice; or
  - 32 (d) in connection with, or incidental to, the trustee's compliance  
33 with a section 139ZQ notice; or
  - 34 (e) in compliance with a section 139ZU order; or
  - 35 (f) in connection with, or incidental to, the trustee's compliance  
36 with a section 139ZU order; or
  - 37 (g) in compliance with a subsection 139ZT(2) order; or
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- 1 (h) in connection with, or incidental to, the trustee's compliance  
2 with a subsection 139ZT(2) order; or  
3 (i) in compliance with a paragraph 128K(1)(b) order; or  
4 (j) in connection with, or incidental to, the trustee's compliance  
5 with a paragraph 128K(1)(b) order;  
6 is taken not to be in breach of:  
7 (k) the *Superannuation Industry (Supervision) Act 1993*; or  
8 (l) any standards prescribed under that Act.
- 9 (3) Anything done (or not done) by an RSA provider in good faith:  
10 (a) in compliance with a superannuation account-freezing notice;  
11 or  
12 (b) in connection with, or incidental to, the RSA provider's  
13 compliance with a superannuation account-freezing notice; or  
14 (c) in compliance with a section 139ZQ notice; or  
15 (d) in connection with, or incidental to, the RSA provider's  
16 compliance with a section 139ZQ notice; or  
17 (e) in compliance with a section 139ZU order; or  
18 (f) in connection with, or incidental to, the trustee's compliance  
19 with a section 139ZU order; or  
20 (g) in compliance with a subsection 139ZT(2) order; or  
21 (h) in connection with, or incidental to, the trustee's compliance  
22 with a subsection 139ZT(2) order; or  
23 (i) in compliance with a paragraph 128K(1)(b) order; or  
24 (j) in connection with, or incidental to, the trustee's compliance  
25 with a paragraph 128K(1)(b) order;  
26 is taken not to be in breach of:  
27 (k) the *Retirement Savings Accounts Act 1997*; or  
28 (l) any standards prescribed under that Act.

29 **128M References to a member of an eligible superannuation plan**

30 References in a provision of this Subdivision to:

- 31 (a) a member of an eligible superannuation plan; and  
32 (b) a bankrupt;

33 do not imply that the bankrupt may not be the member.

34 **22 Section 128N**

35 Insert:

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1                    *cash*, in relation to a superannuation interest, includes applied  
2                    towards the provision of a pension.

3                    **23 Section 128N**

4                    Insert:

5                    *costs*:

- 6                    (a) in relation to a regulated superannuation fund, an approved  
7                    deposit fund or an RSA—includes:  
8                    (i) transaction costs; and  
9                    (ii) government charges; and  
10                    (iii) taxes and duties; and  
11                    (iv) charges relating to the management or investment of  
12                    fund assets or RSA assets, as the case may be; or  
13                    (b) in any other case—includes anything that, under the  
14                    regulations, is taken to be costs for the purposes of this  
15                    paragraph.

16                    **24 Section 128N**

17                    Insert:

18                    *family law payment split* means a payment split under Part VIIIIB  
19                    of the *Family Law Act 1975*.

20                    **25 Section 128N**

21                    Insert:

22                    *member*:

- 23                    (a) in relation to a regulated superannuation fund—means a  
24                    member of the fund; or  
25                    (b) in relation to an approved deposit fund—means a depositor in  
26                    the fund; or  
27                    (c) in relation to an RSA—means the RSA holder; or  
28                    (d) in relation to a public sector superannuation scheme—has the  
29                    meaning given by the regulations.

30                    **26 Section 128N**

31                    Insert:

32                    *pension* includes:

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**Schedule 1** Amendments relating to superannuation contributions  
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- 1 (a) a benefit provided by a fund, if the benefit is taken, under  
2 regulations made for the purposes of the definition of  
3 ***pension*** in subsection 10(1) of the *Superannuation Industry*  
4 *(Supervision) Act 1993*, to be a pension for the purposes of  
5 that Act; and  
6 (b) a benefit provided by a public sector superannuation scheme,  
7 if the benefit is taken, under the regulations, to be a pension  
8 for the purposes of this definition.

9 **27 Section 128N**

10 Insert:

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

13 **28 Section 128N**

14 Insert:

15 ***superannuation account-freezing notice*** means a notice under  
16 section 128E.

17 **29 Section 128N**

18 Insert:

19 ***superannuation interest*** means an interest in an eligible  
20 superannuation plan, but does not include a reversionary interest.

21 **30 Section 128N**

22 Insert:

23 ***trustee***, in relation to an eligible superannuation plan, means:

- 24 (a) if the plan is a fund that has a trustee (within the ordinary  
25 meaning of that word)—the trustee of the plan; or  
26 (b) if the plan is an RSA—the RSA provider; or  
27 (c) if:  
28 (i) none of the preceding paragraphs apply; and  
29 (ii) a person is identified in accordance with the regulations  
30 as the trustee of the plan for the purposes of this  
31 definition;  
32 the person identified in accordance with the regulations; or  
33 (d) in any other case—the person who manages the plan.
-

1 If a person who is not the trustee of an eligible superannuation plan  
2 nevertheless has the power to make payments to members of the  
3 plan, then references in this Subdivision to the trustee of the plan  
4 include references to that person.

5 **31 Section 128N**

6 Insert:

7 ***withdrawal benefit:***

- 8 (a) in relation to a regulated superannuation fund or an approved  
9 deposit fund—has the same meaning as in the  
10 *Superannuation Industry (Supervision) Regulations 1994*; or  
11 (b) in relation to an RSA—has the same meaning as in the  
12 *Retirement Savings Accounts Regulations 1997*; or  
13 (c) in relation to a public sector superannuation scheme—has the  
14 meaning given by the regulations.

15 **32 Subsection 139ZQ(1)**

16 Omit “the money or the value of the property received.”, substitute:  
17 whichever of the following is applicable:

18 (c) if:

- 19 (i) the transaction is void against the trustee under  
20 section 128B or 128C; and  
21 (ii) the transaction is by way of a contribution to an eligible  
22 superannuation plan for the benefit of a person (the  
23 ***beneficiary***) who may or may not be the bankrupt; and  
24 (iii) the beneficiary is a member of the eligible  
25 superannuation plan;

26 whichever is the lesser of the following:

- 27 (iv) the money or the value of the property received;  
28 (v) the beneficiary’s withdrawal benefit in relation to the  
29 eligible superannuation plan;

30 (d) in any other case—the money or the value of the property  
31 received.

32 **33 At the end of section 139ZQ**

33 Add:

- 34 (9) For the purposes of subparagraph (1)(c)(ii), disregard a benefit that  
35 is payable in the event of the death of a person.
-

1 (10) In this section:

2 *contribution* has the same meaning as in Subdivision B of  
3 Division 3.

4 *eligible superannuation plan* has the same meaning as in  
5 Subdivision B of Division 3.

6 *member* of an eligible superannuation plan has the same meaning  
7 as in Subdivision B of Division 3.

8 *withdrawal benefit* has the same meaning as in Subdivision B of  
9 Division 3.

10 **34 At the end of Division 4B of Part VI**

11 Add:

12 **Subdivision K—Rolled-over superannuation interests etc.**

13 **139ZU Order relating to rolled-over superannuation interests etc.**

14 (1) If, on application by the trustee of a bankrupt's estate, the Court is  
15 satisfied that:

- 16 (a) a transaction is void against the trustee of the bankrupt's  
17 estate under section 128B or 128C; and  
18 (b) the transaction was by way of a contribution to an eligible  
19 superannuation plan (the *first plan*) for the benefit of a  
20 person (the *beneficiary*) who may or may not be the  
21 bankrupt; and  
22 (c) the beneficiary's withdrawal benefit in relation to the first  
23 plan falls short of the amount of the money, or the value of  
24 the property, received as a result of the transaction; and  
25 (d) the beneficiary has a superannuation interest in another  
26 eligible superannuation plan; and  
27 (e) the superannuation interest referred to in paragraph (d) is  
28 attributable, in whole or in part, to the roll-over or transfer,  
29 after the transaction referred to in paragraph (a) happened, of  
30 the whole or a part of the beneficiary's superannuation  
31 interest in the first plan;

32 the Court may, by order, direct the trustee of the other eligible  
33 superannuation plan to pay to the trustee of the bankrupt's estate a

- 1 specified amount not exceeding whichever is the lesser of the  
2 following:
- 3 (f) the amount of the shortfall referred to in paragraph (c);  
4 (g) the beneficiary's withdrawal benefit in relation to the other  
5 eligible superannuation plan.
- 6 (2) The Court must not make an order under subsection (1) unless it is  
7 satisfied that it is in the interests of the creditors of the bankrupt to  
8 do so.
- 9 (3) For the purposes of paragraph (1)(a), it is immaterial whether the  
10 transaction occurred before, at or after the commencement of this  
11 section.
- 12 (4) For the purposes of paragraph (1)(b), disregard a benefit that is  
13 payable in the event of the death of a person.
- 14 (5) For the purposes of paragraph (1)(c), if the beneficiary does not  
15 have a superannuation interest in an eligible superannuation plan,  
16 the beneficiary is taken to have a nil withdrawal benefit in relation  
17 to the plan.
- 18 (6) For the purposes of paragraph (1)(e), it is immaterial whether the  
19 roll-over or transfer occurred directly or indirectly through one or  
20 more interposed eligible superannuation plans.
- 21 (7) An applicant under subsection (1) must give a copy of the  
22 application to:  
23 (a) the trustee of the other eligible superannuation plan; and  
24 (b) the beneficiary.
- 25 (8) At the hearing of an application under subsection (1):  
26 (a) the trustee of the other eligible superannuation plan; and  
27 (b) the beneficiary.  
28 may appear, adduce evidence and make submissions.
- 29 (9) For the purposes of sections 128E, 128F and 128J, an order under  
30 this section is taken to relate to:  
31 (a) the transaction referred to in paragraph (1)(a) of this section;  
32 and  
33 (b) the beneficiary's superannuation interest referred to in  
34 paragraph (1)(d) of this section.
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1 **139ZV Enforcement of order**

2 An order by the Court under section 139ZU is enforceable as if it  
3 were an order for the payment of money made by the Court when  
4 exercising jurisdiction otherwise than under this Act.

5 **139ZW Definitions**

6 In this Subdivision:

7 *contribution* has the same meaning as in Subdivision B of  
8 Division 3.

9 *eligible superannuation plan* has the same meaning as in  
10 Subdivision B of Division 3.

11 *superannuation interest* has the same meaning as in Subdivision B  
12 of Division 3.

13 *trustee* of an eligible superannuation plan has the same meaning as  
14 in Subdivision B of Division 3.

15 *withdrawal benefit* has the same meaning as in Subdivision B of  
16 Division 3.

17 **35 At the end of subsection 302A(2A)**

18 Add:

- 19 ; or (c) a notice under section 128E; or  
20 (d) an order under paragraph 128K(1)(b); or  
21 (e) a notice under section 139ZQ; or  
22 (f) an order under subsection 139ZT(2); or  
23 (g) an order under section 139ZU.

24 **36 At the end of subsection 302AB(3)**

25 Add:

- 26 ; or (c) a notice under section 128E; or  
27 (d) an order under paragraph 128K(1)(b); or  
28 (e) a notice under section 139ZQ; or  
29 (f) an order under subsection 139ZT(2); or  
30 (g) an order under section 139ZU.

1 **37 At the end of subsection 302B(2)**

2 Add:

- 3 ; or (c) a notice under section 128E; or  
4 (d) an order under paragraph 128K(1)(b); or  
5 (e) a notice under section 139ZQ; or  
6 (f) an order under subsection 139ZT(2); or  
7 (g) an order under section 139ZU.

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## Schedule 2—Other amendments

### *Bankruptcy Act 1966*

#### **1 Subsection 5(1)**

Insert:

*rural support scheme* means a program or scheme that:

- (a) is administered by or on behalf of the Commonwealth, a State or a Territory; and
- (b) relates to:
  - (i) agriculture or the cultivation of land; or
  - (ii) the maintenance of animals for commercial purposes; or
  - (iii) horticulture; or
  - (iv) any other primary industry activity.

#### **2 Subsection 20H(5)**

Omit “Official Trustee” (wherever occurring), substitute “Inspector-General”.

#### **3 Subsection 20H(5)**

Omit “it” (wherever occurring), substitute “the Inspector-General”.

#### **4 Transitional—subsection 20H(5) of the *Bankruptcy Act 1966***

- (1) This item applies to anything done by the Official Trustee under subsection 20H(5) of the *Bankruptcy Act 1966* before the commencement of this item.
- (2) The thing has effect, after the commencement of this item, as if it had been done under that subsection by the Inspector-General.

#### **5 Paragraphs 116(2)(k) to (md)**

Repeal the paragraphs, substitute:

- (k) amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph;



- 1 (l) amounts paid to the bankrupt under a rural support scheme
- 2 prescribed for the purposes of this paragraph, where the
- 3 amounts are paid in circumstances prescribed for the
- 4 purposes of this paragraph;
- 5 (m) prescribed amounts paid to the bankrupt under a rural support
- 6 scheme prescribed for the purposes of this paragraph;
- 7 (ma) prescribed amounts paid to the bankrupt under a rural support
- 8 scheme prescribed for the purposes of this paragraph, where
- 9 the amounts are paid in circumstances prescribed for the
- 10 purposes of this paragraph;
- 11 (mb) amounts paid to the bankrupt by the Commonwealth as
- 12 compensation in relation to the loss of:
  - 13 (i) an amount covered by paragraph (k), (l), (m) or (ma); or
  - 14 (ii) property purchased or acquired wholly or partly with
  - 15 such an amount;

16 **6 Subsection 116(2D) (paragraph (c) of the definition of**

17 **exempt money)**

18 Repeal the paragraph, substitute:

- 19 (c) amounts covered by paragraph (2)(k), (l), (m), (ma) or (mb).

20 **7 After subsection 116(2D)**

21 Insert:

22 (2E) Nothing in this Act or the *Legislative Instruments Act 2003*

23 prevents regulations made for the purposes of paragraph (2)(k), (l),

24 (m) or (ma) from applying to amounts paid before the regulations

25 take effect.

26 (2F) Regulations made for the purposes of paragraph (2)(k), (l), (m) or

27 (ma) may make provision in relation to a matter by applying,

28 adopting or incorporating any matter contained in an instrument or

29 other writing as in force or existing from time to time.

30 **8 Paragraph 121(4)(b)**

31 Omit “or”, substitute “and”.

32 **9 Paragraph 121(9)(a)**

33 Omit “or”, substitute “of”.

1 **10 Subsection 302A(3)**

2 Omit “applies”, substitute “extends”.

3 ***Proceeds of Crime Act 2002***

4 **11 Subsections 299(1) and (2)**

5 Omit “\*Official Trustee”, substitute “Inspector-General in Bankruptcy”.

6 Note: The heading to section 299 is altered by omitting “**Official Trustee**” and substituting  
7 “**Inspector-General in Bankruptcy**”.

8 **12 Subsection 299(2)**

9 Omit “Official Trustee”, substitute “Inspector-General in Bankruptcy”.

10 **13 Subsection 299(4)**

11 Omit “\*Official Trustee”, substitute “Inspector-General in Bankruptcy”.

12 **14 Subsection 299(4)**

13 Omit “Official Trustee”, substitute “Inspector-General in Bankruptcy”.

14 **15 Subsection 299(6)**

15 Omit “\*Official Trustee”, substitute “Inspector-General in Bankruptcy”.

16 **16 Subsection 299(6)**

17 Omit “it”, substitute “the Inspector-General in Bankruptcy”.

18 **17 Paragraph 299(7)(a)**

19 Omit “\*Official Trustee”, substitute “Inspector-General in Bankruptcy”.

20 **18 Paragraph 299(7)(b)**

21 Omit “Official Trustee”, substitute “Inspector-General in Bankruptcy”.

22 **19 Transitional—section 299 of the *Proceeds of Crime Act***  
23 ***2002***

24 (1) This item applies to anything done by the Official Trustee under  
25 section 299 of the *Proceeds of Crime Act 2002* before the  
26 commencement of this item.

- 1 (2) The thing has effect, after the commencement of this item, as if it had  
2 been done under that section by the Inspector-General in Bankruptcy.