



Bankruptcy Regulations 1996

Statutory Rules 1996 No. 263 as amended

made under the

Bankruptcy Act 1966

This compilation was prepared on 1 July 2007
taking into account amendments up to SLI 2007 No. 138

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1	Preliminary	
1.01	Name of Regulations [see Note 1]	13
1.02	Commencement	13
1.03	Interpretation	13
1.04	Application of <i>Criminal Code</i>	16
Part 2	Administration	
2.01	Section 20J of the Act — prescribed rate of interest on moneys in Common Fund	17
Part 3	Courts	
3.01	Paragraph 29 (5) (b) of the Act — prescribed countries	18
Part 4	Proceedings in connexion with bankruptcy	
Division 1	Bankruptcy notices	
4.01	Application for bankruptcy notice	19
4.02	Form of bankruptcy notices	20
4.02A	Service of bankruptcy notices	20
4.03	Inspection of bankruptcy notices	20
4.04	Judgment or order in foreign currency	21
Division 2	Petitions	
4.05	Copy of petition, etc to be given to Official Receiver	22
4.06	Control of debtor's property before sequestration	22
4.07	Expenses of trustee before sequestration	22
4.08	Application for damages where petition dismissed	23
4.09	Subsection 50 (5) of the Act — prescribed modifications of applied provisions	24
4.10	Acceptance of debtor's declaration	25
4.11	Prescribed information to be supplied by Official Receiver to debtor	25
4.12	Debtor's petition — filing of trustee's consent	26

	Page
4.13 Notice to partners of referral to Court of petition by other partners against the partnership	26
Division 3	
Miscellaneous	
4.14 Notification by trustee to creditors	27
4.15 Exercise of proxy by trustee's representative at meeting	27
4.16 Lodgment of proxies by fax — section 64M of the Act	27
4.17 Inspection and copying of composition or scheme of arrangement	28
4.18 Proposal and report for a composition or arrangement	28
4.19 Meetings of creditors — modification of Division 5 of Part IV of the Act	28
Part 5	
Control over person and property of debtors and bankrupts	
5.01 Where debtor or bankrupt is arrested	29
Part 6	
Administration of property	
Division 1	
Order of payment of debts	
6.01 Priority payments under section 109 of the Act — prescribed matters	30
6.02 Maximum amount payable to employee	30
Division 2	
Property available for payment of debts	
6.03 Household property	31
6.03A Personal property	33
6.03B Property divisible among creditors — prescribed amounts	33
Division 2A	
Rural support schemes	
6.04A Prescribed rural support schemes (Act s 116)	34
6.04B Prescribed rural support schemes (Act s 116)	35
Division 4	
Undervalued transactions	
6.09 Transfers exempt from being void against trustee	35
Division 5	
Realisation of property	
6.10 Disclaimer of onerous property	36

		Page
Division 6	Definition of <i>income</i> (Act s 139L)	
6.11	Interpretation	36
6.12	Fringe benefits: modification of the FBTA Act	36
6.12A	Restart scheme payments	38
6.12B	Superannuation contributions	38
6.12C	Family assistance and social security payments	39
6.12D	Primary Industry rural support scheme	40
Division 7	Contributions by bankrupt	
6.13	Interpretation	40
6.14	Contributions by bankrupt — modes of payment	40
6.15	Contributions where bankrupt dies	41
6.15A	Contribution assessment — income of dependant	41
6.17	Certificate of outstanding contribution	41
6.18	Discharged bankrupt to give information if contribution unpaid	42
Division 8	Notice under section 139ZL of the Act	
6.19	Notice under section 139ZL of the Act not to refer to protected money	43
6.20	Notice under section 139ZL of the Act (notice of ceasing or commencing employment)	43
Division 9	Distribution of property	
6.21	Minimum amount of dividend	44
6.22	Manner of declaring final dividend	44
Part 7	Discharge and annulment	
7.01	Trustee to inform the Official Receiver of return of bankrupt to Australia	45
7.01A	Grounds of objection — failure to provide complete and accurate information	45
7.02	Trustee to inform the Official Receiver of cancellation of objection	46
Part 8	Trustees	
Division 1	Application for registration, or extension of registration, as a trustee	
8.01	Documents to accompany application for registration	47

	Page	
8.02	Qualifications, experience, knowledge and abilities of applicants	48
8.03	Subsection 155C (2) of the Act — prescribed particulars of applicant for registration as a trustee	49
8.04	Extension of registration — proof of insurance	50
Division 1A	Change in trustee's particulars	
8.04A	Trustee to notify change in particulars	50
Division 2	Registration of trustees	
Subdivision 1	Preliminary	
8.05	Definitions	50
Subdivision 2	Constitution and procedure of committees generally	
8.05A	Chairperson of a committee	51
8.05B	Trustee chosen by the Insolvency Practitioners Association of Australia	51
8.05C	Resignation of chairperson	51
8.05D	Resignation of members	51
8.05E	Disclosure of interests	51
8.05F	Removal of members from a committee	52
8.05G	Convening of a replacement committee	52
8.05H	General procedures of a committee	53
8.05I	Procedure at committee meetings	53
8.05J	Resolutions without meeting	53
Subdivision 3	Inquiries and interviews	
8.05K	Inquiries by the committee	54
8.05L	Notice of interview	55
8.05M	Applicant interviews	55
8.05N	Report of committee decision	56
Subdivision 4	Other matters	
8.05O	Confidentiality	56
8.05P	Evidence of proceedings at committee meetings	56
Division 3	Consent to act, and appointment, as trustee of estate	
8.06	Consent to act as trustee — subsection 156A (1) of the Act	57
8.06A	Certificate of appointment under subsection 156A (3) of the Act	57

		Page
Division 4	Trustee's remuneration	
8.07	Fixed remuneration — prescribed rates under subsections 162 (2) and (3) of the Act	57
8.08	Other remuneration — prescribed rate under subsection 162 (4) of the Act	58
8.09	Taxation of trustee's remuneration and costs — preliminary	58
8.10	Bill of costs	59
8.11	Taxation — hearing	60
8.11A	Costs of taxation	60
8.12	Remuneration of trustees — notices	61
Division 5	Registered trustee ceasing to be trustee of an estate	
8.13	Notice of removal of trustee of estate	61
8.14	Notice of finalisation of administration; entry on the Index	62
Division 6	Variation and termination of registration	
Subdivision 1	Preliminary	
8.15	Definitions	63
8.16	Documents to accompany application for change or removal of conditions	63
Subdivision 2	Constitution and procedure of committees generally	
8.17	Chairperson of a committee	63
8.18	Trustee chosen by the Insolvency Practitioners Association of Australia	63
8.19	Resignation of chairperson	64
8.20	Resignation of members	64
8.21	Disclosure of interests	64
8.22	Removal of members from a committee	65
8.23	Convening of a replacement committee	65
8.24	General procedures of a committee	66
8.25	Procedure at committee meetings	66
8.26	Resolutions without meeting	66
Subdivision 3	Inquiries and interviews	
8.27	Inquiries by the committee	67
8.28	Notice of interview (Act s 155E (6))	67
8.29	Change of conditions on practising as a registered trustee — interview	68
8.30	Involuntary termination of registration — interview	69

	Page
8.31 Report of committee decision	69
Subdivision 4 Other committee-related matters	
8.32 Confidentiality	70
8.33 Evidence of proceedings at committee meetings	70
8.34 Time for deciding matters (Act s 155l (1))	70
Subdivision 4A Standards for trustees	
8.34A Performance standards for trustees (including controlling trustees)	70
Subdivision 5 Controlling trustees other than Official Trustee or registered trustees	
8.35 Eligibility of controlling trustees, other than Official Trustee or registered trustees	71
8.36 Review by Tribunal of determination under subregulation 8.35 (2)	72
8.37 Official Trustee to perform duties	72
Part 9 Debt agreements	
9.01 Prescribed information to be supplied to the debtor	73
9.02 Qualifications of applicants	74
Part 10 Personal insolvency agreements	
10.01 Modifications of Part X of the Act — joint debtors	75
10.02 Information to be given to debtor (Act ss 188 (2AA) and (2AB))	75
10.03 Documents under section 188 of Act	76
10.04 Documents for meeting called under an authority under section 188 of the Act	76
10.05 Modifications of Division 5 of Part IV of the Act — meetings called under authorities under section 188 of the Act	77
10.06 Controlling trustee to give Official Receiver copy of special resolution and certain particulars for the Index	78
10.07 Modifications of Part VIII of the Act — controlling trustees and trustees of personal insolvency agreements	78
10.08 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	79
10.09 Meeting if trustee does not execute personal insolvency agreement	79

	Page	
10.10	Notification of personal insolvency agreement	79
10.11	Sequestration order, or order terminating or setting aside a personal insolvency agreement — notice to Official Receiver (Act s 221, s 222 and s 222C)	80
10.12	Termination of personal insolvency agreement by trustee (Act s 222A)	80
10.13	Modifications of Parts V and VI of the Act — personal insolvency agreements	81
10.14	Certificate relating to realisation of divisible property and non-availability of dividend	81
Part 11	Administration of estates of deceased persons in bankruptcy	
11.01	Statement of affairs and of administration of estate	82
11.02	Modifications of the Act — administration of estates of deceased persons	83
Part 12	Unclaimed dividends or moneys	
12.01	Statement where moneys are paid to the Commonwealth	84
Part 13	National Personal Insolvency Index	
Division 1	Preliminary	
13.01	Interpretation	85
13.02	Establishment and maintenance of the National Personal Insolvency Index	85
Division 2	Information to be entered on the Index	
13.03	What information is to be entered on the Index?	85
13.04	Application for certain information not to be on the Index	88
13.05	Application to the AAT	89
Division 3	Miscellaneous	
13.06	Inspection of the Index	89
13.07	Extract, etc of the Index to be admissible in evidence	90
13.08	Immunity from defamation	90
13.09	Access to the Index	91

	Page
13.10 Information extracted from the Index to be evidence	91
Part 14 Offences under the Act	
14.01 Apprehension under a warrant — notification to Registrar in certain cases	92
14.02 Registrar to act on notification; direction to person executing warrant	92
Part 15A Provisions relating to the Bankruptcy Charges Acts	
15A.01 Interpretation	93
15A.02 Mode of payment	93
15A.03 Overpayments to be refunded or offset	93
15A.04 Information to accompany payment of interest charge	94
15A.05 Information to accompany payment of realisations charge	94
15A.07 Lodgment of request for remission	94
Part 16 Miscellaneous	
Division 1 Provisions concerning documents (including inventories)	
16.01 Service of documents	95
16.02 Documents for the Inspector-General, the Official Receiver or the Official Trustee	96
16.03 Inventory by trustee taking possession of, or attaching, property	97
16.03A Document filed by Inspector-General or Official Receiver — fee not payable	97
Division 2 Matters relevant to fees	
16.06 Payment of fees	97
16.07 Official Trustee's entitlement to interim remuneration	98
16.08 Reimbursement of Official Trustee for expenses	98
16.09 Fees — notes and transcript of evidence	99
16.11 Waiver or remission of fees by Inspector-General	99
16.12 Review by AAT of decision of Inspector-General	100

		Page
Schedule 1	Forms	101
Form 1	Bankruptcy Notice	101
Schedule 2	Modifications under section 76A of the Act — meetings of creditors under Division 6 of Part IV of the Act	107
64AA	Immunity from civil actions and proceedings	108
11A	After subsection 64ZC (5)	113
Schedule 3	Paragraph 109 (1) (a) of the Act — order of payment of first priority debts	114
Schedule 4	Modifications of the <i>Fringe Benefits Tax Assessment Act 1986</i>	116
Schedule 4A	Performance standards for trustees (including controlling trustees)	127
Part 1	Preliminary	127
1.1	Purpose	127
1.2	Definitions	128
Part 2	General standards	129
Division 2.1	Application	129
2.1	Application of Part 2	129
Division 2.2	General	129
2.2	Duty to act honestly and impartially	129
2.3	Conflict of interest	129
2.4	Use of information relating to an administration	130
2.5	Compliance with standards by trustee's employees	130
2.6	Preliminary inquiries and actions	130
2.7	Investigation of matters affecting administration	131
Division 2.3	Assets	132
2.8	Realising assets	132
2.9	Ownership or interests in assets	132
2.10	Obtaining advice about interest or value	132
2.11	Disposal of property	132
2.12	Records	132
Division 2.4	Remuneration and costs	133
2.13	Costs incurred to be necessary and reasonable	133
2.14	Receipt of moneys as trustee's remuneration	133
2.15	Rate for tasks undertaken by trustee's staff	133
2.16	Records	134
Division 2.5	Files and access to information	134
2.17	File maintenance	134

		Page
	2.18 Provision of information to creditors	134
Division 2.6	Meetings of creditors	134
	2.19 Need for meeting	134
	2.20 Matters to be considered when holding a meeting	135
	2.21 Attendance at meeting	135
	2.22 President's duties at creditors' meeting	135
	2.23 Attendance of Inspector-General at meetings	136
Division 2.7	Trustee's accounts	136
	2.24 Records of accounts	136
	2.25 Verifying payments and transfers	136
	2.26 Cash book	136
Part 3	Standards for trustees other than controlling trustees	137
Division 3.1	Application	137
	3.1 Application of Part 3	137
Division 3.2	Reporting to creditors	137
	3.2 Notification of administration	137
Division 3.3	Creditors' claims	138
	3.3 Provable debts in a joint administration	138
	3.4 Evidence relating to proof of debt	138
	3.5 Evidence of liability for debt	138
Division 3.4	Distribution of dividends	139
	3.6 Creditors' views to be considered	139
	3.7 Distribution of estate funds	139
	3.8 Advice relating to dividends and administration	139
	3.9 Records	139
Part 4	Standards for trustees of bankrupt estates	140
Division 4.1	Application	140
	4.1 Application of Part 4	140
Division 4.2	Assets	140
	4.2 Identifying assets for vesting	140
	4.3 Protecting certain assets	141
Division 4.3	Contributions	141
	4.4 Application of Division 4.3	141
	4.5 Income and contribution assessment	141
	4.6 Monitoring payment of contributions	141
Part 5	Standards for controlling trustees	142
	5.1 Application of Part 5	142
	5.2 Notification of administration	142

	Page	
5.3 Investigating debtor's property and income	142	
5.4 Report to creditors	143	
5.5 Records	143	
5.6 Voting at creditors' meeting	143	
Schedule 6	Modifications in relation to Part X of the Act	144
Part 1	Modifications of Part X of the Act — joint debtors	144
Part 2	Modifications of Division 5 of Part IV of the Act — meetings called under authorities under section 188 of the Act	148
Part 3	Modifications of Part VIII of the Act — controlling trustees and trustees of personal insolvency agreements	153
Part 4	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	156
Part 5	Modification under subsection 231 (1) of the Act — personal insolvency agreements	157
Part 6	Modifications under subsection 231 (3) of the Act — personal insolvency agreements	157
Part 7	Modification under subsection 231 (5) of the Act — trustees of personal insolvency agreements	163
Schedule 7	Modifications under Part XI of the Act — administration of estates of deceased persons	164
Schedule 8	Information on the National Personal Insolvency Index	189
Notes		206

Part 1 Preliminary

1.01 Name of Regulations [see Note 1]

These Regulations are the *Bankruptcy Regulations 1996*.

1.02 Commencement

These Regulations commence on 16 December 1996.

Note This date is the date of commencement of Schedules 1 and 2 to the *Bankruptcy Legislation Amendment Act 1996*.

1.03 Interpretation

- (1) In these Regulations, unless the contrary intention appears:

1985 Rural Adjustment Grant Scheme means a scheme established and operated by a State or the Northern Territory in accordance with:

- (a) the agreement between the Commonwealth, the States and the Northern Territory the execution of which, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1985*; or
- (b) that agreement as subsequently amended.

1988 Rural Adjustment Grant Scheme means a scheme established and operated by a State or the Northern Territory in accordance with:

- (a) an agreement between the Commonwealth and that State or Territory whose execution, on behalf of the Commonwealth, was approved by the *States Grants (Rural Adjustment) Act 1988*; or
- (b) that agreement as subsequently amended.

2006 Fees Determination means the *Bankruptcy (Fees and Remuneration) Determination 2006* made under subsection 316 (1) of the Act.

Act means the *Bankruptcy Act 1966*.

Regulation 1.03

commencement date means 16 December 1996.

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

CPI rate, in relation to a financial year, means the annual average of the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of the quarters in the year.

Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995*, being that Code as amended from time to time.

DEP scheme means the scheme mentioned in section 52C of the *Farm Household Support Act 1992*.

farm help re-establishment grant scheme means the scheme mentioned in section 52A of the *Farm Household Support Act 1992*.

FC (Bankruptcy) Rules means the *Federal Court (Bankruptcy) Rules 2005*.

FMC (Bankruptcy) Rules means the *Federal Magistrates Court (Bankruptcy) Rules 2006*.

registered liquidator has the meaning given by the Corporations Law.

Rural Adjustment Grant Scheme means a scheme established and operated by a State or the Northern Territory in accordance with:

- (a) the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Adjustment) Act 1976*; or
- (b) that agreement as subsequently amended, including that agreement as amended by:
 - (i) the agreement between the Commonwealth, the States and the Northern Territory the execution of which, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1979*; or
 - (ii) that agreement as subsequently amended.

Regulation 1.03

Rural Adjustment Scheme has the meaning given by section 4 of the *Rural Adjustment Act 1992*.

Rural Reconstruction Grant Scheme means a scheme established and operated by a State in accordance with:

- (a) the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Reconstruction) Act 1971*; or
- (b) that agreement as subsequently amended.

rural support scheme has the meaning given by subsection 5 (1) of the Act.

Sugar Industry Reform Program means the scheme known as the Sugar Industry Reform Program 2004 made under the Sugar Industry Reform Program Guidelines as in force on 29 April 2004, administered by the Department of Agriculture, Fisheries and Forestry.

Tobacco Grower Adjustment Assistance Package means the scheme known as the Tobacco Grower Adjustment Assistance Package 2006 made under the Tobacco Grower Adjustment Assistance Package Guidelines as in force on 2 March 2007, administered by the Department of Agriculture, Fisheries and Forestry.

taxing officer has the same meaning as in section 167 of the Act.

the court, in relation to a judgment or order, means the court by which the judgment was given or the order was made.

the Index means the National Personal Insolvency Index established by subregulation 13.02 (1).

working day, in or in relation to a particular place, means a day that is not:

- (a) a public holiday or a bank holiday in that place; or
 - (b) a Saturday or a Sunday.
- (2) A reference in these Regulations to a form of a specified number is a reference to the form of that number in Schedule 1.

Regulation 1.04

1.04 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to offences against these Regulations.

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

Part 2 Administration

2.01 Section 20J of the Act — prescribed rate of interest on moneys in Common Fund

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

Note This rate is prescribed under subsections 20J (2) and (4) of the Act.

Regulation 3.01

Part 3 Courts**3.01 Paragraph 29 (5) (b) of the Act — prescribed countries**

For the purposes of subsection 29 (5) of the Act, each of the countries specified in the following table is prescribed:

Table

Jersey	Singapore
Malaysia	Switzerland
Papua New Guinea	United States of America

Part 4 Proceedings in connexion with bankruptcy

Division 1 Bankruptcy notices

4.01 Application for bankruptcy notice

- (1) In order to apply for the issue of a bankruptcy notice, a person must lodge with the Official Receiver:
- (a) a duly completed draft bankruptcy notice; and
 - (b) one of the following documents in respect of the final judgment or final order specified by the person on the approved form:
 - (i) a sealed or certified copy of the judgment or order;
 - (ii) a certificate of the judgment or order sealed by the court or signed by an officer of the court;
 - (iii) a copy of the entry of the judgment or order certified as a true copy of that entry and sealed by the court or signed by an officer of the court;
 - (iv) in the case of an award referred to in paragraph 40 (3) (a) of the Act:
 - (A) a copy of the award certified as a true copy by the arbitrator who made the award or, failing the arbitrator, by an officer of the Court after having compared the copy with the original award; and
 - (B) a sealed or certified copy of the order giving leave to enforce the award; and
 - (c) a copy of the draft bankruptcy notice for the Official Receiver's records and sufficient additional copies of the draft bankruptcy notice for service and for annexure to any required affidavits of service.

Note For bankruptcy notices, see r. 4.02 and Form 1.

- (2) If documents are lodged with the Official Receiver in accordance with subregulation (1), he or she must sign (by hand or by facsimile reproduction) and date the copies of the

Regulation 4.02

bankruptcy notice lodged in accordance with paragraph (1) (c), and return to the applicant the additional copies referred to in that paragraph.

4.02 Form of bankruptcy notices

- (1) For the purposes of subsection 41 (2) of the Act, the form of bankruptcy notice set out in Form 1 is prescribed.
- (2) A bankruptcy notice must follow Form 1 in respect of its format (for example, bold or italic typeface, underlining and notes).
- (3) Subregulation (2) is not to be taken as expressing an intention contrary to section 25C of the *Acts Interpretation Act 1901*.

Note Under section 25C of the *Acts Interpretation Act 1901*, where an Act prescribes a form, then, unless the contrary intention appears, strict compliance with the form is not required and substantial compliance is sufficient; see also paragraph 46 (1) (a) of that Act for the application of that Act to legislative instruments other than Acts.

4.02A Service of bankruptcy notices

A bankruptcy notice must be served within:

- (a) the period of 6 months commencing on the date of issue of the bankruptcy notice; or
- (b) any further period that the Official Receiver allows (whether within or outside that period of 6 months).

Note If paragraph (b) applies to a bankruptcy notice, a fee is payable under the 2006 Fees Determination.

4.03 Inspection of bankruptcy notices

- (1) Subject to subregulation (2), the only persons who may inspect a bankruptcy notice lodged with the Official Receiver are:
 - (a) a person specified in the notice; and
 - (b) a party to a proceeding to which the notice relates; and
 - (c) a solicitor acting for a person mentioned in paragraph (a) or (b).

Regulation 4.04

- (2) If a creditor's petition is presented that is founded on an act of bankruptcy consisting of failure to comply with a bankruptcy notice, that notice (as lodged with the Official Receiver) is open to public inspection.

4.04 Judgment or order in foreign currency

- (1) This regulation applies to a bankruptcy notice if the judgment or order lodged under subregulation 4.01 (1) in relation to the notice is expressed in an amount of foreign currency (whether or not the judgment or order is also expressed in an amount of Australian currency).
- (2) A bankruptcy notice to which this regulation applies must:
- (a) contain a statement to the effect that payment of the amount of foreign currency expressed in the judgment or order may be paid in that foreign currency or by means of a specified amount of Australian currency that is stated to be equivalent to the amount of foreign currency; and
 - (b) set out:
 - (i) the applicable rate of exchange, being the rate worked out in accordance with subregulation (3); and
 - (ii) the conversion calculation; and
 - (iii) a statement that the conversion of the amount of foreign currency into Australian currency has been made in accordance with this regulation.
- (3) For the purposes of paragraph (2) (b), the conversion of an amount of foreign currency into an equivalent amount of Australian currency must be done in accordance with the exchange rate that, on the second working day before the day on which the relevant application is lodged under subregulation 4.01 (1), is the relevant opening telegraphic transfer rate of the Commonwealth Bank of Australia.

Regulation 4.05

Division 2 Petitions

4.05 Copy of petition, etc to be given to Official Receiver

- (1) A creditor who presents a petition under Division 2 of Part IV of the Act must, within 3 working days, give a copy of the petition, that is endorsed by the court, to the Official Receiver.
- (2) The time within which, under subsection 52 (1A) of the Act, a creditor must give a copy of a sequestration order to the Official Receiver is 2 working days after the making of the order.

4.06 Control of debtor's property before sequestration

- (1) Where the Court makes a direction or other order under subsection 50 (1) of the Act, the creditor who applied for the direction or other order must, within 7 days, serve the following documents in accordance with subregulation (2):
 - (a) a copy of the application;
 - (b) a copy of any affidavit filed in support of the application;
 - (c) a certified copy of the direction or other order.
- (2) The documents must be served:
 - (a) on the trustee who the Court has directed to take control of the debtor's property; and
 - (b) except where that person is the Official Trustee — on the Official Receiver.

4.07 Expenses of trustee before sequestration

- (1) Where:
 - (a) the Court makes a direction or other order under subsection 50 (1) of the Act; and
 - (b) the amount deposited, in accordance with the direction or other order of the Court, with the Official Trustee or a registered trustee is insufficient to meet the fees and expenses incurred by the Official Trustee or registered trustee:
 - (i) as a result of the direction or other order; or

Regulation 4.08

- (ii) in carrying out an examination of a person as a result of the issue of a summons under subsection 50 (2) of the Act;

the Official Trustee or registered trustee may:

- (c) request the creditor who made the application under subsection 50 (1) of the Act; or
- (d) apply to the Court for an order directing that creditor; to deposit with the Official Trustee or the registered trustee a specified additional sum.

- (2) Where the Court, under section 50 of the Act, directs the Official Trustee or a registered trustee to take control of the property of a debtor, and subsequently any of the following events occurs:

- (a) the debtor enters into a personal insolvency agreement, or the debtor's estate is administered under Part XI of the Act, and the Court authorises the Official Trustee or the registered trustee to transfer the property to some other person;
- (b) a sequestration order is made against the debtor;
- (c) the creditor's petition against the debtor is dismissed;
- (d) a debtor's petition relating to the debtor is accepted by the Official Receiver;
- (e) a proposal by the debtor relating to a debt agreement is accepted under section 185B of the Act;

the creditor is entitled to a refund of the amount deposited by him or her in accordance with the direction or other order of the Court to meet the fees and expenses of the Official Trustee or the registered trustee incurred:

- (f) as a result of the direction; or
- (g) in carrying out an examination of a person as the result of the issue of a summons;

less the amount of any fees or expenses so incurred.

4.08 Application for damages where petition dismissed

Where:

- (a) the Court has made a direction or other order under subsection 50 (1) of the Act; and

Regulation 4.09

- (b) the creditor's petition against the debtor is subsequently dismissed;
the debtor may, within 21 days after the day on which the petition is dismissed, apply to the Court for an order for:
- (c) the assessment of the amount of any damage resulting from the control of the property of the debtor by the Official Trustee or a registered trustee in accordance with the order; and
- (d) the payment by the creditor to the debtor of an amount so assessed.

4.09 Subsection 50 (5) of the Act — prescribed modifications of applied provisions

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

- (a) by omitting from subsection (2) 'An' and substituting 'Subject to subsection (2A), an';
- (b) by inserting after subsection (2) the following subsection:
'(2A) The Court or a magistrate may direct that an examination, or any part of an examination, under this section shall be held in private.';
- (c) by omitting from subsection (9) 'is the trustee' and substituting 'has been directed to take control of the property of the debtor';
- (d) by omitting subsection (10A);
- (e) by omitting subsection (14) and substituting the following subsections:
'(14) Subject to subsection (14A), the applicant for an examination under this section is to pay the costs incurred in connection with the examination.
'(14A) The Court or a magistrate may order that all or some of the costs mentioned in subsection (14) are to be paid by the debtor.'

Regulation 4.11

4.10 Acceptance of debtor's declaration

Where, under paragraph 54C (a) of the Act, the Official Receiver accepts and signs a declaration, the Official Receiver must give a copy of the signed declaration to the debtor.

4.11 Prescribed information to be supplied by Official Receiver to debtor

- (1) For the purposes of subsections 54D (1), 55 (3A), 56B (5) and 57 (3A) of the Act, the following information is prescribed:
 - (a) information about alternatives to bankruptcy;
 - (b) information about the consequences of bankruptcy;
 - (c) information about sources of financial advice and guidance to persons facing or contemplating bankruptcy;
 - (d) information about a debtor's right to choose whether the bankruptcy is administered by a registered trustee or the Official Trustee;
 - (e) a statement that it is an act of bankruptcy for a debtor to present to the Official Receiver, under section 54A of the Act, a declaration of intention to present a debtor's petition.
- (2) The information must be factual and objective.
- (3) The Official Receiver must not accept a debtor's petition under section 55, 56B or 57 of the Act unless the debtor has given to the Official Receiver a signed acknowledgement (which may be included in or appended to the petition) that the debtor has received and read the prescribed information.
- (4) If the debtor presents a petition without having given the acknowledgement, the Official Receiver must:
 - (a) if the debtor presents the petition in person — give the prescribed information to the debtor; or
 - (b) if the debtor presents the petition by post — post the prescribed information to the debtor.
- (5) Where a person intending to present a petition ('the intending petitioner') is unable to properly read the petition, prescribed

Regulation 4.12

information and acknowledgement ('the relevant material') because he or she is:

- (a) blind, partially sighted, illiterate or partially literate; or
- (b) insufficiently familiar with the English language;

the petition and acknowledgement may be signed by another person if that person signs a statement:

- (c) where paragraph (a) applies — that he or she has carefully read the relevant material to the intending petitioner; or
- (d) where paragraph (b) applies — that he or she has carefully interpreted the relevant material to the intending petitioner in a language with which both persons are familiar.

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

Where:

- (a) a debtor presents, or 2 or more debtors present, a petition to the Official Receiver under section 55, 56B or 57 of the Act; and
- (b) there is in force under section 156A of the Act the consent of a registered trustee to act as the trustee of:
 - (i) the estate of the debtor; or
 - (ii) in the case of 2 or more debtors — the separate estates, the joint estates, or the joint and separate estates, of the debtors or any of them;

the petition to the Official Receiver must have with it the original, or a clearly legible photocopy, of the instrument of consent.

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

- (1) Notice by the Official Receiver under subsection 56C (2) of the Act must:
 - (a) be in writing; and
 - (b) state that the petition has been referred to the Court specified in the notice; and
 - (c) state the date, time and place of hearing of the petition.
- (2) The Official Receiver must give the notice:

- (a) at least 7 days before that date; and
 - (b) in accordance with regulation 16.01;
- to each member to whom, under that subsection, it is required to be given.

Division 3 Miscellaneous

4.14 Notification by trustee to creditors

- (1) The trustee of a person who becomes bankrupt must, within 28 days after the day on which the trustee receives the bankrupt's statement of affairs, give to each creditor of the bankrupt:
 - (a) a notice stating the fact and date of the bankruptcy; and
 - (b) a summary of the statement of affairs of the bankrupt.
- (2) If the trustee does not receive the statement of affairs within 60 days after the date of bankruptcy, he or she must give notice in writing to each creditor of the bankrupt of whom the trustee is aware:
 - (a) stating that the trustee has not received the statement of affairs; and
 - (b) setting out what the trustee knows of the bankrupt's affairs.

4.15 Exercise of proxy by trustee's representative at meeting

A person appointed under subsection 63B (1) of the Act to represent a trustee at a meeting may exercise at the meeting any proxy exercisable by the trustee at the meeting.

4.16 Lodgment of proxies by fax — section 64M of the Act

For the purposes of section 64M of the Act:

- (a) an instrument appointing a proxy may be lodged with the trustee by facsimile transmission; and
- (b) an instrument so lodged may be circulated by the trustee under subsection 64M (2) of the Act.

Regulation 4.17

4.17 Inspection and copying of composition or scheme of arrangement

Where a proposal for a composition or scheme of arrangement in relation to a bankrupt has been accepted under subsection 73 (4) of the Act the person may, personally or by an agent, inspect and copy the composition or scheme of arrangement.

Note Except in the case of a person who states in writing that he or she is a person who is a creditor of the bankrupt, a fee is payable under the 2006 Fees Determination.

4.18 Proposal and report for a composition or arrangement

Where a trustee is required, under subsection 73 (2) of the Act, to send a copy of a proposal and a report to creditors before a meeting, the trustee must send those documents to each creditor so that they arrive, or should in due course of post arrive, at least 7 days before the meeting.

4.19 Meetings of creditors — modification of Division 5 of Part IV of the Act

For the purposes of section 76A of the Act, Division 5 of Part IV of the Act is modified in accordance with Schedule 2 in relation to meetings of creditors under Division 6 of that Part.

Part 5

Control over person and property of debtors and bankrupts

5.01 Where debtor or bankrupt is arrested

Where a person is arrested under section 78 of the Act, the arresting officer must immediately notify a Registrar of the arrest.

Part 6 Administration of property

Division 1 Order of payment of debts

6.01 Priority payments under section 109 of the Act — prescribed matters

- (1) Payment of proceeds of the property of a bankrupt under paragraph 109 (1) (a) of the Act is to be in the order set out in Schedule 3.
- (2) For the purposes of item 5 of Schedule 3:
 - (a) a reference to the petitioning creditor is taken to include a reference to a petitioner whose petition has not been proceeded with because of the acceptance of the debtor's petition; and
 - (b) paragraph (a) applies irrespective of whether the debtor's petition was referred to the Court under subsection 55 (3B) of the Act or, if the petition was so referred, the outcome of the reference.

6.02 Maximum amount payable to employee

- (1) For the purposes of paragraph 109 (1) (e) of the Act, the maximum amount due to or in respect of an employee of a bankrupt is:
 - (a) in the case of a bankruptcy occurring or continuing in the period commencing on the commencement date and ending at the end of 30 June 1997 — \$3,100; or
 - (b) in the case of a bankruptcy occurring in a financial year commencing on 1 July 1997 or on 1 July of a subsequent year — the amount worked out in accordance with subregulation (2).
- (2) For the purposes of subparagraph (1) (b), the applicable amount is:
 - (a) in the case of the financial year commencing on 1 July 1997 — \$3,100 increased in accordance with the CPI rate

Regulation 6.03

for the financial year that commenced on 1 July 1996 and rounded down to the nearest multiple of \$50; and

- (b) in the case of a subsequent financial year — the amount worked out in accordance with this subregulation for the immediately preceding financial year, increased in accordance with the CPI rate for that financial year and rounded down to the nearest multiple of \$50.

Example

In the case of a bankruptcy occurring in the financial year 1997-1998, the applicable CPI rate is the rate for 1996-1997.

Note For the meaning of *financial year*, see para. 22 (1) (e) of the *Acts Interpretation Act 1901*.

Division 2 Property available for payment of debts

6.03 Household property

- (1) For the purposes of subparagraph 116 (2) (b) (i) of the Act, household property of the bankrupt specified in this regulation is household property to which subsection 116 (1) of the Act (which deals with property divisible among the creditors) does not extend.
- (2) Subsection 116 (1) of the Act does not extend to household property (including recreational and sports equipment) that is reasonably necessary for the domestic use of the bankrupt's household, having regard to current social standards.
- (3) In particular (but without limiting by implication the generality of subregulation (2)), subsection 116 (1) of the Act does not extend to property of the following kinds:
 - (a) in the case of kitchen equipment, cutlery, crockery, foodstuffs, heating equipment, cooling equipment, telephone equipment, fire detectors and extinguishers, anti-burglar devices, bedding, linen, towels and other household effects — that property to the extent that it is reasonably appropriate for the household, having regard to the criteria mentioned in subregulation (4);

Regulation 6.03

- (b) sufficient household furniture;
 - (c) sufficient beds for the members of the household; and
 - (d) educational, sporting or recreational items (including books) that are wholly or mainly for the use of children or students in the household;
 - (e) 1 television set;
 - (f) 1 set of stereo equipment;
 - (g) 1 radio;
 - (h) either:
 - (i) 1 washing machine and 1 clothes drier; or
 - (ii) 1 combined washing machine and clothes drier;
 - (i) either:
 - (i) 1 refrigerator and 1 freezer; or
 - (ii) 1 combination refrigerator/freezer;
 - (j) 1 generator, if relied on to supply electrical power to the household;
 - (k) 1 telephone appliance;
 - (l) 1 video recorder.
- (4) For the purposes of deciding whether property, other than property of a kind mentioned in paragraphs (3) (b) to (l) (both inclusive), is property to which subregulation (2) applies, regard must be had to the following criteria:
- (a) the number and ages of members of the bankrupt's household;
 - (b) any special health or medical needs of any of those members;
 - (c) any special climatic or other factors (including geographical isolation) of the place where the household residence is located;
 - (d) whether the property is reasonably necessary for the functioning or servicing of the household as a viable and properly run household;
 - (e) whether the costs of seizure, storage and sale of the property would be likely to exceed the sale price of the property;

Regulation 6.03B

- (f) if paragraph (e) does not apply — whether for any other reason (for example, costs of transport) the sale of the property would be likely to be uneconomical.
- (5) The preceding provisions of this regulation do not prevent subsection 116 (1) of the Act from extending to antique items.
- (6) For the purposes of subregulation (5), an item is taken to be antique if, and only if, a substantial part of its market value is attributable to its age or historical significance.

6.03A Personal property

- (1) For subparagraph 116 (2) (ba) (ii) of the Act, sporting, cultural, military or academic awards made to the bankrupt in recognition of his or her performance are personal property to which subsection 116 (1) of the Act does not extend.
- (2) Subregulation (1) does not apply to a monetary award.

6.03B Property divisible among creditors — prescribed amounts

- (1) For the purposes of subparagraph 116 (2) (c) (i) of the Act, the maximum total value of a bankrupt's property that is for use by the bankrupt in earning income by personal exertion is:
 - (a) in the case of a bankruptcy occurring or continuing in the period commencing on the commencement date and ending at the end of 30 June 1997 — \$2,600; or
 - (b) in the case of a bankruptcy occurring in a financial year commencing on 1 July 1997 or on 1 July of a subsequent year — the amount worked out in accordance with subregulation (2).
- (2) For the purposes of subparagraph (1) (b), the applicable amount is:
 - (a) in the case of the financial year commencing on 1 July 1997 — \$2,600 increased in accordance with the CPI rate for the financial year that commenced on 1 July 1996 and rounded down to the nearest multiple of \$50; and

Regulation 6.04A

- (b) in the case of a subsequent financial year — the amount worked out in accordance with this subregulation for the immediately preceding financial year, increased in accordance with the CPI rate for that financial year and rounded down to the nearest multiple of \$50.
- (3) For the purposes of paragraph 116 (2) (ca) of the Act, the maximum aggregate value of property used by the bankrupt primarily as a means of transport is:
 - (a) in the case of a bankruptcy occurring or continuing in the period commencing on the commencement date and ending at the end of 30 June 1997 — \$5,000; or
 - (b) in the case of a bankruptcy occurring in a financial year commencing on 1 July 1997 or on 1 July of a subsequent year — the amount worked out in accordance with subregulation (4).
- (4) For the purposes of subparagraph (3) (b), the applicable amount is:
 - (a) in the case of the financial year commencing on 1 July 1997 — \$5,000 increased in accordance with the CPI rate for the financial year that commenced on 1 July 1996 and rounded down to the nearest multiple of \$50; and
 - (b) in the case of a subsequent financial year — the amount worked out in accordance with this subregulation for the immediately preceding financial year, increased in accordance with the CPI rate for that financial year and rounded down to the nearest multiple of \$50.

Division 2A Rural support schemes

6.04A Prescribed rural support schemes (Act s 116)

For paragraph 116 (2) (k) of the Act, the following rural support schemes are prescribed:

- (a) DEP scheme;
- (b) farm help re-establishment grant scheme.

6.04B Prescribed rural support schemes (Act s 116)

For paragraph 116 (2) (1) of the Act, each rural support scheme mentioned in the following table, and the circumstances mentioned for the scheme, are prescribed.

Item	Rural support scheme	Circumstance
1	1985 Rural Adjustment Grant Scheme	Assistance is required by a person engaged in the agricultural industry, in the form of a loan for rehabilitation or household support
2	1988 Rural Adjustment Grant Scheme	Assistance is required by a person engaged in the agricultural industry, in the form of a grant or loan for rehabilitation or household support
3	Rural Adjustment Grant Scheme	Assistance is required by a person engaged in the agricultural industry, in the form of a grant or loan for rehabilitation or household support
4	Rural Adjustment Scheme	Assistance is required by a person engaged in the agricultural industry, in the form of a grant or loan for rural adjustment
5	Rural Reconstruction Grant Scheme	Assistance is required by a person engaged in the agricultural industry, in the form of a grant or loan for rehabilitation
6	Sugar Industry Reform Program	Assistance is required in the form of a grant to enable a person engaged in the sugar industry, as a grower or harvester, to exit all agricultural industries
7	Tobacco Grower Adjustment Assistance Package	Assistance is required in the form of a grant to enable a person engaged, or previously engaged, in the tobacco industry as a grower to exit all agricultural industries

Division 4 Undervalued transactions

6.09 Transfers exempt from being void against trustee

The kind of transfer of property to which paragraph 120 (2) (d) of the Act applies is one where the costs of recovering the transferred property would, in the trustee's opinion, be likely to exceed the value to the creditors of the property.

Regulation 6.10

Division 5 Realisation of property

6.10 Disclaimer of onerous property

- (1) A notice of disclaimer under subsection 133 (1) or (1A) of the Act must:
 - (a) in every case — adequately identify:
 - (i) the bankrupt to whom the notice relates; and
 - (ii) the property or contract being disclaimed; and
 - (b) in the case of disclaimer, without the leave of the Court, of:
 - (i) a lease — set out facts showing that subsection 133 (4) of the Act has been complied with; or
 - (ii) a contract — set out facts showing that the contract is, for the purposes of subsection 133 (5A) of the Act, an unprofitable contract.
- (2) A trustee who gives a notice of disclaimer under subsection 133 (1) or (1A) of the Act must give the notice to each person who, to the trustee's knowledge:
 - (a) in the case of disclaimer of property — has an interest in the property; or
 - (b) in the case of a contract — is entitled to a benefit of, or subject to a burden or liability under, the contract.

Division 6 Definition of *income* (Act s 139L)

6.11 Interpretation

In this Division:

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

6.12 Fringe benefits: modification of the FBTA Act

- (1) For the purposes of subparagraph (a) (v) of the definition of ***income*** in section 139L of the Act, the FBTA Act is modified in accordance with Schedule 4.

Regulation 6.12

- (2) For those purposes, the following modifications of the FBTA Act apply:
- (a) a reference to a year of tax is taken to be a reference to a contribution assessment period;
 - (b) a reference to the taxable value of a benefit is taken to be a reference to the value, for the purposes of the Act, of the benefit;
 - (c) a reference to the declaration date is taken to be a reference to the date occurring 21 days after the end of the contribution assessment period in relation to the bankrupt;
 - (d) a reference to a declaration to be given to the employer is taken to be a reference to a declaration to be given to the trustee;
 - (e) a reference to a form approved by the Commissioner is taken to be a reference to a form approved by the Inspector-General;
 - (f) subject to paragraph (d), a reference to an employer, or to the employer, is taken to be a reference to any person (other than the bankrupt);
 - (g) a reference to an employee, or to the employee, is taken to be a reference to a bankrupt, or to the bankrupt, as the case requires;
 - (h) a reference (however expressed) to:
 - (i) the employment of the employee; or
 - (ii) an associate of the employee;is to be disregarded.
- (3) In spite of subregulations (1) and (2), the modifications specified or referred to in those subregulations do not apply in relation to the provision of a fringe benefit, within the meaning of the FBTA Act, where the provider of the fringe benefit:
- (a) was the employer of the bankrupt; and
 - (b) provided the fringe benefit to the bankrupt in respect of his or her employment by the provider; and
 - (c) was not an employer over whom the bankrupt exercised effective control, whether directly or indirectly.

Regulation 6.12A

6.12A Restart scheme payments

For subparagraph (b) (v) of the definition of *income* in section 139L of the Act, payments of restart income support, being payments of a kind mentioned in paragraph (a) of the definition of *restart scheme payments* in subsection 3 (2) of the *Farm Household Support Act 1992*, are not income of a bankrupt.

6.12B Superannuation contributions

- (1) Subject to subregulation (2), for subparagraph (b) (v) of the definition of *income* in section 139L of the Act, the following contributions and payments made for the purpose of providing superannuation benefits for a bankrupt person are not income of the person:
 - (a) contributions made by, or on behalf of, each employer of the person to the extent that the contributions reduce the employer's potential liability for the superannuation guarantee charge imposed under section 5 of the *Superannuation Guarantee Charge Act 1992*;
 - (b) contributions made by, or on behalf of, each employer of the person in accordance with the employer's obligation to make contributions for the person under:
 - (i) an industrial award or determination made under a law of the Commonwealth, a State or a Territory; or
 - (ii) an industrial agreement registered, made or lodged under a law of the Commonwealth, a State or a Territory; or
 - (iii) a law of the Commonwealth, or of a State or Territory;that exceed the contributions, made by or on behalf of the employer, mentioned in paragraph (a);
 - (c) payments of shortfall components made to, or for the benefit of, the person under sections 65 to 67 of the *Superannuation Guarantee (Administration) Act 1992*.
- (2) If:

Regulation 6.12C

(a) the employer has an obligation to make contributions that arises under an industrial agreement made solely between the employer and the person; and

(b) the contributions are not contributions of the kind mentioned in subparagraph (1) (b) (iii);

contributions that, for a particular financial year, exceed an amount equal to 9% of the employee's ordinary time earnings for the year are taken to be income of the person.

(3) For this regulation:

industrial agreement made solely between the employer and the person includes an Australian Workplace Agreement under the *Workplace Relations Act 1996* or a similar agreement under the law of a State or Territory.

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

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

6.12C Family assistance and social security payments

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

(a) a payment or amount of family tax benefit paid under the family assistance law;

(b) an amount that is not income for the purposes of the *Social Security Act 1991* because of subsection 8 (8) of that Act, except for a payment or amount mentioned in paragraph (a), (h), (ha), (k), (ka), (m), (z), (za) or (zb) of that subsection.

(2) For this regulation, ***family assistance law*** has the same meaning as in the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Regulation 6.12D

6.12D Primary Industry rural support scheme

For subparagraph (b)(v) of the definition of *income* in section 139L of the Act, any of the following is not income of a bankrupt:

- (a) an amount paid to a person under the DEP scheme;
- (b) an amount paid to a person under the Sugar Industry Reform Program for the prescribed circumstance mentioned for it in regulation 6.04B;
- (c) an amount paid to a person under the Tobacco Grower Adjustment Assistance Package for the prescribed circumstance mentioned for it in regulation 6.04B.

Division 7 Contributions by bankrupt

6.13 Interpretation

In this Division:

contributing bankrupt means a bankrupt who is liable to make contributions.

contribution means a contribution payable or paid under section 139P or 139Q of the Act.

6.14 Contributions by bankrupt — modes of payment

- (1) A contributing bankrupt may pay a contribution in any of the following ways:
 - (a) in cash to the trustee at the trustee's office during business hours;
 - (b) by bank draft, cheque, money order or postal order payable to the trustee and delivered or posted to that office;
 - (c) by deposit of the amount of the contribution in, or transfer of that amount to, the trustee's bank account;
 - (d) any other method authorised in writing by the trustee.
- (2) In the case of payment by cheque, payment is taken to occur when the cheque is cleared and the amount of the payment is credited to the account into which the cheque is deposited.

Regulation 6.17

- (3) The trustee may, on reasonable notice in writing to the bankrupt, vary or cancel an authorisation under paragraph (1) (d).
- (4) If the trustee incurs a delivery or postal charge (including a surcharge) or bank charge in connection with the receipt or processing of payment of a contribution, the trustee may reimburse himself or herself for the amount of the charge from the bankrupt's estate.

6.15 Contributions where bankrupt dies

If a contributing bankrupt dies during a contribution assessment period:

- (a) no refund is payable in respect of any part of a contribution paid by or on behalf of the bankrupt in respect of that period; and
- (b) if a contribution in respect of that period remains unpaid, the deceased bankrupt's estate is liable for the portion of the contribution attributable to the part of the period occurring before the date of death.

Note For proceedings in bankruptcy on the death of the bankrupt, see s. 63 of the Act.

6.15A Contribution assessment — income of dependant

- (1) For paragraph (c) of the definition of *dependant* in section 139K of the Act, the amount is \$2 500.
- (2) Section 304A of the Act applies to this regulation as if the amount mentioned in subregulation (1) were an amount also mentioned in the definition of *indexable amount* in subsection 304A (1) of the Act.

6.17 Certificate of outstanding contribution

- (1) A trustee may give a certificate, signed and dated by the trustee, stating:
 - (a) that the trustee has made an assessment under subsection 139W (1) or (2) of the Act in relation to a bankrupt; and

Regulation 6.18

- (b) the amount of the contribution to which the assessment relates that the bankrupt is liable to pay; and
 - (c) that the trustee has given notice setting out particulars of the assessment to the bankrupt under subsection 139W (4) of the Act; and
 - (d) the respective dates of the assessment and the notice.
- (2) In proceedings against the bankrupt for recovery of the amount, or part of the amount, of a contribution, the certificate:
- (a) is evidence that the bankrupt is liable to pay the amount of contribution stated in the certificate; and
 - (b) may be tendered in evidence without further proof.

6.18 Discharged bankrupt to give information if contribution unpaid

- (1) If:
- (a) a person is discharged from bankruptcy; and
 - (b) immediately before being discharged he or she was a contributing bankrupt; and
 - (c) after the discharge he or she remains liable, under section 139R of the Act, in respect of a contribution that is due and unpaid;
- the person must at once give notice in writing to the trustee in relation to the bankruptcy if any change occurs in the particulars:
- (d) set out in the person's statement of affairs in relation to the bankruptcy; or
 - (e) notified by the person under section 80 of the Act.

Penalty: 10 penalty units

- (2) An offence against subregulation (1) is an offence of strict liability.

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

Division 8 Notice under section 139ZL of the Act

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

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

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

- (1) If the employer of a bankrupt receives a notice under section 139ZL of the Act in relation to the bankrupt and the employment of the bankrupt subsequently ceases, the employer must, within 21 days of the cessation, give notice in writing to the trustee of the bankrupt stating that, on the date specified in the notice, the bankrupt ceased to be employed by the employer.

Penalty: 2 penalty units

- (2) Within 21 days after commencing employment with an employer, the bankrupt must give notice in writing to the trustee stating:
- (a) the employer's name and postal address; and
 - (b) the address of the place where the bankrupt is employed; and
 - (c) the amount of the bankrupt's average gross weekly income from the employment.

Penalty: 2 penalty units

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

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

Regulation 6.21

Division 9 Distribution of property

6.21 Minimum amount of dividend

For the purposes of subsection 140 (9) of the Act, the amount of \$25 is prescribed.

6.22 Manner of declaring final dividend

A notice under subsection 145 (3) of the Act must be given by serving it, in accordance with subregulation 16.01 (1), on each person to whom, under the subsection, it must be given.

Part 7 Discharge and annulment

7.01 Trustee to inform the Official Receiver of return of bankrupt to Australia

- (1) This regulation applies to a registered trustee who is the trustee of the estate of a bankrupt, if:
 - (a) an objection to the discharge of the bankrupt has been made on a ground, or on grounds that include a ground, referred to in paragraph 149D (1) (a) or (h) of the Act (which refer to the bankrupt being out of Australia); and
 - (b) the bankrupt has returned to Australia; and
 - (c) the trustee becomes aware that the bankrupt has returned to Australia.
- (2) Within 7 days after becoming aware that the bankrupt has returned to Australia, the registered trustee must give notice in writing to the Official Receiver stating:
 - (a) that the bankrupt has returned to Australia; and
 - (b) the date on which:
 - (i) the bankrupt returned; or
 - (ii) if the trustee does not know the date on which the bankrupt returned — the trustee became aware that the bankrupt had returned.

Penalty: 1 penalty unit

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

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

7.01A Grounds of objection — failure to provide complete and accurate information

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

Regulation 7.02

7.02 Trustee to inform the Official Receiver of cancellation of objection

- (1) This regulation applies where the Administrative Appeals Tribunal (the *AAT*), on an application under section 149Q of the Act for review of a decision of a registered trustee to file a notice of objection to the discharge of a bankrupt, cancels or varies the decision.
- (2) Where this regulation applies, the registered trustee must, by notice in writing, inform the Official Receiver of the decision of the AAT.
- (3) The registered trustee must give the notice within 7 days of being notified of the decision of the AAT.
- (4) An offence against subregulation (3) is an offence of strict liability.

Penalty: 1 penalty unit.

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

Part 8 Trustees

Division 1 Application for registration, or extension of registration, as a trustee

8.01 Documents to accompany application for registration

- (1) For the purposes of paragraph 154A (3) (a) of the Act, the following documents must accompany an application to be registered as a trustee:
 - (a) if the applicant relies on a qualification referred to in paragraph 8.02 (1) (a):
 - (i) an original statement in accordance with subregulation (2), certified by the appropriate officer of the university, college of advanced education or other tertiary institution; or
 - (ii) a copy of the statement, certified as a copy by a person before whom an affidavit may be sworn under section 262 of the Act;
 - (b) 2 references, signed by the respective referees, who are familiar with relevant work undertaken by the applicant within the 12 months before the application, that contain the particulars specified in subregulation (3).
- (2) A statement referred to in subparagraph (1) (a) (i) must set out the relevant qualification of the applicant and state that the qualification represents:
 - (a) a course of study in accountancy of not less than 3 years' duration; and
 - (b) a course of study in commercial law of not less than 2 years' duration.
- (3) For the purposes of paragraph 1 (b), each reference must contain the following particulars:
 - (a) the name, address and telephone number of the referee;
 - (b) the occupation of the referee;

Regulation 8.02

- (c) the period during which, and the circumstances under which, the referee has known the applicant;
- (d) the referee's opinion about the following matters:
 - (i) the applicant's abilities in oral and written communication;
 - (ii) the applicant's knowledge of the powers, duties and functions of a registered trustee or registered liquidator;
 - (iv) the applicant's knowledge of business management and his or her ability to successfully conduct business activities;
- (e) whether, in the referee's opinion, the applicant has experience in assisting a registered trustee or a registered liquidator within the meaning of the *Companies Act 1981* or the Corporations Law in carrying out the functions of the trustee or liquidator and, if so:
 - (i) the nature of the activities that the applicant was required to carry out in acquiring that experience; and
 - (ii) the length of the period of time during which the applicant carried out those activities; and
 - (iii) whether the applicant carried out those activities in a competent manner;
- (f) the referee's reasons for supporting the application.

8.02 Qualifications, experience, knowledge and abilities of applicants

- (1) For the purposes of paragraph 155A (2) (a) of the Act, the following qualifications, experience, knowledge and abilities are prescribed in relation to an applicant for registration as a trustee:
 - (a) completion of the academic requirements for the award of a degree, diploma or similar qualification from an Australian university or college of advanced education, or other Australian tertiary institution of an equivalent standard, being a degree, diploma or similar qualification granted to a person who has completed:

Regulation 8.03

- (i) a course of study in accountancy of not less than 3 years' duration; and
- (ii) a course of study in commercial law of not less than 2 years' duration;
- (b) engagement in relevant employment on a full-time basis for a total of not less than 2 years in the preceding 5 years;
- (c) the ability to perform satisfactorily the duties of a registered trustee immediately after registration.

Note If the committee considering the application considers that the applicant is suitable to be registered as a trustee, it may decide that the applicant should be registered even if it is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed in subregulation 8.02 (1); see subsection 155A (3) of the Act.

- (2) In this regulation:

relevant employment means employment that:

- (a) involves assisting a liquidator or trustee in the performance of his or her duties as a liquidator or trustee; and
- (b) involves the providing of advice in relation to bankruptcy matters; and
- (c) provides experience in insolvency administrations outside bankruptcy, including administration of receiverships, the winding up of corporations and any other similar functions.

8.03 Subsection 155C (2) of the Act — prescribed particulars of applicant for registration as a trustee

For the purposes of subsection 155C (2) of the Act, the following details are prescribed in relation to an applicant referred to in that subsection:

- (a) the applicant's full name, and any alias;
- (b) the applicant's business address (including, where applicable, the postal address) and telephone number;
- (c) a statement or summary of any conditions applying to the person's entitlement to practise as a registered trustee;
- (d) the date on which details in respect of the applicant are entered on the Index.

Regulation 8.04

8.04 Extension of registration — proof of insurance

A person who applies under section 155D of the Act must provide proof, of a kind reasonably acceptable to the Inspector-General, that the applicant has insurance of the kind mentioned in paragraph 155A (2) (b) of the Act.

Division 1A Change in trustee's particulars

8.04A Trustee to notify change in particulars

- (1) A trustee must promptly give notice in writing to the Official Receiver of any change, in relation to the trustee, of the particulars specified in paragraph 8.03 (a), (b) or (c).

Penalty: 1 penalty unit

- (2) An offence against subregulation (1) is an offence of strict liability.

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

Division 2 Registration of trustees

Subdivision 1 Preliminary

8.05 Definitions

In this Division, unless the contrary intention appears:

application means an application under subsection 154A (1) of the Act.

chairperson means the chairperson of a committee.

committee means a committee convened under subsection 155 (1) of the Act.

member, in relation to a committee, includes the chairperson.

Subdivision 2 Constitution and procedure of committees generally

8.05A Chairperson of a committee

The chairperson of a committee is:

- (a) the Inspector-General; or
- (b) if the Inspector-General appoints another member of the committee as chairperson — that person.

8.05B Trustee chosen by the Insolvency Practitioners Association of Australia

A registered trustee chosen by the Insolvency Practitioners Association of Australia under paragraph 155 (2) (c) of the Act must have practised as a registered trustee for at least 5 years.

8.05C Resignation of chairperson

- (1) A chairperson other than the Inspector-General may resign the office of chairperson by notice in writing signed by the chairperson and given to the Inspector-General.
- (2) A notice of resignation takes effect when the Inspector-General receives it.

8.05D Resignation of members

- (1) A member of a committee, other than the Inspector-General, may resign from the committee by notice in writing signed by the member and given to the Inspector-General.
- (2) A notice of resignation takes effect when the Inspector-General receives it.

8.05E Disclosure of interests

If a member of a committee:

- (a) is a close relative of the applicant; or

Regulation 8.05F

- (b) has a financial or personal relationship with the applicant; the member must, as soon as practicable after becoming aware of the identity of the applicant, disclose the nature of the relationship to the other members of the committee and to the Inspector-General.

8.05F Removal of members from a committee

- (1) The Inspector-General may terminate the appointment of a member of a committee if:
 - (a) the member becomes physically or mentally incapable of performing the duties of a member; or
 - (b) the member becomes a bankrupt; or
 - (c) the member signs an authority under section 188 of the Act that is effective for the purposes of Part X of the Act; or
 - (d) the member becomes a party, as a debtor, to a debt agreement; or
 - (e) the member has been convicted of an offence involving fraud or dishonesty; or
 - (f) the member neglects his or her duty as a member.
- (2) The Inspector-General may terminate the appointment of a member of a committee if:
 - (a) the member:
 - (i) is a close relative of the applicant; or
 - (ii) has a financial or personal relationship with the applicant; and
 - (b) the Inspector-General believes that relationship may affect the impartiality of the member.

8.05G Convening of a replacement committee

- (1) This regulation applies if:
 - (a) either of the following events occurs:
 - (i) a member of a committee resigns or dies;
 - (ii) the appointment of a member of a committee is terminated under regulation 8.05F; and

Regulation 8.05J

- (b) at the time of that occurrence, the committee has not made a decision under subsection 155A (1) of the Act.
- (2) If this regulation applies:
 - (a) the Inspector-General must convene another committee (the *new committee*) in place of the committee referred to in subregulation (1) (the *previous committee*); and
 - (b) the new committee must not have regard to any proceedings of the previous committee.

8.05H General procedures of a committee

- (1) Subject to the Act and this Division, a committee may determine its procedure.
- (2) A committee must observe natural justice.
- (3) A committee is not bound by any rules of evidence but may inform itself on any matter as it sees fit.
- (4) A committee must keep a written record of its decisions.

8.05I Procedure at committee meetings

- (1) Subject to this regulation, all members of a committee must be present in order to constitute a quorum for a meeting of the committee.
- (2) At a meeting of a committee a matter is to be decided by a majority of the votes of the members.
- (3) Any member may participate in a meeting by telephone.
- (4) A member who participates in a meeting by telephone is taken to be present at the meeting.
- (5) A committee may keep minutes of proceedings at its meetings.

8.05J Resolutions without meeting

- (1) If the majority of the members of a committee sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, the resolution is taken to have been passed at a meeting of the committee:

Regulation 8.05K

- (a) on the day on which the document is signed; or
 - (b) if the members sign the document on different days — on the day on which the document is signed by the member who makes up the majority.
- (2) Two or more separate documents that are identical in all material respects (apart from signatures), each of which is signed by 1 or more members, are taken for the purposes of subregulation (1) to constitute a single document.

Subdivision 3 Inquiries and interviews

8.05K Inquiries by the committee

- (1) A committee considering an application may make inquiries of any person for the purposes of deciding whether the applicant should be registered as a trustee or not.
- (2) If the committee decides that the applicant should be registered, the committee may make inquiries of any person for the purposes of deciding what conditions, if any, should apply to the applicant's practice as a registered trustee.
- (3) Inquiries made must be inquiries:
 - (a) that are reasonable, for the purpose of making an informed decision; or
 - (b) that the Chairperson of the committee believes are appropriate in order for the committee to have sufficient information to make the decision.
- (4) Before making a decision that is adverse to the applicant, a committee must:
 - (a) inform the applicant of any information or material that the committee relies on, or proposes to rely on, in making the decision; and
 - (b) give the applicant a reasonable opportunity to reply to, or rebut, the information or material.

8.05L Notice of interview

For subsection 155 (3) of the Act, the Inspector-General or authorised employee on the committee must, after consultation with the other members of the committee:

- (a) fix a date, time and place for the interview; and
- (b) give written notice of that date, time and place to the applicant and the other members of the committee.

8.05M Applicant interviews

- (1) A committee must interview the applicant as soon as practicable and, for that purpose:
 - (a) any member of the committee may participate in the interview by telephone; and
 - (b) the applicant may participate in the interview by telephone.
- (2) A member or applicant who participates in an interview as provided by paragraph (1) (a) or (b) is taken to be present at the interview.
- (3) If the applicant fails to attend, or participate by telephone in, the interview and does not, within 7 days, give the committee a reasonable excuse for that failure:
 - (a) the application is taken to have lapsed; and
 - (b) the application fee is not refundable.
- (4) If an applicant who fails to attend, or participate by telephone in, an interview gives the committee, within 7 days, a reasonable excuse for that failure, the committee must arrange another interview date, time and place.
- (5) At an interview, the committee may ask the applicant any question that the committee reasonably believes to be related to:
 - (a) the application; or
 - (b) a reference accompanying the application; or
 - (c) the issue of whether the applicant has the qualifications, experience, knowledge and abilities to perform the functions of a registered trustee.

Regulation 8.05N

- (6) A committee must not interview an applicant until:
 - (a) the Inspector-General has received the information and documents in relation to the application that are prescribed by regulation 8.01; and
 - (b) any charge imposed by an Act for making the application has been paid.

8.05N Report of committee decision

- (1) A report under subsection 155A (6) of the Act must:
 - (a) be in writing; and
 - (b) be signed by each member of the committee; and
 - (c) in the case of a majority decision — set out the reasons of the minority member.
- (2) The report must be given to the applicant and to the Inspector-General within 14 days of the committee making its decision.

Subdivision 4 Other matters

8.05O Confidentiality

A committee must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in, or in connection with, the performance of its functions or the exercise of its powers under the Act or these Regulations.

8.05P Evidence of proceedings at committee meetings

In any proceedings, a copy of the minutes of proceedings at a committee meeting, signed by the Chairperson of the committee:

- (a) is evidence of the proceedings as recorded in the minutes; and
- (b) may be tendered in evidence without further proof.

Division 3 Consent to act, and appointment, as trustee of estate

8.06 Consent to act as trustee — subsection 156A (1) of the Act

- (1) A trustee who signs an instrument under subsection 156A (1) of the Act in relation to a debtor must file the instrument with the Official Receiver as soon as practicable after signing it or, if the Court makes a sequestration order against the debtor's estate, not later than 2 working days after the day on which the order is made.
- (2) A certificate under subsection 156A (6) of the Act or under regulation 8.06A may be given in the form of an extract of the Index setting out the matters required to be shown by the certificate.

Note For the admissibility in evidence of an extract of the Index, see r. 13.07.

8.06A Certificate of appointment under subsection 156A (3) of the Act

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

Division 4 Trustee's remuneration

8.07 Fixed remuneration — prescribed rates under subsections 162 (2) and (3) of the Act

- (1) For the purposes of subsection 162 (2) of the Act, the rate is:
 - (a) if the moneys received by the trustee do not exceed \$30,000 — 10 percent; or
 - (b) if the moneys received by the trustee exceed \$30,000 but do not exceed \$50,000 — 10 percent in respect of the first \$30,000 and 7.5 percent in respect of the balance of those moneys; or

Regulation 8.08

- (c) if the moneys received by the trustee exceed \$50,000 — 10 percent in respect of the first \$30,000, 7.5 percent in respect of the next \$20,000 and 5 percent in respect of the balance of those moneys.
- (2) For the purposes of subsection 162 (3) of the Act, the prescribed rate is 2.5 percent.

8.08 Other remuneration — prescribed rate under subsection 162 (4) of the Act

For the purposes of subsection 162 (4) of the Act, the remuneration of a trustee is to be:

- (a) in accordance with the scale of charges that is:
 - (i) set out in the IPAA Guide to Hourly Rates published by the Insolvency Practitioners Association of Australia; and
 - (ii) applicable to the work to be remunerated; and
- (b) at the level of 85 percent of those charges.

8.09 Taxation of trustee's remuneration and costs — preliminary

- (1) Where the trustee of the estate of a bankrupt claims remuneration under section 162 of the Act, the bankrupt or a creditor who is dissatisfied with the amount of the claim may, by notice in writing lodged within 28 days of being notified in writing or becoming aware of the amount of the claim, request a taxing officer to tax the claim.
- (2) The taxing officer must, promptly after receiving a request in accordance with subregulation (1), give notice in writing to the trustee to lodge a detailed bill of costs, in accordance with regulation 8.10, with the taxing officer within 28 days or such further period as the taxing officer may, in writing, allow.
- (3) On receiving the bill of costs, the taxing officer must give notice in writing of the date, time and place for the taxation, at least 5 days before the taxation, to the trustee and the person requesting the taxation.

Regulation 8.10

- (4) Subject to subregulation (5), if the trustee fails to comply with a notice given under subregulation (2):
 - (a) the trustee forfeits his or her right to disbursements and expenses; and
 - (b) any amount that, apart from this subregulation, would have been applied as the trustee's remuneration is to be applied for the benefit of the creditors.
- (5) A trustee who is aggrieved by the operation of subregulation (4) in respect of his or her claim, or intended claim, for costs may apply to the Court for relief, and the Court may:
 - (a) grant such relief; and
 - (b) grant the relief on such terms, if any; as it thinks fit.

8.10 Bill of costs

- (1) A bill of costs required under subsection 167 (1) of the Act or regulation 8.09 must:
 - (a) be typed or printed on only one side of each sheet of paper; and
 - (b) have a margin on the left-hand side of each sheet of paper; and
 - (c) show separately the trustee's:
 - (i) professional fees; and
 - (ii) disbursements and expenses; and
 - (d) in the case of a detailed bill of costs:
 - (i) number each item consecutively; and
 - (ii) in respect of each item — specify the date or dates on which the work referred to in the item was done, or the disbursement or expenditure referred to in the item was made, as the case may require.
- (2) If a bill of costs complies substantially, but not strictly, with subregulation (1), it is taken, for the purposes of subregulation (1), to be duly lodged. However, the taxing officer may require trustee to rectify the bill of costs in accordance with any direction that the taxing officer thinks fit, and if the trustee defaults the bill ceases to be so taken.

Regulation 8.11

8.11 Taxation — hearing

- (1) The trustee and the person requesting a taxation may attend, or be represented at, the hearing of the taxation.
- (2) At the hearing of the taxation the person requesting the taxation may object to an item in the bill of costs:
 - (a) if the person has given notice in writing, at least 2 clear days before the hearing, of the nature and grounds of the objection; or
 - (b) with the leave of the taxing officer — without having given such notice.
- (3) The taxing officer may disallow an item or part of an item, or reduce the amount of an item or part of an item, if:
 - (a) he or she considers that:
 - (i) the amount of the costs or disbursements in the item is unreasonably high; or
 - (ii) any of the costs or disbursements in the item were incurred or made improperly, unreasonably, negligently or unnecessarily; or
 - (b) in the case of any disbursements in the item — they are not proved, to the taxing officer's satisfaction, by production of a receipt, voucher or similar document.
- (4) The taxing officer must, within 7 days of concluding the taxation, sign a certificate of taxation and send it to the trustee and the person requesting the taxation.
- (5) An account in respect of the fee for taxation must be sent to the person requesting the taxation, and the fee is payable by that person within 7 days of receipt.
- (6) In this regulation:

taxation means a taxation of costs for the purposes of subsection 167 (1) of the Act or regulation 8.09.

8.11A Costs of taxation

- (1) If taxation under regulation 8.09 results in a reduction of at least 15% in the amount of a claim for remuneration, the trustee must meet the costs of the taxation.

Regulation 8.13

- (2) Except in a case mentioned in subregulation (1), the person who asks for the taxation under regulation 8.09 must meet the costs of the taxation.

8.12 Remuneration of trustees — notices

For subsection 162 (6A) of the Act, a trustee must give the following notices to the bankrupt and creditors:

- (a) a notice that includes the basis and the method on which the trustee seeks to be remunerated, and, if appropriate, an estimate of the expected level of the trustee's remuneration;
- (b) if the trustee claims remuneration calculated by reference to an hourly rate — a notice that includes:
 - (i) the type of work undertaken by the trustee and the trustee's staff; and
 - (ii) the number of hours charged by each person; and
 - (iii) the hourly rate charged for each person; and
 - (iv) the total remuneration claimed;
- (c) a notice advising the bankrupt and creditors of their right, within 28 days of receiving notice of a trustee's claim for remuneration, to request the claim be taxed.

Division 5 Registered trustee ceasing to be trustee of an estate

8.13 Notice of removal of trustee of estate

- (1) This regulation applies in relation to the removal of a registered trustee if:
- (a) the Court removes the trustee, under subsection 156A (5) or 179 (1) of the Act, from the office of trustee of an estate; or
 - (b) the creditors remove the trustee, under section 181 of the Act, from that office.
- (2) In the event of such a removal, the person specified in paragraph (3) (a) or (b) (as the case requires) must give notice in writing to the Official Receiver, in accordance with the

Regulation 8.14

applicable paragraph, stating the name of the registered trustee, the fact and the date of the removal and whether the removal was by the Court or the creditors.

- (3) The notice must be given:
- (a) where paragraph (1) (a) applies — by the applicant to the Court for the removal, as soon as practicable after the making of the order for removal; or
 - (b) where paragraph (1) (b) applies — by the new trustee of the estate appointed by the creditors under section 181 of the Act, as soon as practicable after the appointment.
- (4) An offence against this regulation is an offence of strict liability.

Penalty: 1 penalty unit.

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

8.14 Notice of finalisation of administration; entry on the Index

- (1) A registered trustee must, within 7 days of finalising the administration of an estate, give notice in writing of the finalisation to the Official Receiver.

Penalty: 1 penalty unit

- (2) The Official Receiver must promptly enter on the Index the fact that the administration of an estate has been finalised, where:
- (a) the Official Receiver receives notice under subregulation (1); or
 - (b) the estate was administered by the Official Trustee.
- (3) An offence against subregulation (1) is an offence of strict liability.

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

**Division 6 Variation and termination of
 registration**

Subdivision 1 Preliminary

8.15 Definitions

In this Division, unless the contrary intention appears:

application means an application under subsection 155E (1) of the Act.

chairperson means the chairperson of a committee.

committee means a committee convened under subsection 155E (4) or 155H (2) of the Act.

member, in relation to a committee, includes the chairperson.

**8.16 Documents to accompany application for change or
 removal of conditions**

For paragraph 155E (3) (a) of the Act, an application must be accompanied by 2 references signed by the respective referees, containing the particulars specified in subregulation 8.01 (3).

**Subdivision 2 Constitution and procedure of
 committees generally**

8.17 Chairperson of a committee

The chairperson of a committee is:

- (a) the Inspector-General; or
- (b) if the Inspector-General appoints another member of the committee as chairperson — that person.

**8.18 Trustee chosen by the Insolvency Practitioners
 Association of Australia**

A registered trustee chosen by the Insolvency Practitioners Association of Australia under paragraph 155E (5) (c) or 155H

Regulation 8.19

(3) (c) of the Act must have practised as a registered trustee for at least 5 years.

8.19 Resignation of chairperson

- (1) A chairperson other than the Inspector-General may resign the office of chairperson by notice in writing signed by the chairperson and given to the Inspector-General.
- (2) A notice of resignation takes effect when the Inspector-General receives it.

8.20 Resignation of members

- (1) A member of a committee, other than the Inspector-General, may resign from the committee by notice in writing signed by the member and given to the Inspector-General.
- (2) A notice of resignation takes effect when the Inspector-General receives it.

8.21 Disclosure of interests

If:

- (a) a member of a committee convened under subsection 155E (4) of the Act:
 - (i) is a close relative of the applicant; or
 - (ii) has a financial or personal relationship with the applicant; or
- (b) a member of a committee convened under subsection 155H (2) of the Act:
 - (i) is a close relative of the trustee concerned; or
 - (ii) has a financial or personal relationship with the trustee;

the member must, as soon as practicable after becoming aware of the identity of the applicant or trustee, disclose the nature of the relationship to the other members of the committee and to the Inspector-General.

8.22 Removal of members from a committee

- (1) The Inspector-General may terminate the appointment of a member of a committee if:
 - (a) the member becomes physically or mentally incapable of performing the duties of a member; or
 - (b) the member becomes a bankrupt; or
 - (c) the member signs an authority under section 188 of the Act that is effective for the purposes of Part X of the Act; or
 - (d) the member becomes a party, as a debtor, to a debt agreement; or
 - (e) the member has been convicted of an offence involving fraud or dishonesty; or
 - (f) the member neglects his or her duty as a member.
- (2) The Inspector-General may terminate the appointment of a member of a committee convened under subsection 155E (4) or 155H (2) of the Act if:
 - (a) the member:
 - (i) is a close relative of the applicant, or trustee, concerned; or
 - (ii) has a financial or personal relationship with the applicant or trustee; and
 - (b) the Inspector-General believes that relationship may affect the impartiality of the member.

8.23 Convening of a replacement committee

- (1) This regulation applies if:
 - (a) either of the following events occurs:
 - (i) a member of a committee resigns or dies;
 - (ii) the appointment of a member of a committee is terminated under regulation 8.22; and
 - (b) at the time of that occurrence, the committee has not made a decision under subsection 155F (1) or 155I (1) of the Act.

Regulation 8.24

- (2) If this regulation applies:
 - (a) the Inspector-General must convene another committee (the *new committee*) in place of the committee referred to in subregulation (1) (the *previous committee*); and
 - (b) the new committee must not have regard to any proceedings of the previous committee.

8.24 General procedures of a committee

- (1) Subject to the Act and this Division, a committee may determine its procedure.
- (2) A committee must observe natural justice.
- (3) A committee is not bound by any rules of evidence but may inform itself on any matter as it sees fit.
- (4) A committee must keep a written record of its decisions.

8.25 Procedure at committee meetings

- (1) Subject to this regulation, all members of a committee must be present in order to constitute a quorum for a meeting of the committee.
- (2) At a meeting of a committee a matter is to be decided by a majority of the votes of the members.
- (3) Any member may participate in a meeting by telephone.
- (4) A member who participates in a meeting by telephone is taken to be present at the meeting.
- (5) A committee may keep minutes of proceedings at its meetings.

8.26 Resolutions without meeting

- (1) If the majority of the members of a committee sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, the resolution is taken to have been passed at a meeting of the committee:
 - (a) on the day on which the document is signed; or

- (b) if the members sign the document on different days — on the day on which the document is signed by the member who makes up the majority.
- (2) Two or more separate documents that are identical in all material respects (apart from signatures), each of which is signed by 1 or more members, are taken for the purposes of subregulation (1) to constitute a single document.

Subdivision 3 Inquiries and interviews

8.27 Inquiries by the committee

- (1) A committee considering an application may make inquiries of any person for the purposes of making a decision under subsection 155F (1) or 155I (1) of the Act.
- (2) Inquiries made must be:
 - (a) inquiries that are reasonable for the purpose of making an informed decision; or
 - (b) inquiries that the Chairperson of the committee believes are appropriate in order for the committee to have sufficient information to make the decision.
- (3) Before making a decision that is adverse to a person, a committee must:
 - (a) inform the person of any information or material that the committee relies on, or proposes to rely on, in making the decision; and
 - (b) give the person a reasonable opportunity to reply to, or rebut, the information or material.

8.28 Notice of interview (Act s 155E (6))

For subsection 155E (6) of the Act, the Inspector-General or authorised employee on the committee must, after consultation with the other members of the committee:

- (a) fix a date, time and place for the interview; and
- (b) give written notice of that date, time and place to the applicant and the other members of the committee.

Regulation 8.29

8.29 Change of conditions on practising as a registered trustee — interview

- (1) A committee must interview the applicant as soon as practicable and, for that purpose:
 - (a) any member of the committee may participate in the interview by telephone; and
 - (b) the applicant may participate in the interview by telephone.
- (2) A member, or applicant, who participates in an interview in accordance with paragraph (1) (a) or (b) is taken to be present at the interview.
- (3) If the applicant fails to attend, or participate by telephone in, the interview and does not, within 7 days, give the committee a reasonable excuse for that failure:
 - (a) the application is taken to have lapsed; and
 - (b) the application fee is not refundable.
- (4) If an applicant who fails to attend, or participate by telephone in, an interview gives the committee, within 7 days, a reasonable excuse for that failure, the committee must arrange another interview date, time and place.
- (5) At an interview, the committee may ask the applicant any question that the committee reasonably believes to be related to:
 - (a) the application; or
 - (b) a reference accompanying the application; or
 - (c) the issue of whether the applicant has the qualifications, experience, knowledge and abilities to perform the functions of a registered trustee.
- (6) A committee must not interview an applicant until:
 - (a) the Inspector-General has received the references, in relation to the application, mentioned in regulation 8.16; and
 - (b) any charge imposed by an Act for making the application has been paid.

Regulation 8.31

8.30 Involuntary termination of registration — interview

- (1) If the Inspector-General is required under subsection 155H (2) of the Act to convene a committee to consider whether a trustee should continue to be registered, the Inspector-General or authorised employee on the committee must, after consultation with the other members of the committee:
 - (a) fix a date, time and place for the interview; and
 - (b) give written notice of that date, time and place to the trustee and the other members of the committee.
- (2) The committee must interview the trustee as soon as practicable and, for that purpose:
 - (a) any member of the committee may participate in the interview by telephone; and
 - (b) the trustee may participate in the interview by telephone.
- (3) A member, or trustee, who participates in an interview in accordance with paragraph (1) (a) or (b) is taken to be present at the interview.
- (4) If the trustee fails to attend, or participate by telephone in, the interview and does not, within 7 days, give the committee a reasonable excuse for that failure, the committee may proceed with its consideration of the matter.
- (5) If an trustee who fails to attend, or participate by telephone in, an interview gives the committee, within 7 days, a reasonable excuse for that failure, the committee must arrange another interview date, time and place.

8.31 Report of committee decision

- (1) A report under subsection 155F (2) or 155I (4) of the Act must:
 - (a) be in writing; and
 - (b) be signed by each member of the committee; and
 - (c) in the case of a majority decision — set out the reasons of the minority member.
- (2) The report must be given to the applicant or trustee, and to the Inspector-General, within 14 days of the committee making its decision.

Regulation 8.32

Subdivision 4 Other committee-related matters

8.32 Confidentiality

A committee must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in, or in connection with, the performance of its functions or the exercise of its powers under the Act or these Regulations.

8.33 Evidence of proceedings at committee meetings

In any proceedings, a copy of the minutes of proceedings at a committee meeting, signed by the Chairperson of the committee:

- (a) is evidence of the proceedings as recorded in the minutes; and
- (b) may be tendered in evidence without further proof.

8.34 Time for deciding matters (Act s 155I (1))

A committee must decide a matter under subsection 155I (1) of the Act within 60 days of being convened.

Subdivision 4A Standards for trustees

8.34A Performance standards for trustees (including controlling trustees)

- (1) For subsection 155H (5) of the Act, the standards applicable to the exercise of powers, or the carrying out of duties, of registered trustees are set out in Schedule 4A.
- (2) For subsection 188 (2A) of the Act, the standards in Parts 1, 2 and 5 of Schedule 4A also apply to a solicitor who is a controlling trustee.

**Subdivision 5 Controlling trustees other than Official
Trustee or registered trustees**

**8.35 Eligibility of controlling trustees, other than Official
Trustee or registered trustees**

- (1) For subsection 188 (2A) of the Act, a person (other than the Official Trustee or a registered trustee) is not eligible to act as a controlling trustee if the person:
- (a) is convicted of a criminal offence involving fraud or dishonesty, or was so convicted within the 10 years before the proposed authorisation; or
 - (b) is not insured against the liabilities the trustee may become subject to as a controlling trustee; or
 - (c) is a solicitor who no longer holds a practising certificate; or
 - (d) is an undischarged bankrupt or insolvent under administration, or became a party (as debtor) to a debt agreement or a Part X administration within the 10 years before the proposed authorisation; or
 - (e) is a person who the Inspector-General decides under subregulation (2) has failed to properly exercise powers or carry out duties or to cooperate with an inquiry or investigation, or in relation to whom such a decision was made within the 3 years before the proposed authorisation; or
 - (f) has not, by 1 December 2006:
 - (i) become a full member of the Insolvency Practitioners Association of Australia; or
 - (ii) satisfactorily completed a course in insolvency approved by the Inspector-General.
- (1A) The Inspector-General may approve a course in insolvency by notice published on the Insolvency and Trustee Service Australia's website.

Note Paper copies of the notice are available from the Insolvency and Trustee Service Australia on request.

Regulation 8.36

- (2) In addition to subregulation (1), a person who is, or has been, a controlling trustee is not eligible to act as a controlling trustee if the Inspector-General determines that the person:
 - (a) has failed to properly exercise the powers, or carry out the duties, of a controlling trustee, including meeting a standard applicable to a controlling trustee set out in Schedule 4A; or
 - (b) has refused, or failed to cooperate with the Inspector-General in an inquiry or investigation under paragraph 12 (1) (b) of the Act.
- (3) If the Inspector-General forms an opinion of the kind mentioned in paragraph (2) (a) or (b), the Inspector-General must:
 - (a) by written notice, tell the person; and
 - (b) invite the person to respond within 28 days or such longer time as is specified in the notice.
- (4) After the expiry of the time mentioned in paragraph (3) (b), the Inspector-General may, having regard to the response (if any) of the person, make a determination under subregulation (2).
- (5) If the Inspector-General makes a determination under subregulation (2), the Inspector-General must give the person a written notice of the determination, setting out the reasons.

8.36 Review by Tribunal of determination under subregulation 8.35 (2)

Application may be made to the Administrative Appeals Tribunal for a review of a determination of the Inspector-General under subregulation 8.35 (2).

8.37 Official Trustee to perform duties

If a controlling trustee becomes ineligible to act as a controlling trustee then, unless and until the debtor appoints a controlling trustee who is eligible to so act, the Official Trustee must perform the duties of the controlling trustee.

Regulation 9.01

Part 9 Debt agreements**9.01 Prescribed information to be supplied to the debtor**

- (1) For paragraph 185C (2D) (b) and subsection 185E (1) of the Act, the following information is prescribed:
 - (a) information about alternatives to entering into a debt agreement;
 - (b) information about the consequences of making a debt agreement proposal;
 - (c) information about sources of financial advice and guidance to persons facing or contemplating entering into a debt agreement;
 - (d) a statement that it is an act of bankruptcy for a debtor to give to the Official Receiver a debt agreement proposal.
- (2) The information must be factual and objective.
- (3) The Official Receiver must not accept a debtor's debt agreement proposal under Division 2 of Part IX of the Act, unless the debtor has given to the Official Receiver a signed acknowledgment that the debtor has received and read the prescribed information.
- (4) If the debtor presents a debt agreement proposal without having given the acknowledgement, the Official Receiver must:
 - (a) if the debtor presents the debt agreement proposal in person — give the prescribed information to the debtor; or
 - (b) if the debtor presents the debt agreement proposal by post — post the prescribed information to the debtor.
- (5) Subject to subregulation (6), a debt agreement proposal and acknowledgement may be signed by a person for a debtor intending to present a debt agreement proposal if the debtor is unable to properly read the debt agreement proposal, prescribed information and acknowledgement ('the relevant material') because he or she is:
 - (a) blind, partially sighted, illiterate or partially literate; or

Regulation 9.02

- (b) insufficiently familiar with the English language.
- (6) A person who signs a debt agreement proposal and acknowledgement for a debtor, must sign a statement:
 - (a) where paragraph (5) (a) applies — that he or she has carefully read the relevant material to the debtor; or
 - (b) where paragraph (5) (b) applies — that he or she has carefully interpreted the relevant material to the debtor in a language with which both are familiar.

9.02 Qualifications of applicants

For paragraph 186C (2) (e) of the Act, the following qualifications are prescribed after 30 June 2009:

- (a) a Certificate IV in Financial Services (Accounting) from an Australian college of advanced education;
- (b) a degree, diploma or similar qualification from an Australian university or college of advanced education, or other Australian tertiary institution, of an equivalent or higher level to the qualification mentioned in paragraph (a).

Part 10 Personal insolvency agreements

10.01 Modifications of Part X of the Act — joint debtors

For section 187A of the Act, a provision of Part X of the Act specified in Part 1 of Schedule 6 is modified in accordance with that Part in relation to its application, in accordance with that section, to joint debtors, whether partners or not.

10.02 Information to be given to debtor (Act ss 188 (2AA) and (2AB))

- (1) For subsections 188 (2AA) and (2AB) of the Act, the following information is prescribed:
 - (a) information about the consequences of entering into a personal insolvency agreement;
 - (b) information about sources of financial advice and guidance to persons facing or contemplating entering into a personal insolvency agreement;
 - (c) information about whether a personal insolvency agreement may be administered by a registered trustee or the Official Trustee;
 - (d) a statement that it is an act of bankruptcy if a debtor does any of the things mentioned in paragraphs 40 (1) (i) to (m) of the Act;
 - (e) information about the processes under Part X of the Act;
 - (f) information about a debtor's rights and responsibilities under Part X of the Act, including a debtor's obligation to disclose all related entities;
 - (g) information about a controlling trustee's obligation to disclose his or her relationship with a debtor.
- (2) The information must be factual and objective.
- (3) A person authorised under subsection 188 (1) of the Act to take control of a debtor's property must not consent to exercise the powers given by the authority unless the debtor has given the

Regulation 10.03

person a signed acknowledgement (which may be included with or appended to the authority) that the debtor has received and read the prescribed information.

- (4) Subregulation (5) applies if a debtor intending to sign an authority is unable to properly read the authority, prescribed information and acknowledgement (*the relevant material*) because he or she is:
 - (a) blind, partially sighted, illiterate or partially literate; or
 - (b) insufficiently familiar with the English language.
- (5) The authority and acknowledgement may be signed by another person if that person signs a statement to the effect that:
 - (a) if paragraph (4) (a) applies — he or she has carefully read the relevant material to the debtor; or
 - (b) if paragraph (4) (b) applies — he or she has carefully interpreted the relevant material to the debtor in a language that both persons understand.

10.03 Documents under section 188 of Act

- (1) A registered trustee or solicitor who consents to exercise the powers given by an authority under section 188 of the Act must sign a consent in accordance with the approved form.
- (2) The registered trustee or solicitor must, within 2 working days of consenting, give a copy of the signed consent to the Official Receiver for the District in which the debtor resides.

Note Under subsection 188 (5) of the Act, a registered trustee or solicitor who consents to exercise the powers given by an authority must also give to the Official Receiver for the District in which the debtor resides, a copy of the authority and the debtor's statement of affairs.

10.04 Documents for meeting called under an authority under section 188 of the Act

At least 10 days before the first meeting of creditors called under an authority under section 188 of the Act is held, the controlling trustee must give the Official Receiver for the District in which the debtor resides, the debtor and each creditor:

Regulation 10.05

- (a) notice in writing of the date, time and place of the meeting; and
- (aa) a copy of the proposal, given by the debtor under subsection 188 (2C) of the Act, for dealing with the debtor's affairs under Part X of the Act; and
- (b) a copy of the controlling trustee's report, prepared in accordance with subsection 189A (1) of the Act, in relation to the debtor's affairs; and
- (c) a copy of the controlling trustee's statement, prepared in accordance with subsection 189B (1) of the Act, in relation to special resolutions expected to be passed at the meeting; and
- (d) a notice that includes the basis and the method on which the controlling trustee seeks to be remunerated, and, if appropriate, an estimate of the expected level of the controlling trustee's remuneration; and
- (e) if the controlling trustee claims remuneration calculated by reference to an hourly rate — a notice stating:
 - (i) the type of work undertaken by the trustee and the trustee's staff; and
 - (ii) the number of hours charged by each person; and
 - (iii) the hourly rate charged for each person; and
 - (iv) the total remuneration claimed; and
- (f) a notice informing the debtor and each creditor of their right, within 28 days of receiving notice of a controlling trustee's claim for remuneration, to request that the claim be taxed.

Note Section 194 of the Act sets out the time for when a meeting that is to be called under an authority under section 188 of the Act must be held.

10.05 Modifications of Division 5 of Part IV of the Act — meetings called under authorities under section 188 of the Act

For section 196 of the Act, a provision of Division 5 of Part IV of the Act specified in Part 2 of Schedule 6 is modified in accordance with that Part in relation to its application, in accordance with that section, to a meeting called under an authority under section 188 of the Act.

Regulation 10.06

10.06 Controlling trustee to give Official Receiver copy of special resolution and certain particulars for the Index

- (1) If, at a meeting called under an authority under section 188 of the Act, a special resolution is passed under subsection 204 (1) of the Act, the controlling trustee must give to the Official Receiver, within 7 days after the date when the resolution is passed:
- (a) a copy of the resolution; and
 - (b) written notice specifying the following particulars for entry in the Index:
 - (i) the date of the resolution;
 - (ii) in respect of the debtor:
 - (A) the debtor's full name, and any alias;
 - (B) the debtor's address;
 - (C) the debtor's occupation (if any);
 - (iii) if the resolution requires the debtor to execute a personal insolvency agreement — the name of each person nominated under subsection 204 (3) of the Act to be a trustee of the agreement.

Penalty: 1 penalty unit.

- (2) An offence against subregulation (1) is an offence of strict liability.

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

For section 210 of the Act, a provision of Part VIII of the Act specified in Part 3 of Schedule 6 is modified in accordance with that Part in relation to its application, in accordance with that section, to the controlling trustee in relation to a debtor.

Regulation 10.10

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

For subsection 211 (1) of the Act, a provision in Division 1 of Part V of the Act specified in Part 4 of Schedule 6 is modified in accordance with that Part in relation to its application, in accordance with that subsection, to a debtor whose property is subject to control under Division 2 of Part X of the Act.

10.09 Meeting if trustee does not execute personal insolvency agreement

- (1) A meeting of creditors under subsection 217 (1) of the Act must be called in accordance with a written notice of the meeting that was given at least 7 days before the meeting to each of the following persons (other than the person giving the notice):
 - (a) the debtor;
 - (b) the trustee required to execute the personal insolvency agreement;
 - (c) each creditor whose identity and address are known to, or can reasonably be discovered by, the person giving the notice.
- (2) A notice under subregulation (1) must set out the terms of any resolution proposed under subsection 217 (1) of the Act that is known to the person giving the notice.

10.10 Notification of personal insolvency agreement

A notification under paragraph 218 (1) (a) of the Act must be in writing.

Note Regulation 16.01 applies to a notification under paragraph 218 (1) (a) of the Act.

Regulation 10.11

10.11 Sequestration order, or order terminating or setting aside a personal insolvency agreement — notice to Official Receiver (Act s 221, s 222 and s 222C)

- (1) This regulation does not apply in relation to an applicant who is the Official Trustee, the Inspector-General or a person authorised by the Inspector-General under subsection 222 (1) or (5) of the Act.
- (2) If the Court makes a sequestration order under subsection 221 (1), 222 (10) or 222C (5) of the Act, the applicant for the order must give a copy of the order to the Official Receiver.
- (3) If the Court makes an order:
 - (a) under subsection 222 (1), (2) or (5) of the Act, setting aside a personal insolvency agreement; or
 - (b) under subsection 222C (1) of the Act, terminating a personal insolvency agreement;the applicant for the order must give a copy of the order to the Official Receiver.
- (4) A copy of an order required by this regulation to be given to the Official Receiver must be given within 2 days after the order is made.

Penalty: 1 penalty unit.
- (5) An offence against subregulation (4) is an offence of strict liability.

10.12 Termination of personal insolvency agreement by trustee (Act s 222A)

- (1) If a personal insolvency agreement is terminated in accordance with section 222A of the Act, the trustee of the agreement must immediately give written notice of the termination to the Official Receiver.

Penalty: 1 penalty unit.
- (2) An offence against subregulation (1) is an offence of strict liability.

Regulation 10.14

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

- (1) For subsection 231 (1) of the Act, the provision specified in Part 5 of Schedule 6 is modified in accordance with that Part in relation to its application, in accordance with that subsection, to a debtor who has executed a personal insolvency agreement.
- (2) For subsection 231 (3) of the Act, a provision specified in Part 6 of Schedule 6 is modified in accordance with that Part in relation to its application, in accordance with that subsection, to a personal insolvency agreement.
- (3) For subsection 231 (5) of the Act, the provision specified in Part 7 of Schedule 6 is modified in accordance with that Part in relation to its application, in accordance with that subsection, to a trustee of a personal insolvency agreement.

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

- (1) If the trustee of a personal insolvency agreement is satisfied that the divisible property of the debtor has, so far as practicable, been realised and no dividend is payable to the creditors, the trustee must, on written request by the debtor, give the debtor a certificate signed by the trustee to that effect.
- (2) The trustee must give the certificate to the debtor within 7 days of receiving the written request.
- (3) In any proceeding, a certificate signed by the trustee under subregulation (1):
 - (a) is evidence of the facts stated in it; and
 - (b) may be tendered in evidence without further proof.
- (4) If the trustee gives a certificate to the debtor under subsection 232 (1) of the Act or subregulation (1), the trustee must, within 7 days of giving the certificate, give a copy of the certificate to the Official Receiver.

Penalty: 1 penalty unit.

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

Regulation 11.01

Part 11 Administration of estates of deceased persons in bankruptcy

11.01 Statement of affairs and of administration of estate

A statement under paragraph 246 (1) (a) or subsection 247 (1) of the Act must state, so far as applicable, the following particulars:

- (a) in relation to the capital account of the deceased person's estate:
 - (i) particulars of each amount received, including the name of the payer, the date received and the bank account into which the amount was paid; and
 - (ii) particulars of each amount paid, including the name of the payee, the date of payment and the bank account from which the amount was drawn;
- (b) in relation to each of the assets of the deceased person transferred to beneficiaries — the particulars of the asset, the date of transfer and the name and address of the relevant beneficiary;
- (c) in relation to the income account of the deceased person:
 - (i) particulars of each amount received, including the name of the payer, the date received and the bank account into which the amount was paid; and
 - (ii) particulars of each amount paid, including the name of the payee, the date of payment and the bank account from which the amount was drawn;
- (d) in relation to each of the unsecured debts owed by the deceased person:
 - (i) the name and address of the creditor and the amount (if any) owed by the creditor to the deceased person; and
 - (ii) the amount of the debt; and
 - (iii) the year when the debt was contracted; and

Regulation 11.02

- (iv) the nature of the debt;
- (e) in relation to each of the secured debts owed by the deceased person:
 - (i) the name and address of the creditor and the amount (if any) owed by the creditor to the deceased person; and
 - (ii) the amount of the debt and particulars of the security relating to it; and
 - (iii) the date when the security was given; and
 - (iv) the estimated present value of the security; and
 - (v) the estimated deficiency or surplus if the security were to be realised;
- (f) in relation to each of current hire purchase, credit purchase, lease purchase or similar agreements:
 - (i) the name and address of the finance company; and
 - (ii) the date of the agreement; and
 - (iii) particulars of the goods to which the agreement relates; and
 - (iv) any arrears of payment under the agreement; and
 - (v) the amount required to complete the agreement; and
 - (vi) the present value of the goods and the estimated deficiency or surplus if the goods were to be realised;
- (g) in relation to any other assets and liabilities, including contingent assets and liabilities, of the deceased person's estate — particulars of each asset and liability, including its present value.

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

For the purposes of subsections 248 (1) and (3) of the Act, the provisions specified in Schedule 7 are modified in accordance with that Schedule in relation to proceedings under Part XI of the Act and the administration of estates under that Part.

Regulation 12.01

Part 12 Unclaimed dividends or moneys

12.01 Statement where moneys are paid to the Commonwealth

- (1) Where a trustee pays moneys, under subsection 254 (2) of the Act, to the Commonwealth, he or she must, at the time of payment, give to the officer to whom the moneys are paid a statement setting out the name and address of:
 - (a) the trustee; and
 - (b) the relevant bankrupt, debtor or (subject to subregulation (2)) deceased person, as the case requires; and
 - (c) each person who, so far as the trustee is aware, is entitled to the moneys or any part of the moneys.
- (2) For the purposes of paragraph (1) (b), where the relevant person is a deceased person, the address to be stated is that person's address at the date of his or her death.
- (3) Where the Official Trustee or Official Receiver, or a registered trustee, pays moneys, under subsection 254 (2A) of the Act, to the Commonwealth, that person must, at the time of payment give to the officer to whom the moneys are paid a statement setting out the name and address of:
 - (a) the trustee; and
 - (b) each person who, so far as the Official Trustee, Official Receiver or registered trustee is aware, is entitled to the moneys or any part of the moneys.
- (4) A registered trustee who gives a statement to an officer in accordance with subregulation (1) or (3) must, within 7 days, give a copy of the statement to the Official Receiver.
- (5) An offence against subregulation (4) is an offence of strict liability.

Penalty: 1 penalty unit.

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

Part 13 National Personal Insolvency Index

Division 1 Preliminary

13.01 Interpretation

In this Part:

BIOS means the electronic database, known as the Bankruptcy Index Online System, maintained before the commencement date by Registrars in Bankruptcy.

13.02 Establishment and maintenance of the National Personal Insolvency Index

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

Division 2 Information to be entered on the Index

13.03 What information is to be entered on the Index?

- (1) Subject to this regulation, the following information is to be entered on the Index:
 - (a) in respect of each creditor's petition, bankruptcy, debt agreement under Part IX of the Act, personal insolvency agreement, administration under Part XI of the Act or order under section 253E of the Act, occurring or made on

Regulation 13.03

- or after the commencement date — information of the kind specified in Schedule 8, to the extent applicable;
- (b) the information on BIOS in respect of bankruptcies (including completed bankruptcies);
 - (c) in respect of each registered trustee or controlling trustee (other than the Official Trustee):
 - (i) the trustee's full name, and any alias;
 - (ii) the trustee's business address (including, where applicable, the postal address) and telephone number;
 - (iii) a statement or summary of any conditions applying to the person's entitlement to practise as a registered trustee;
 - (iv) the date on which details in respect of the trustee are entered on the Index;
 - (v) the date (if any) of termination of the trustee's registration as a trustee;
 - (d) in respect of each applicant for registration as a trustee:
 - (i) the applicant's full name, and any alias;
 - (ii) the applicant's business address (or, if none, his or her residential address);
 - (iii) the applicant's occupation;
 - (iv) the date on which details in respect of the applicant are entered on the Index;
 - (e) in respect of each debtor specified in subregulation (3):
 - (i) the debtor's full name, and any alias;
 - (ii) the debtor's address;
 - (iii) the debtor's occupation (if any);
 - (iv) the date on which details in respect of the debtor are entered on the Index;
 - (f) information that, under these Regulations, the Official Receiver:
 - (i) receives for entry on the Index; or
 - (ii) is required to enter on the Index;
 - (g) information concerning a creditor's petition (including details of any orders made in relation to the petition, or the withdrawal of the petition).

Regulation 13.03

- (1A) In relation to a matter mentioned in paragraph (1) (a), a document described in an item in Schedule 8 must be given to the Official Receiver by the person mentioned in column 4 of the item within the period mentioned in column 5 of the item.
- (1B) Item 13 of Schedule 8 applies in relation only to a bankruptcy dated 4 May 2003 or earlier.
- (2) Paragraph (1) (a) is taken to apply also to bankruptcies that:
- (a) occurred before the commencement date; and
 - (b) were not completed before the commencement date.
- (3) For the purposes of paragraph (1) (e), the following debtors are specified:
- (a) a debtor whose property is subject, by reason of a direction of the Court under paragraph 50 (1) (a) of the Act, to the control of the Official Trustee or a registered trustee;
 - (b) a debtor who signed an authority under subsection 188 (1) of the Act;
 - (c) subject to subregulation (5), in the case of a deceased debtor — where a petition for an order for the administration of the debtor's estate has been presented under Part XI of the Act;
 - (d) a debtor who has applied to the Court under subsection 253E (1) of the Act for an order staying all or any proceedings under a petition.
- (4) In the application of paragraph (3) (c) (concerning certain deceased debtors) to paragraph (1) (e), the information to be entered is the information that applied in respect of the debtor immediately before his or her death.
- (5) Subregulation (1) applies subject to:
- (a) any decision of the Inspector-General under paragraph 13.04 (3) (a); and
 - (b) any order or direction of the Administrative Appeals Tribunal on an application under regulation 13.05.
- (6) If an entry on the Index contains information that is, in the opinion of the Official Receiver, in any particular:

Regulation 13.04

- (a) contrary to, or inconsistent with, a decision, order or direction of a kind mentioned in subregulation (5); or
 - (b) out of date, inaccurate or misleading;
- the Official Receiver must correct the entry without delay.

13.04 Application for certain information not to be on the Index

- (1) Subject to subregulation (4), a person who is a debtor or bankrupt may apply in writing to the Inspector-General for information in respect of the person:
 - (a) not to be entered on the Index, on the ground that the entry of the information would jeopardise, or be likely to jeopardise, the person's safety; or
 - (b) on the Index to be removed on the ground that:
 - (i) its inclusion jeopardises, or is likely to jeopardise, the person's safety; or
 - (ii) it is inaccurate or misleading; or
 - (c) on the Index to be corrected on the ground that it is inaccurate or misleading.

Note Under subregulation (4), an application cannot be made for the removal of information in respect of a person's name or date of birth.

- (2) The application must specify the ground relied and contain, or have with it, full particulars in support of the ground.

Example

A person may rely on a court order (such as a domestic violence order) to show that publication of the information in question would jeopardise, or be likely to jeopardise, the person's safety.

- (3) The Inspector-General must, without delay:
 - (a) decide an application; and
 - (b) give notice in writing to the applicant of:
 - (i) the decision and the reasons for it; and
 - (ii) the applicant's right, if aggrieved by the decision, to apply under regulation 13.05 to the Administrative Appeals Tribunal for review of the decision.

Regulation 13.06

- (4) An application or a decision must not be made under this regulation to remove from the Index any of the following items of information in respect of a person:
- (a) the person's name;
 - (b) the person's date of birth.

13.05 Application to the AAT

A person who made an application under subregulation 13.04 (1) and who is aggrieved by a decision under paragraph 13.04 (3) (a) in respect of the application may apply to the Administrative Appeals Tribunal for review of the decision.

Division 3 Miscellaneous

13.06 Inspection of the Index

- (1) A person may, by application in writing, ask an Official Receiver to inspect material in the Index and give an extract of material specified in the application.
- (2) On receipt of an application, the Official Receiver:
 - (a) if the fee determined under the 2006 Fees Determination is paid — must inspect the Index and, within 14 days of receiving the application:
 - (i) give the requested extract to the applicant; or
 - (ii) tell the applicant, in writing, that the requested extract is not entered in the Index; or
 - (b) may give the applicant a list of Index search agents who may be able to inspect material entered in the Index for the applicant.
- (3) A person who has been granted access to the Index by the Inspector-General may, after paying the fee determined under the 2006 Fees Determination:
 - (a) inspect material entered in the Index; or
 - (b) obtain an extract of material entered in the Index.

Regulation 13.07

Example for paragraph (b)

Making notes of information shown on a computer screen, or obtaining a print-out of information stored electronically.

- (4) However, prior payment is not required under subregulation (3) if the person has an alternative arrangement with the Inspector-General about the method of payment.

Example

An arrangement for payment by bulk billing.

- (5) The Inspector-General may specify conditions that apply to:
- (a) the use of information entered in the Index; and
 - (b) the use of an extract of material entered in the Index.

Note Under regulation 13.09, the Inspector-General has control of access to the Index.

13.07 Extract, etc of the Index to be admissible in evidence

- (1) In any proceedings, a document or copy of a document that qualifies under subregulation (2):
- (a) is proof, in the absence of evidence to the contrary, of information on the Index that is stated in it; and
 - (b) may be tendered in evidence without further proof.
- (2) A document or copy qualifies if it:
- (a) purports (irrespective of the form of wording used) to be an extract of information on the Index; and
 - (b) does not appear to the Court to have been revised or tampered with in a way that affects, or is likely to affect, the information.

13.08 Immunity from defamation

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

Regulation 13.10

- (2) An officer has immunity from actions for defamation arising out of publication of material in the Index or publication of extracts of material from the Index, if the publication was done:
 - (a) by an officer acting in the course of his or her duty; and
 - (b) in good faith.
- (3) A person who provides material for entry in the Index has immunity from actions for defamation arising out of publication of the material by way of providing it for such inclusion, publication of the material in the Index or publication of extracts of the material from the Index, if the publication was done:
 - (a) in the performance of a function or duty under these Regulations or any other law of the Commonwealth; and
 - (b) in good faith.
- (4) Nothing in subregulation (2) or (3) affects by implication the generality of subregulation (1).
- (5) The immunity of the Inspector-General or another officer under this regulation arising out of publication of material extends to the Commonwealth and the Official Trustee to the extent that the Commonwealth or the Official Trustee would, apart from this subregulation, be liable in respect of the publication.
- (6) Nothing in this regulation affects by implication any other ground of defence.

13.09 Access to the Index

The Inspector-General has control of access to the Index.

13.10 Information extracted from the Index to be evidence

Information extracted from the Index is evidence, in the absence of proof to the contrary, of the truth of the information.

Regulation 14.01

Part 14 Offences under the Act**14.01 Apprehension under a warrant — notification to Registrar in certain cases**

- (1) This regulation applies where:
 - (a) a warrant issued under subsection 264B (1) of the Act for the apprehension of a person is executed; and
 - (b) the person executing the warrant considers that it is impracticable to bring the apprehended person forthwith before the Court, a Registrar or a magistrate.
- (2) Where this regulation applies, the person executing the warrant must immediately notify a Registrar of the apprehension and of the date and time when the person considers that it will be practicable to bring the apprehended person before the Court, a Registrar or a magistrate.

14.02 Registrar to act on notification; direction to person executing warrant

- (1) Where a Registrar receives a notification under subregulation 14.01 (2), he or she must, without delay:
 - (a) fix a date, time and place for the apprehended person to be brought before the Court, a Registrar or a magistrate; and
 - (b) direct the person who gave the notification to bring the apprehended person before the Court, a Registrar or a magistrate accordingly.
- (2) The time and date fixed under paragraph (1) (a) must be the earliest that, in the Registrar's opinion, are practicable.
- (3) A person to whom a direction is given under paragraph (1) (b) must comply with it.

Part 15A Provisions relating to the Bankruptcy Charges Acts

15A.01 Interpretation

- (1) In this Part:

charge means an interest charge, a realisations charge or a registration charge.

charge period has the same meaning as in the Estate Charges Act.

penalty means a late payment penalty.

trustee includes a debt agreement administrator.

- (2) An expression defined for Part XV of the Act has the same meaning in this Part.

15A.02 Mode of payment

An amount of charge or penalty may be paid to the Inspector-General:

- (a) in cash; or
- (b) by cheque; or
- (c) by any other means (for example, by direct debit or electronic transfer) that the Inspector-General approves in writing.

15A.03 Overpayments to be refunded or offset

The amount of an overpayment by a trustee of a charge or penalty may be:

- (a) refunded to the trustee; or
- (b) unless the trustee, by notice in writing to the Inspector-General, directs otherwise — offset against an amount of charge or penalty payable by the trustee.

Regulation 15A.04

15A.04 Information to accompany payment of interest charge

- (1) A payment of interest charge by a trustee must have with it, in the approved form, any information required by the approved form.
- (2) Where a payment of interest charge is made by or on behalf of a trustee by non-physical means (for example, by direct debit or electronic transfer), the trustee must without delay give the Inspector-General that information.
- (3) This regulation does not apply to the Official Trustee.

15A.05 Information to accompany payment of realisations charge

- (1) A payment of realisations charge by a trustee must have with it, in the approved form, any information required by the approved form.
- (2) Where a payment of realisations charge is made by or on behalf of a trustee by non-physical means (for example, by direct debit or electronic transfer), the trustee must without delay give the Inspector-General that information.
- (3) This regulation does not apply to the Official Trustee.

15A.07 Lodgment of request for remission

A request by a trustee for remission of a charge or penalty must be in writing and lodged with the Official Receiver for the District in which the trustee carries on business.

Part 16 Miscellaneous

Division 1 Provisions concerning documents (including inventories)

16.01 Service of documents

- (1) Unless the contrary intention appears, where a document is required or permitted by the Act or these Regulations to be given or sent to, or served on, a person (other than a person mentioned in regulation 16.02), the document may be:
 - (a) sent by post, or by a courier service, to the person at his or her last-known address; or
 - (b) left, in an envelope or similar packaging marked with the person's name and any relevant document exchange number, at a document exchange where the person maintains a document exchange facility; or
 - (c) left, in an envelope or similar packaging marked with the person's name, at the last-known address of the person; or
 - (d) personally delivered to the person; or
 - (e) sent by facsimile transmission or another mode of electronic transmission:
 - (i) to a facility maintained by the person for receipt of electronically transmitted documents; or
 - (ii) in such a manner (for example, by electronic mail) that the document should, in the ordinary course of events, be received by the person.
- (2) A document given or sent to, or served on, a person in accordance with subregulation (1) is taken, in the absence of proof to the contrary, to have been received by, or served on, the person:
 - (a) in the case of service in accordance with paragraph (1) (a) or (b) — when the document would, in the due course of post or business practice, as the case requires, be delivered to the person's address or document exchange facility; and

Regulation 16.02

- (b) in the case of service in accordance with paragraph (1) (c), (d) or (e) — when the document is left, delivered or transmitted, as the case requires.

16.02 Documents for the Inspector-General, the Official Receiver or the Official Trustee

- (1) Unless the contrary intention appears, where a document is required or permitted by the Act or these Regulations to be given or sent to, or filed or lodged with, the Inspector-General, the Official Receiver or the Official Trustee, the document must:
 - (a) be posted to, or delivered at:
 - (i) in the case of a document for the Inspector-General — the office of the Inspector-General; or
 - (ii) in the case of a document for the Official Receiver or the Official Trustee — the office of the Official Receiver; or
 - (b) sent by facsimile transmission:
 - (i) in the case of a document for the Inspector-General — to a facility maintained by the Inspector-General for receipt of facsimile transmissions; or
 - (ii) in the case of a document for the Official Receiver or the Official Trustee — to a facility maintained by the Official Receiver for receipt of facsimile transmissions; or
 - (c) sent by another mode of electronic transmission (for example, by electronic mail):
 - (i) in the case of a document for the Inspector-General — to the office of the Inspector-General; or
 - (ii) in the case of a document for the Official Receiver or the Official Trustee — to the office of the Official Receiver.
- (2) Where subregulation (1) applies, the document is taken to be received, filed or lodged only when the document (or, where applicable, a copy of it) is actually received by, or on behalf of, the Inspector-General or the Official Receiver (as the case requires).

Regulation 16.06

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

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

- (a) make, sign and date an inventory of the property; and
- (b) give a copy of the inventory to any person who has custody of the property or part of the property.

16.03A Document filed by Inspector-General or Official Receiver — fee not payable

A fee is not payable by the Inspector-General or the Official Receiver in respect of an application to, or the filing of a document in, the Court.

Division 2 Matters relevant to fees

Note Divisions 2 and 3 of Part 16 of the Regulations formerly provided for the fees in relation to the Act (including remuneration of the Official Trustee). As a result of the amendment of the Act by the *Bankruptcy Legislation Amendment (Fees and Charges) Act 2006*, the remuneration of the Official Trustee and fees in relation to the Act are now set out in the 2006 Fees Determination.

16.06 Payment of fees

- (1) If a fee is payable in respect of:
 - (a) the making of a request or an application to an Official Receiver; or
 - (b) the presentation or lodgment of a document with an Official Receiver;the request, application or document must not be dealt with unless the fee has been paid.
- (2) If a fee is payable in respect of the doing of a matter or thing by an Official Receiver, the matter or thing must not be done unless the fee has been paid.
- (3) However, prior payment of a fee is not required under subregulation (1) or (2) if the person has an alternative

Regulation 16.07

arrangement with the Inspector-General about the method of payment.

Example

An arrangement under which fees payable by a registered trustee are paid monthly in arrears.

16.07 Official Trustee's entitlement to interim remuneration

- (1) The Official Trustee's entitlement to remuneration under the 2006 Fees Determination arises when the Official Trustee:
 - (a) performs work or first acts in accordance with clause 3.03, 3.04, 3.07 or 3.08 of the 2006 Fees Determination; or
 - (b) is appointed as described in clause 3.06 of the 2006 Fees Determination; or
 - (c) first acts in accordance with subclause 3.09 (1) of the 2006 Fees Determination; or
 - (d) performs work as described in subclause 3.09 (2) or clause 3.10 of the 2006 Fees Determination.
- (2) For paragraph (1) (a), (b) or (d), remuneration is payable to the Official Trustee in respect of an amount received by the Official Trustee:
 - (a) when the amount is received; and
 - (b) at the rate applicable when the amount is received.
- (3) For paragraph (1) (c), remuneration is payable to the Official Trustee:
 - (a) from time to time as the funds are realised; and
 - (b) at the rate applicable when the funds are realised.

16.08 Reimbursement of Official Trustee for expenses

- (1) An amount equal to the amount of expenses incurred by the Official Trustee, in performing work of a kind mentioned in clause 3.03, 3.04, 3.08 or 3.09 of the 2006 Fees Determination in relation to an estate or debtor, is payable to the Official Trustee:
 - (a) for work under clause 3.03, 3.08 or 3.09 — out of the estate; or

Regulation 16.11

(b) for work under clause 3.04 — out of the composition or scheme of arrangement.

(2) In this regulation:

amount realised has the meaning given by clause 3.01 of the 2006 Fees Determination.

16.09 Fees — notes and transcript of evidence

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

16.11 Waiver or remission of fees by Inspector-General

(1) Subject to subregulation (2), the Inspector-General may waive or remit the whole or part of any fee.

(2) A fee may only be waived or remitted, whether wholly or in part, if the Inspector-General is reasonably satisfied that:

(a) payment of the fee by the person liable to pay it has imposed, or would impose, undue hardship on the person;
or

(b) because of other exceptional circumstances, it is proper and reasonable to do so.

(3) For paragraph (2) (a), *undue hardship* means hardship that is unusual and exceptional in comparison to the hardship arising in the normal course of bankruptcy.

(4) A decision under subregulation (1) must be notified in writing to:

(a) the person concerned; and

(b) except where the fee is payable to the Inspector-General — the officer to whom the fee is or, but for the waiver or remission, would be payable.

(5) In this regulation:

fee means a fee payable under:

(a) regulation 16.09; or

(b) item 1, 2, 3, 4, 9, 11, 12 or 13 of the table following subclause 2.01 (1) of the 2006 Fees Determination; or

Regulation 16.12

- (c) subclause 2.01 (2) for making copies of, or taking extracts from, a document mentioned in column 3 of item 1, 2, 3, 4, 11 or 13 of the table following subclause 2.01 (1) of the 2006 Fees Determination; or
- (d) clause 2.02, 2.07 or 2.08 of the 2006 Fees Determination.

16.12 Review by AAT of decision of Inspector-General

Application may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General under subregulation 16.11 (1) to refuse to waive or remit the whole or part of a fee that became payable under a provision or item mentioned in the definition of fee in regulation 16.11.

Note Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give any person whose interests are affected by the decision notice, in writing or otherwise, of the making of the decision and of the person's right to have the decision reviewed. In giving that notice, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act (*Gazette* No. S 432, 7 December 1994).

2. The creditor claims that the debt is due and payable by you. A copy of the judgments or orders relied upon by the creditor is attached. At the time of applying for this Notice, execution of the judgments or orders had not been stayed.

3. You are required, within (*insert number in accordance with the note to this paragraph*) days after service on you of this Bankruptcy Notice:

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

Note The number of days to be inserted is 21 or, if an order has been made under subparagraph 40 (1) (g) (ii) of the Act, the number of days constituting the time fixed by the order.

4. Payment of the debt can be made to:

(*name*) _____
of: (*address*) _____

Note The address must be within Australia.

5. **Bankruptcy proceedings may be taken against you** if, within the time stated in paragraph 3, above:

- (a) you do not comply with the requirements of either paragraph 3 (a) or paragraph 3 (b) above; and
- (b) the Court (that is, the Federal Court of Australia or the Federal Magistrates Court) does not extend, or is not deemed to have extended, the time for compliance with this Bankruptcy Notice (see paragraph 6, below).

6. The Court may extend the time for compliance with this Bankruptcy Notice if, within the time stated in paragraph 3 above, you apply to the Court on one or both of the following grounds:

- (a) that you have instituted proceedings to set aside the judgments or orders in respect of which this Bankruptcy Notice has been issued;

- (b) that you have filed with the Court an application (on one or more grounds, apart from the grounds mentioned in paragraph 7, below) to set aside this Bankruptcy Notice.

7. In addition, within the time specified in paragraph 3 above, you may file an application to the Court for an order to set aside this Bankruptcy Notice on the specific grounds that:

- (a) you have a counter-claim, set-off or cross demand equal to or exceeding the sum specified in this Bankruptcy Notice as owing to the creditor; and
- (b) in the action or proceeding in which the judgments or orders mentioned in paragraph 2 of this Bankruptcy Notice was obtained, you could not have set up that counter-claim, set-off or cross demand*.

* This means that, because of a legal obstacle, you could not have raised that counter-claim, set-off or cross demand in defence of the creditor's court action against you. It is not enough if, for example, you simply neglected or overlooked the matter.

8. You should note the following points carefully:

- (a) If you file, at the Court, an application mentioned in **paragraph 6 (a) or (b)**, you must still comply with this Bankruptcy Notice within the time stated in paragraph 3 above unless the Court extends the time for you to comply.
- (b) If you file, at the Court, an application mentioned in **paragraph 7 (a)**, you need not comply with this Bankruptcy Notice until the Court decides whether you have grounds for a counter-claim, set-off or cross demand. Whether you will have to comply at that stage will depend on the Court's decision.

WARNING

9. The information in paragraphs 6, 7 and 8 is based on provisions of section 41 of the Act. The information is a summary only, and not a complete statement of the relevant law. It might be unwise to rely solely on this summary. If you need a more detailed explanation, you should seek legal advice.

Schedule

Column 1	Column 2
1. Amount of judgments or orders	
plus 2. Legal costs if ordered to be paid and a specific amount was not included in the judgments or orders (see <u>Note 1</u> , below)	
plus 3. If claimed in this Bankruptcy Notice, interest accrued since the date of judgments or orders (see <u>Note 2</u> , below)	
4. Subtotal	
less 5. Payments made and/or credits allowed since date of judgments or orders	
6. Total debt owing	

(NB: Amounts, where applicable, are to be inserted in column 2)

**For the Information of the Creditor —
Notes to the Schedule**

Note 1: Legal costs (item 2 of the Schedule)

If legal costs are being claimed in this Bankruptcy Notice, a certificate of taxed or assessed costs in support of the amount claimed must be attached to this Bankruptcy Notice.

Note 2: Interest accrued (item 3 of the Schedule)

If interest is being claimed in this Bankruptcy Notice, details of the calculation of the amount of interest claimed are to be set out in a document attached to this Bankruptcy Notice. The document must state:

- (a) the provision under which the interest is being claimed;
and

(b) the principal sum on which, the period for which, and the interest rate or rates at which, the interest is being claimed.

(NB: If different rates are claimed for different periods, full details must be shown)

Note 3: Foreign currency amount conversion (see Bankruptcy Regulations, reg. 4.04.)

Total debt owing, expressed in foreign currency (amount)

Commonwealth Bank of Australia opening telegraphic transfer rate on ___/___/___(date) x (rate)

Australian dollar equivalent = \$ (amount)

(delete Note 3 if not applicable)

**For the Information of the Creditor
Note about use of information**

It may be necessary to disclose some or all of the information provided by you on this Form to Government agencies and departments for any purpose under the Act. Also, the information may be included on a public record or given to other persons, bodies or agencies for purposes authorised by the Act.

The person who applied for this notice to be issued is:

(name)

who confirms by the following signature that he or she is the creditor/the creditor's authorised agent *:

(* delete as appropriate)

(signature)

and whose address for service is:

(address)

Telephone and fax numbers
(including STD code):

DX number (if applicable):

FOR OFFICIAL USE ONLY

Dated this *(date)* day of *(month)* *(year)*

This notice was issued by the Official Receiver (or delegate or an officer authorised by the Official Receiver) for the Bankruptcy District of:

address of Official Receiver:

(signature or stamp of Official Receiver or delegate or authorised officer)

Schedule 2 Modifications under section 76A of the Act — meetings of creditors under Division 6 of Part IV of the Act

(regulation 4.19)

1AA Subsection 64A (2)

substitute

- (2) Notice of a meeting:
 - (a) for the first meeting of creditors — must be published in a manner approved by the Inspector-General; and
 - (b) for any other meeting of creditors — must be given in a manner specified in the regulations.

1AB After subsection 64A (2)

insert

- (3) The notice of the first meeting of creditors must include any matter approved by the Inspector-General.
- (4) For the purposes of paragraph (2) (a) and without limiting the power of the Inspector-General under that paragraph, the Inspector-General may:
 - (a) approve, as the manner of publication of the notice of the first meeting of creditors, publication on a website; and
 - (b) specify in the approval:
 - (i) the website where the notice must be published; and
 - (ii) any conditions relating to the approval.

Example

The Inspector-General may specify:

- (a) the format in which the notice is to be made available; and
- (b) the period of time for which the notice must remain on the website; and

(c) whether related documents are to be made available for downloading from the website or in hard copy.

- (5) An approval made by the Inspector-General for the purposes of paragraph (2) (a) or subsection (3) must be published on the Insolvency and Trustee Service Australia's website.

1AC After section 64A

insert

64AA Immunity from civil actions and proceedings

- (1) A civil action or proceeding does not lie against a person who operates a website, specified in an approval for the purposes of paragraph 64A (2) (a) or subsection 64A (3), in respect of a publication of a notice of the first meeting of creditors (or a notice that appears to be a notice of the first meeting of creditors) if the publication was made in good faith and without negligence.
- (2) Nothing in this section affects by implication any other ground of defence.

1 Section 64B (Certain matters to be included in notice of meeting)

1.1 Add at the end:

- ‘(6) The trustee must attach to the notice:
- (a) the documents referred to in subsection 73 (2); and
 - (b) if the meeting is the first meeting of creditors held during the administration of the estate — a copy of:
 - (i) the bankrupt's statement of affairs; or
 - (ii) a summary of that statement.’

1B After paragraph 64D (aa)

insert

- (ab) whether the creditor, in relation to the debtor, is a related entity; and

2 Section 64E (Notice about voting by proxy)

2.1 Omit the section, substitute:

‘64E Notice — proxy voting and voting on bankrupt’s proposal

- ‘(1) The trustee must attach to the notice a form for use in:
- (a) appointing a proxy; and
 - (b) expressing under subsection 73 (5) the creditor’s assent to, or dissent from, the bankrupt’s proposal.
- ‘(2) The notice must tell the creditors that if a creditor wishes to appoint a person to represent the creditor at the meeting as the creditor’s proxy, the creditor must complete the form of appointment of proxy and either:
- (a) arrange for the proxy to give the completed form to the trustee before the meeting; or
 - (b) send the completed form with the statement given by the creditor to the trustee in accordance with section 64D.
- ‘(3) The notice must tell creditors that if a creditor wishes to use the form to express his or her assent to or dissent from the bankrupt’s proposal, the creditor must arrange for the form to be given to the trustee before the meeting.’.

3 Section 64G (Agenda to be set out in notice of meeting)

3.1 Paragraph 64G (g):

Omit the paragraph, substitute:

- ‘(g) consideration of the bankrupt’s proposals for a composition or scheme of arrangement;’.

3.2 Paragraph 64G (k):

Omit the paragraph, substitute:

- ‘(k) proposal of:

-
- (i) a special resolution accepting the bankrupt's proposal for a composition or a scheme of arrangement; or
 - (ii) any other relevant motion;'

4 Section 64R (Tabling of bankrupt's statement of affairs)

4.1 Omit the section, substitute:

'64R Provision of bankrupt's statement of affairs, bankrupt's proposal and trustee's report

- '(1) The President must then ask whether each creditor, or representative of a creditor, at the meeting has with him or her a copy of:
 - (a) the bankrupt's proposal; and
 - (b) the trustee's report on the proposal.
- '(2) If the meeting is the first meeting of the creditors, the President must also ask each creditor or representative whether the creditor or representative has a copy of the bankrupt's statement of affairs with him or her.
- '(3) If a creditor or representative indicates that he or she does not have a copy of the proposal, the report or the statement of affairs with him or her, the trustee must give the creditor or representative, as soon as practicable, a copy of the proposal, report or statement, as the case requires.
- '(4) If the trustee cannot give a creditor or representative a copy of the proposal, report or statement of affairs within a reasonable time, the meeting is to be adjourned to a time and place decided by the meeting.
- '(5) In this section, a reference to a statement of affairs is taken to include a reference to a summary of such a statement.'

5 Section 64S (Statements and questions)

5.1 Subsection 64S (1)

Omit the subsection, substitute:

-
- ‘(1) The President must then invite the bankrupt to make a statement outlining his or her proposal to the meeting.
- ‘(1A) The President must then ask the trustee to comment on his or her report on the bankrupt’s proposal.’.

6 Section 64T (Motions)

6.1 Omit the section, substitute:

‘64T Motions

- ‘(1) The President must then call for a motion for a special resolution to approve the bankrupt’s proposal for a composition or scheme of arrangement.
- ‘(2) If a motion is:
- (a) not proposed; or
 - (b) proposed but not passed;
- the President may close the meeting.’.

7 Section 64U (Remuneration of registered trustee)

7.1 Subsection 64U (1)

Omit the subsection, substitute:

- ‘(1) If:
- (a) a special resolution, accepting the bankrupt’s proposal, has been passed at the meeting; and
 - (b) a registered trustee has consented to be the trustee of the composition or scheme of arrangement; and
 - (c) the President has told the creditors and representatives at the meeting that provision for remuneration of the trustee may be included in the instrument setting out the terms of the composition or scheme;
- the President must then ask the trustee of the composition or scheme of arrangement to state the basis on which the trustee wishes to be remunerated.’.

7.2. Subsection 64U (8):

Omit the subsection, substitute:

‘(8) If:

- (a) a special resolution, accepting the bankrupt’s proposal, has been passed at the meeting; and
 - (b) the trustee of the bankruptcy is a registered trustee;
- the President must ask the trustee to lay before the meeting a statement of the amount of remuneration drawn by the trustee from the funds of the bankrupt’s estate before the meeting was held.

‘(9) The trustee must comply with the President’s request.’.

8 Section 64V (Appointment of committee of inspection)

8.1 Omit the section.

9 Section 64W (Other business)

9.1 Omit the section.

10 Section 64X (Next meeting)

10.1 Omit the section.

10A Before subsection 64Y (1)

insert

- (1A) The trustee may adjourn a meeting to undertake further investigations, in relation to the proposal for the composition or scheme of arrangement, that the trustee considers necessary.
- (1B) The creditors attending the meeting may, by special resolution, revoke the trustee’s decision to adjourn the meeting.

11 Section 64ZB (Manner of voting)

11.1 After subsection 64ZB (1), insert:

- ‘(1A) A creditor may, in a written vote given to the trustee at least 2 clear days (not including a Saturday, a Sunday or a public holiday) before the meeting is held, vote on a special resolution to accept a proposal by a bankrupt for a composition or scheme of arrangement.’

11A After subsection 64ZC (5)

insert

(5A) An instrument appointing a proxy must include:

- (a) a statement disclosing whether or not the creditor has received, or will receive, a financial incentive:
 - (i) to appoint the proxy; or
 - (ii) to direct the proxy as to the manner in which the proxy is to vote on a particular matter or matters that may arise, or on a particular motion or motions that may be proposed, at a meeting to which the proxy relates; and
- (b) if the proxy or creditor has received, or will receive, a financial incentive in relation to a matter mentioned in paragraph (a) — a statement specifying the amount of financial incentive paid or to be paid and the name of the person who paid, or is to pay, the financial incentive.

12 Section 64ZE (Joint bankruptcies)

12.1 Omit the section.

Schedule 3 Paragraph 109 (1) (a) of the Act — order of payment of first priority debts

(regulation 6.01)

1. Realisations charges payable under the *Bankruptcy (Estate Charges) Act 1997*
- 1A. If the Official Trustee transfers the administration of the bankruptcy to a registered trustee:
 - (a) the remuneration set out in Division 3.2 of the 2006 Fees Determination that is payable to the Official Trustee; and
 - (b) the reimbursement set out in regulation 16.08 that is payable to the Official Trustee.
2. Expenses reasonably incurred by or on behalf of the trustee:
 - (a) in protecting all or part of the bankrupt's assets; or
 - (b) in carrying on, in accordance with the Act, a business of the bankrupt; or
 - (c) by way of an advance made to the trustee of the bankrupt's estate for payment of properly incurred expenses of the estate for any proper purpose (other than remuneration of the trustee)
3. Other fees, costs, charges and expenses payable by the trustee in administering the bankrupt's estate
4. Where:
 - (a) a creditor has deposited an amount in accordance with an order made under section 50 of the Act; and
 - (b) the amount, or part of the amount, has been used for meeting the expenses referred to in that regulation;the amount, or part of the amount, that has been so used
5. The taxed costs of the petitioning creditor, the administrator of the estate of a deceased person or the applicant under Part X of the Act for a sequestration order and, if a petitioning creditor under Part X of the Act also applied for an order under

Division 5 or 6 of Part IX of the Act, any taxed costs of the creditor in respect of the application*

6. The trustee's lawful remuneration
7. Where the creditors, or a majority of them, have approved payment of out-of-pocket expenses incurred by a member of the committee of inspection — those expenses, to the extent that the trustee of the bankrupt's estate allows them as being fair and reasonable
8. Costs of any audit carried out under section 175 of the Act

**Note* For the extended application of item 5, see subregulation 6.01 (2).

Schedule 4 Modifications of the *Fringe Benefits Tax Assessment Act 1986*

(regulation 6.12)

1 Section 7 (Car benefits)

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

Omit the subsections, substitute:

‘(1) Where, at any time on a day, a person:

(a) applies a car held by the person; or

(b) makes a car held by the person available;

for the private use of a bankrupt, the car is taken, for the purposes of this Act, to constitute a benefit provided on that day by the first-mentioned person to the bankrupt.’.

2 Section 8 (Exempt car benefits)

2.1 Subsections 8 (1) and (2):

Omit the subsections.

3 Section 9 (Taxable value of car fringe benefits — statutory formula)

3.1 Subparagraphs 9 (2) (c) (i) and (ii):

Omit the subparagraphs, substitute:

‘(i) for the first contribution assessment period:

(A) where the annualised number of whole kilometres travelled by the car during the year preceding the bankruptcy was more than 40,000 — 0.07; or

-
- (B) where the annualised number of whole kilometres travelled by the car during the year preceding the bankruptcy was not more than 40,000 and not less than 25,000 — 0.11; or
 - (C) where the annualised number of whole kilometres travelled by the car during the year preceding the bankruptcy was less than 25,000 and not less than 15,000 — 0.20; or
 - (D) where the annualised number of whole kilometres travelled by the car during the year preceding the bankruptcy was less than 15,000 — 0.26; and
- (ii) for each subsequent contribution assessment period:
- (A) where the annualised number of whole kilometres travelled by the car during the previous contribution assessment period was more than 40,000 — 0.07; or
 - (B) where the annualised number of whole kilometres travelled by the car during the previous contribution assessment period was not more than 40,000 and not less than 25,000 — 0.11; or
 - (C) where the annualised number of whole kilometres travelled by the car during the previous contribution assessment period was less than 25,000 and not less than 15,000 — 0.20; or
 - (D) where the annualised number of whole kilometres travelled by the car during the previous contribution assessment period was less than 15,000 — 0.26;’.

3.2 Paragraph 9 (2) (d):

Omit the paragraph, substitute:

- (d) the annualised number of whole kilometres travelled by the car during a contribution assessment period is:
- (i) if records of the bankrupt show the number of kilometres travelled by the car during the year preceding that period — that number of kilometres; or
 - (ii) in any other case — the number of kilometres worked out in accordance with the following formula:

$$\frac{AB}{C};$$

where:

A is the number of whole kilometres travelled by the car during the period (in this subsection referred to as the 'holding period') constituting that part of the contribution assessment period during which the provider held the car; and

B is the number of days in the contribution assessment period; and

C is the number of days in the holding period; and'.

3.3 Sub-subparagraph 9 (2) (e) (ia) (B):

Omit the sub-subparagraph.

3.4 Subsection 9 (2):

Add at the end:

Examples

1. Assessment in the first contribution assessment period

A car is purchased in June 1994 for Christopher's use. The purchase price of the car is \$20,000. During the period up to till 30 June 1995, Christopher uses the car on 200 days and travels 10,000 kilometres in that period.

Christopher is declared bankrupt on 1 July 1992. His contribution to expenses is \$300.

The annualised number of kilometres according to the formula $\frac{AB}{C}$ is

$$\frac{10\,000 \times 365}{200} = 18\,250 \text{ kilometres}$$

The figures to be inserted in the formula for calculating the value of the car benefit are:

- A (base value): \$20,000;
- B (statutory fraction [for 18,250 km.]): 0.20;
- C (days when benefit provided): 365;
- D (days in contribution assessment period): 365;
- E (bankrupt's contribution): \$300.

The value of the car benefit, according to the formula $\frac{ABC}{D} - E$ is:

$$\frac{\$20\,000 \times 0.20 \times 365}{365} - 300 = \$3,700$$

2. Assessment in the second contribution assessment period

Suppose that the same car is provided in the second contribution assessment period for the use of the bankrupt, and that during the first contribution assessment period the car travelled 40,000 kilometres. The annualised number of kilometres for the second contribution assessment period is then 40,000 kilometres. Suppose also that the bankrupt's contribution remains \$300. All figures will remain the same except the statutory fraction, which will be 0.11. According to the formula, the value of the benefit in the second contribution assessment period is:

$$\frac{\$20\,000 \times 0.11 \times 365}{365} - 300 = \$1,900.$$

4 Section 10 (Taxable value of car fringe benefits — cost basis)

4.1 Omit the section.

- 5 Section 10A (No reduction of operating cost in a log book year of tax unless log book records and odometer records are maintained)**
- 5.1 Omit the section.
- 6 Section 10B (no reduction of operating cost in a non-log book year of tax unless log book records and odometer records are maintained in log book year of tax)**
- 6.1 Omit the section.
- 7 Section 10C (Nominated business percentage to be reduced if it exceeds business percentage established during applicable log book period or if it is unreasonable)**
- 7.1 Omit the section.
- 8 Section 11 (Calculation of depreciation and interest)**
- 8.1 Omit the section.
- 9 Section 12 (Depreciated value)**
- 9.1 Omit the section.
- 10 Section 13 (Expenditure to be increased in certain circumstances)**
- 10.1 Subsection 13 (1):
Omit all the words after ‘section 9’.
- 11 Section 22A (Taxable value of in-house expense payment fringe benefits)**
- 11.1 Omit the section.

12 Section 23 (Taxable value of external expenses payment fringe benefits)

12.1 Omit 'external'.

13 Section 26 (Taxable value of non-remote housing fringe benefits)

13.1 Omit the section, substitute:

'26 Taxable value of housing fringe benefits

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

14 Section 28 (Indexation factor for valuation purposes — non-remote housing)

14.1 Omit the section.

15 Section 29 (Taxable value of remote area accommodation)

15.1 Omit the section.

16 Section 29A (Indexation factor for valuation purposes — remote area accommodation)

16.1 Omit the section.

17 Section 31 (Taxable value of living-away-from-home allowance fringe benefits)

17.1 Add at the end:

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

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

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

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

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

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

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

$$\$200 - 100 - (80 - 42) = \$82.'$$

18 Section 32: (Airline transport benefits)

- 18.1 Sub-subparagraph 32 (b) (ii) (B):

Omit 'and'.

- 18.2 Paragraph 32 (c):

Omit the paragraph.

19 Section 36 (Taxable value of board fringe benefits)

- 19.1 Omit the section, substitute:

'36 Taxable value of board fringe benefits

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

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

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

$$1 \times \text{CPI}$$

where:

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

20 Section 37 (Reduction of taxable value — ‘otherwise deductible’ rule)

- 20.1 Omit the section.

21 Division 11 of Part III (Property fringe benefits)

- 21.1 Omit the Division.

22 Section 46 (Year of tax in which residual benefits taxed)

- 22.1 Omit the section, substitute:

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

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

23 Section 48 (Taxable value of in-house non-period residual fringe benefits)

- 23.1 Omit the section.

24 Section 49 (Taxable value of in-house period residual fringe benefits)

24.1 Omit the section.

25 Section 50 (Taxable value of external non-period residual fringe benefits)

25.1 Omit the section, substitute:

‘50 Value of residual fringe benefits

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

26 Section 51 (Taxable value of external period residual fringe benefits)

26.1 Omit the section.

27 Division 14 of Part III (Reduction of taxable value of miscellaneous fringe benefits)

27.1 Omit the Division.

28 Division 14A of Part III (Amortisation of taxable value of fringe benefits relating to remote area home ownership schemes)

28.1 Omit the Division.

29 Division 14B of Part III (Reducible fringe benefits relating to remote area home ownership repurchase schemes)

29.1 Omit the Division.

30 Section 136 (Interpretation)

30.1 Subsection 136 (1):

Insert the following definition:

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

30.2 Subsection 136 (1) (definition of *family member*):

Omit the definition, substitute:

'family member, in relation to:

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

30.3 Subsection 136 (1) (definition of *fringe benefit*):

Omit the definition, substitute:

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

- (a) a benefit provided to the bankrupt by his or her spouse under, or because of a genuine maintenance agreement between the spouses; or
- (b) a benefit provided under a maintenance order, within the meaning of the *Bankruptcy Act 1966* as in force from time to time; or
- (c) the benefit of an order by a court in favour of the bankrupt in respect of costs of litigation; or

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

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

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

30.4 After subsection 136 (1), insert:

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

Schedule 4A Performance standards for trustees (including controlling trustees)

(regulation 8.34A)

Part 1 Preliminary

1.1 Purpose

- (1) This Schedule sets out standards for the minimum level of acceptable conduct and performance of:
- (a) a registered trustee when exercising the powers, or carrying out the duties, of a registered trustee under the Act; and
 - (b) a solicitor exercising the powers, or carrying out the duties, of a controlling trustee under the Act.

Note 1 Subsection 155H (1) of the Act provides that the Inspector-General may ask a registered trustee to give the Inspector-General a written explanation why the trustee should continue to be registered, if the Inspector-General believes that the trustee has failed to comply with a standard prescribed in Schedule 4A. Under subsection 155H (2) of the Act, if the Inspector-General does not receive an explanation within a reasonable time, or is not satisfied by the explanation, the Inspector-General must convene a committee to consider whether the trustee should continue to be registered. Section 155I of the Act sets out the committee's powers when considering whether a trustee should continue to be registered.

Matters that the Inspector-General or a committee might consider include:

- (a) the importance of a standard that has not been complied with; and
- (b) the seriousness of the effect of a failure to comply with a standard, including the impact the failure to comply has on a particular estate; and
- (c) a trustee's performance history and whether the trustee has previously failed to comply with a standard.

Note 2 Under paragraph 8.35 (2) (a), the Inspector-General may determine that a person who is or has been a controlling trustee is not eligible to act as a controlling trustee because the person has failed to meet a standard in this Schedule that applies to a controlling trustee.

- (2) The purpose of these standards is to ensure:
- (a) that a person to whom these standards apply acts at all times in accordance with the person's powers and duties under the Act and these Regulations and in relation to the practice of bankruptcy law generally; and
 - (b) that an administration to which these standards apply is carried out consistently at a high level.

1.2 Definitions

In this Schedule:

administration means:

- (a) the administration of the estate of a bankrupt; or
- (b) the administration of a composition or scheme of arrangement under Division 6 of Part IV of the Act; or
- (c) the administration of a personal insolvency agreement; or
- (d) the administration of a debtor's property that has become subject to control under Division 2 of Part X of the Act; or
- (e) the administration of the estate of a deceased person under Part XI of the Act.

contribution assessment period, in relation to a bankrupt, has the meaning given by section 139K of the Act.

contributions liability, in relation to a bankrupt, means the contribution that a bankrupt is liable to pay in respect of a contribution assessment period, calculated in accordance with section 139S of the Act.

controlling trustee means a registered trustee or a solicitor who is controlling the property of a debtor under an authority given under section 188 of the Act.

deceased person means a deceased person in respect of whose estate an order for administration under Part XI of the Act has been made.

divisible property:

- (a) in relation to a bankrupt, means property divisible among his or her creditors within the meaning of section 116 of the Act; and

-
- (b) in relation to a debtor, means property divisible among his or her creditors within the meaning of section 187 of the Act; and
 - (c) in relation to a deceased person, means the divisible property of that person's estate as defined by subsection 249 (6) of the Act.

Part 2 General standards

Division 2.1 Application

2.1 Application of Part 2

This Part applies to:

- (a) the trustee of the estate of a bankrupt; and
- (b) the trustee of a composition or scheme of arrangement under Division 6 of Part IV of the Act; and
- (c) the trustee of a personal insolvency agreement; and
- (d) a controlling trustee; and
- (e) the trustee of the estate of a deceased person.

Division 2.2 General

2.2 Duty to act honestly and impartially

- (1) The trustee must act honestly and impartially in relation to each administration, including not signing, or associating himself or herself with, a document that the trustee knows, or ought reasonably to know, is false or misleading.
- (2) The trustee must not include in any document prepared by the trustee a clause that disclaims the trustee's responsibility for the document's authenticity.

2.3 Conflict of interest

If, during an administration, it becomes apparent that the trustee has an actual or potential conflict of interest in relation

to the administration, the trustee must, as soon as practicable after becoming aware of the conflict of interest:

- (a) notify the creditors, the person who appointed the trustee, a committee of inspection or the court, as appropriate, of the conflict of interest; and
- (b) take appropriate steps to avoid the conflict of interest.

Examples of conflicts of interest

1. The appointer or, in the case of a sequestration order, the bankrupt is or was a client of the trustee or the trustee's firm in relation to a financial, trust or insolvency planning matter.
2. The trustee or a member of the trustee's firm is a personal friend, relative or business associate of the debtor.

2.4 Use of information relating to an administration

The trustee must comply with section 16A of the *Privacy Act 1988* when dealing with information relating to an administration.

Note Section 16A of the *Privacy Act 1988* provides that an organisation must not do an act, or engage in a practice:

- (a) that breaches an approved privacy code binding the organisation; or
- (b) to the extent (if any) that the organisation is not bound by an approved privacy code — that breaches a National Privacy Principle.

The National Privacy Principles are set out in Schedule 3 to the *Privacy Act 1988*.

2.5 Compliance with standards by trustee's employees

The trustee must ensure that his or her employees comply with these standards.

2.6 Preliminary inquiries and actions

The trustee must undertake preliminary inquiries and actions at the start of each administration, including the following:

- (a) informing the bankrupt, debtor or legal personal representative of the deceased person of his or her obligations under the Act and the penalties for failing to comply with those obligations;
- (b) obtaining and reviewing the statement of affairs of the bankrupt, debtor or deceased person;

-
- (c) if necessary, interviewing the bankrupt, debtor or legal personal representative of the deceased person to clarify any matters in the statement of affairs;
 - (d) identifying and making an assessment of realisable assets that could be expected to:
 - (i) provide, on a cost-benefit basis, a return to creditors; or
 - (ii) contribute to the payment of the costs and fees of the administration;
 - (e) assessing a bankrupt's contributions liability;
 - (f) determining the likelihood of whether the estate of the bankrupt or deceased person, or the property of the debtor, includes property that can be realised to pay a dividend to creditors;
 - (g) if the trustee has a genuine reason for believing that a bankrupt, debtor or legal personal representative of the deceased person may not have disclosed an interest in real or other registered property — conducting appropriate searches for such property;
 - (h) if information obtained from a search mentioned in paragraph (g) shows that the bankrupt, debtor or legal representative of the deceased person has not made full and true disclosure of his or her interest in property:
 - (i) making inquiries of third parties about the information; or
 - (ii) if further inquiries are not made, explaining to the creditors why further inquiries were considered unnecessary;
 - (i) if the trustee considers that there may have been antecedent transactions — making inquiries of third parties to identify those transactions;
 - (j) cooperating with the Inspector-General by, for example, responding to reasonable requests for information.

2.7 Investigation of matters affecting administration

- (1) The trustee must consider the views of creditors regarding the extent to which investigations are undertaken in an administration.

- (2) The trustee must inform creditors, as soon as practicable, of the outcomes of inquiries undertaken in the administration.

Division 2.3 Assets

2.8 Realising assets

The trustee must realise only those assets:

- (a) that will give a cost-effective return to creditors; or
- (b) that contribute to the payment of the costs of the administration; or
- (c) that may be realised in accordance with a personal insolvency agreement.

2.9 Ownership or interests in assets

In determining the ownership of, or an interest in, an asset that is part of divisible property, the trustee must act reasonably and claim only the amount that fairly represents the interest in, or value of, the asset.

2.10 Obtaining advice about interest or value

If the value of divisible property is likely to have a material impact on the administration, the trustee must obtain advice from an independent expert in assessing:

- (a) the extent of the trustee's interest in any realisable asset; and
- (b) the value of the property or offers for the property.

2.11 Disposal of property

The trustee must act independently and impartially in undertaking transactions and dealings relating to the disposal of the property of a bankrupt, debtor or deceased person.

2.12 Records

If, in an administration, the trustee makes a decision about the identification, protection, realisation or write-off of a

significant asset of a bankrupt, debtor or deceased person that may have a material impact on the administration, the trustee must:

- (a) record the decision in writing; and
- (b) keep the record on the trustee's file for the administration.

Division 2.4 Remuneration and costs

2.13 Costs incurred to be necessary and reasonable

In conducting an administration, the trustee must:

- (a) incur only those costs that are necessary and reasonable; and
- (b) before deciding whether it is appropriate to incur a cost, compare the amount of the cost likely to be incurred with the value and complexity of the administration.

2.14 Receipt of moneys as trustee's remuneration

- (1) If the trustee receives moneys from a debtor, bankrupt, legal personal representative of a deceased person, creditor or third party that are intended to cover the trustee's remuneration, the moneys must be:
 - (a) included in the trustee's remuneration fixed in accordance with section 162 of the Act; and
 - (b) properly accounted for in accordance with sections 168 and 169 of the Act.
- (2) Subclause (1) does not apply to moneys recovered by the trustee under subsection 161B (2) of the Act.

2.15 Rate for tasks undertaken by trustee's staff

The trustee must ensure that time billed for a task undertaken in conducting an administration is charged at the appropriate rate for the level of staff who would be reasonably expected to undertake the task.

2.16 Records

The trustee must ensure that proper records are kept that:

- (a) provide evidence of the time spent on work done in conducting an administration; and
- (b) adequately describe the nature of the work; and
- (c) state whether the trustee has had to recover moneys under subsection 161B (2) of the Act.

Division 2.5 Files and access to information

2.17 File maintenance

- (1) The trustee must keep separate files for each administration.
- (2) The trustee must keep a record of every material decision in an administration, and any supporting documentation relied on in relation to the decision, on the file for the administration.

2.18 Provision of information to creditors

- (1) This clause applies to:
 - (a) the trustee of a composition or scheme of arrangement under Division 6 of Part IV of the Act; and
 - (b) the trustee of a personal insolvency agreement; and
 - (c) the trustee of the estate of a deceased person.
- (2) The trustee and the trustee's staff must give information about an administration to a creditor who reasonably requests it.

Division 2.6 Meetings of creditors

2.19 Need for meeting

The trustee must consider whether the matters sought to be addressed at a meeting of creditors:

- (a) require the holding of a meeting; or
- (b) could be addressed more cost effectively by another form of communication with creditors, for example, a creditors'

resolution without a meeting in accordance with section 64ZBA of the Act.

2.20 Matters to be considered when holding a meeting

In deciding whether the proposed time and place for a meeting of creditors is convenient for the creditors, the trustee must consider the following:

- (a) the requirements for meetings set out in the Act and these Regulations;
- (b) the location of creditors;
- (c) the ability of creditors to return proxies and statements of debt;
- (d) the complexity of issues to be considered by creditors before the meeting.

2.21 Attendance at meeting

The trustee, or a person appointed under subsection 63B (1) of the Act to represent the trustee at a meeting of creditors, must attend the meeting.

2.22 President's duties at creditors' meeting

- (1) This clause applies to the following persons:
 - (a) a trustee who is elected to preside at a meeting of creditors;
 - (b) a person appointed under subsection 63B (1) of the Act to represent the trustee at a meeting of creditors;
 - (c) a controlling trustee presiding at a meeting of creditors.
- (2) The person must:
 - (a) ensure that proper meeting procedures are followed; and
 - (b) ensure that the requirements relating to meetings set out in the Act and these Regulations are complied with; and
 - (c) ensure that all persons attending the meeting who are entitled to ask questions of the trustee, the bankrupt, the debtor or the legal personal representative of the deceased person are given an opportunity to do so; and

- (d) ensure that the minutes secretary complies with the requirements of section 64Z of the Act; and
- (e) take reasonable steps to establish whether there is sufficient evidence to support a creditor's statement under section 64D of the Act in relation to the amount of liability of the bankrupt, the debtor or the estate of the deceased person to the creditor.

2.23 Attendance of Inspector-General at meetings

The trustee must not prevent the Inspector-General from attending, or participating in, a meeting of creditors.

Division 2.7 Trustee's accounts

2.24 Records of accounts

- (1) The trustee must maintain a separate record of receipts and payments for each administration.
- (2) If a single bank account is kept for 2 or more administrations, the trustee must collectively reconcile the records for the individual administrations with the bank records each month.

2.25 Verifying payments and transfers

The trustee must verify all payments from an administration, and transfers between estates, by reference to appropriate supporting vouchers and original documents kept on the administration file.

2.26 Cash book

The trustee must regularly reconcile the cash book for an administration with the bank records for the administration, in accordance with the amount of activity in relation to the administration.

Part 3 Standards for trustees other than controlling trustees

Division 3.1 Application

3.1 Application of Part 3

This Part applies to:

- (a) the trustee of the estate of a bankrupt; and
- (b) the trustee of a personal insolvency agreement; and
- (c) the trustee of the estate of a deceased person.

Division 3.2 Reporting to creditors

3.2 Notification of administration

The notice given by the trustee to the creditors of a bankrupt, debtor or deceased person must include the following information:

- (a) the name, date of birth, address and occupation of the bankrupt, debtor or legal personal representative of the deceased person;
- (b) the business name or name of any associated entity or related entity of the bankrupt, debtor or deceased person;
- (c) the date and type of administration;
- (d) an outline of matters investigated by the trustee up to the date of the notification;
- (e) advice about any possible contributions liability of the bankrupt;
- (f) any matters the trustee has identified as needing further investigation.

Division 3.3 Creditors' claims

3.3 Provable debts in a joint administration

In conducting an administration in relation to joint bankrupts or debtors, the trustee must ensure that a debt is proved in the appropriate estate.

3.4 Evidence relating to proof of debt

The trustee must ensure that each creditor's claim or proof of debt in relation to an administration bears evidence of:

- (a) its admission or rejection; and
- (b) the reason for its admission or rejection; and
- (c) the amount for which the claim or proof of debt has been admitted.

3.5 Evidence of liability for debt

- (1) If necessary, the trustee must ask a creditor to give evidence in writing in relation to a debt claimed by the creditor:
 - (a) to establish the liability of a bankrupt, a debtor or the estate of a deceased person for the debt; or
 - (b) to identify the estate or property against which the claim should be admitted.
- (2) If the trustee considers that evidence given under subclause (1) is insufficient for the purposes of paragraph (1) (a) or (b), the trustee, before asking for further information, must have regard to the expected dividend rate and the materiality of the issue requiring clarification.
- (3) The trustee must keep a copy of any evidence or information relied on in deciding, for the purposes of voting or distributing dividends, whether to accept or reject the creditor's claim.

Division 3.4 Distribution of dividends

3.6 Creditors' views to be considered

The trustee must consider the views of creditors in relation to whether moneys held by the trustee should be:

- (a) applied to conduct further investigations in relation to the administration; or
- (b) distributed as a dividend.

3.7 Distribution of estate funds

- (1) The trustee must distribute estate funds in a timely manner, having regard to:
 - (a) the complexity of the administration and the claims of creditors; and
 - (b) the amount of funds available for distribution; and
 - (c) the need to retain funds in the estate or property to meet existing or expected commitments.
- (2) The trustee must make an interim distribution of dividends to creditors unless an existing or expected commitment is likely to account for a significant level of the available funds from the estate or property.

3.8 Advice relating to dividends and administration

The trustee must, when distributing dividends to the creditors of a bankrupt, a debtor or the estate of a deceased person, advise creditors about whether:

- (a) further dividends are expected to be distributed; or
- (b) the administration is finalised.

3.9 Records

The trustee must keep a record of the following information for each administration:

- (a) the name of each creditor who received a dividend;
- (b) the amount of each admitted claim;
- (c) the amount of dividend paid to each creditor.

Part 4 Standards for trustees of bankrupt estates

Division 4.1 Application

4.1 Application of Part 4

This Part applies to:

- (a) the trustee of the estate of a bankrupt; and
- (b) the trustee of the estate of a deceased person.

Division 4.2 Assets

4.2 Identifying assets for vesting

The trustee must take appropriate steps to identify the assets of the estate of a bankrupt or deceased person that will vest in the trustee, including the following:

- (a) obtaining and reviewing the statement of affairs of the bankrupt or deceased person;
- (b) considering the size of the deficiency in the estate for the purpose of finding possible assets or determining whether an issue needs to be investigated;
- (c) considering the activities and circumstances of the bankrupt or deceased person to decide whether assets disclosed by the bankrupt or the legal representative of the deceased person are consistent with what would be expected of a bankrupt having a similar background or undertaking a similar activity;
- (d) if the bankrupt is or was, or the deceased person was, involved in significant corporate or trust activity—making inquiries of third parties (for example, solicitors, accountants, creditors, associated entities and financial institutions) to establish whether there is any divisible property or antecedent transactions.

4.3 Protecting certain assets

The trustee must take appropriate steps to protect assets with a commercial value that have vested in him or her, including doing any or all of the following:

- (a) ensuring that the assets are adequately insured;
- (b) taking possession of the assets;
- (c) perfecting legal ownership of the assets.

Division 4.3 Contributions

4.4 Application of Division 4.3

This Division applies to the trustee of the estate of a bankrupt.

4.5 Income and contribution assessment

- (1) The trustee must, as soon as possible after all necessary information has been made available, make an assessment of:
 - (a) the income of a bankrupt in respect of a contribution assessment period; and
 - (b) the contribution that the bankrupt is liable to pay.
- (2) The trustee must:
 - (a) act fairly and reasonably in determining the time for payment of contributions liability; and
 - (b) if full payment within the contribution assessment period or before discharge would cause hardship to the bankrupt, consider giving the bankrupt an extension of the time for payment of contributions liability.
- (3) The trustee must give the bankrupt a copy of the assessment of income and contributions liability, setting out and explaining the basis on which the amount of any contributions liability has been calculated.

4.6 Monitoring payment of contributions

The trustee must:

- (a) monitor the payment of contributions by a bankrupt to ensure the contributions liability is discharged; and
- (b) if necessary, take appropriate steps to recover contributions that remain unpaid after the time for payment has passed.

Part 5 Standards for controlling trustees

5.1 Application of Part 5

This Part applies to a controlling trustee.

5.2 Notification of administration

The notice given by the controlling trustee to the creditors of the debtor must include the debtor's name, date of birth, address and occupation.

5.3 Investigating debtor's property and income

- (1) As soon as practicable after an authority under section 188 of the Act becomes effective, the controlling trustee must conduct appropriate investigations of the debtor's property and income.
- (2) If the debtor's property includes significant real estate, company structures or motor vehicles, the controlling trustee must:
 - (a) search the appropriate registries for information about the property; and
 - (b) obtain advice from an independent expert about the value of the property.
- (3) If the debtor was or is involved in significant corporate or trust activity, the controlling trustee must take appropriate steps to identify the assets of the debtor that will be subject to the personal insolvency agreement, including making inquiries of third parties (for example, solicitors, accountants, creditors, associated entities and financial institutions) to establish whether there is any divisible property or antecedent transactions.

5.4 Report to creditors

The controlling trustee's report under section 189A of the Act must also include the following:

- (a) information about each matter mentioned in subsection 188A (2) of the Act;
- (b) the basis on which the debtor's property has been valued;
- (c) the kind of investigations the controlling trustee has carried out and whether any other matters need to be investigated;
- (d) the reasons for the controlling trustee's opinion about whether creditors' interests would be better served by accepting the debtor's proposal for dealing with the debtor's affairs under Part X of the Act or by the bankruptcy of the debtor.

5.5 Records

The controlling trustee must ensure that:

- (a) bank accounts maintained in accordance with sections 168 and 169 of the Act; and
- (b) records maintained in accordance with section 173 of the Act in respect of all transactions relating to the debtor's property;

are kept separate from records relating to any later administration that takes place in relation to the debtor.

5.6 Voting at creditors' meeting

In deciding whether a creditor is entitled to vote at a meeting of creditors, the controlling trustee must:

- (a) have regard to the merits of the creditor's claim; and
- (b) act impartially and independently, without regard to the debtor's wishes.

Schedule 6 Modifications in relation to Part X of the Act

(regulations 10.01, 10.05, 10.07, 10.08 and 10.13)

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

1 Section 187A

omit

This Part

insert

- (1) This Part

2 Section 187A

insert

- (2) In the application of this Part (other than subsection 187 (1A)) to joint debtors, whether partners or not, an expression specified in one of the following rules of interpretation applies to the extent that the context reasonably permits:
- (a) ‘a debtor’ is to be read as ‘joint debtors’;
 - (b) ‘the debtor’ is to be read as ‘the joint debtors’;
 - (c) ‘the debtor’s’ is to be read as ‘the joint debtors’;
 - (d) if used in relation to a debtor:
 - (i) ‘he or she’ is to be read as ‘they’; and
 - (ii) ‘his or her’ is to be read as ‘their’; and
 - (iii) ‘him or her’ is to be read as ‘them’; and
 - (iv) a noun or verb in the singular form is to be read as being in the plural form.
- (3) Subsection (2) applies, subject to any specific modifications of this Part by the *Bankruptcy Regulations 1996*.

-
- (4) To the extent that the context reasonably permits, a reference (by operation of subsection (2)) to joint debtors includes a reference to any of the joint debtors.
- (5) A reference to the affairs, or examinable affairs, of a debtor includes a reference to the separate affairs, or separate examinable affairs, of a joint debtor.

3 Subsection 188 (1)

omit

A debtor

insert

If each joint debtor is a person

4 Subsection 188 (1)

before

may sign

insert

the joint debtors

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

omit

the debtor

insert

each joint debtor

6 Subsection 188 (2C)

omit the second occurrence of

the debtor

insert

each joint debtor

7 Subsection 188 (2D)

omit the second occurrence of

the debtor

insert

each joint debtor

8 Subsection 188 (4)

before

debtor

insert

joint

9 Subsection 188 (5)

omit

the District in which the

insert

the District in which each joint

10 Paragraphs 188A (2) (a) and (c)

omit

the debtor's

insert

each joint debtor's

11 Paragraph 188A (2) (e)

omit

the debtor

insert

each joint debtor

12 Paragraph 188A (2) (l)

omit

the debtor

insert
each joint debtor

13 Subsection 189AB (1)

omit

- (1) When the debtor's property becomes subject to control under this Division, the debtor's property is charged with:

insert

- (1) When the property of joint debtors becomes charged under this Division, the charges specified in subsection (1A) are created with respect to:

14 After subsection 189AB (1)

insert

- (1A) The charges are:
- (a) a charge over the joint property of the joint debtors; and
 - (b) a separate charge over the separate property of each joint debtor.

15 Subsection 189AB (2)

omit

the charge is not affected

insert

none of the charges is affected

16 Subsections 189AB (3) and (4)

omit

The charge

insert

Each charge

17 Paragraph 189A (1) (a)

substitute

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

**Part 2 Modifications of Division 5 of Part IV of
the Act — meetings called under
authorities under section 188 of the Act**

**1 Subsection 63A (1), definition of *joint bankruptcy*,
subparagraph (d) (ii)**

omit

jointly.

insert

jointly; or

**2 Subsection 63A (1), definition of *joint bankruptcy*,
after paragraph (d)**

insert

- (e) the situation arising out of the signing, by joint debtors for the purposes of section 188, of a joint authority or separate authorities for the administration of their joint estate.

3 Subsection 64A (2)

substitute

- (2) Notice of a meeting:
- (a) for the first meeting of creditors — must be published in a manner approved by the Inspector-General; and
 - (b) for any other meeting of creditors — must be given in a manner specified in the regulations.

3A After subsection 64A (2)

insert

- (3) The notice of the first meeting of creditors must include any matter approved by the Inspector-General.
- (4) For the purposes of paragraph (2) (a) and without limiting the power of the Inspector-General under that paragraph, the Inspector-General may:
 - (a) approve, as the manner of publication of the notice of the first meeting of creditors, publication on a website; and
 - (b) specify in the approval:
 - (i) the website where the notice must be published; and
 - (ii) any conditions relating to the approval.

Example

The Inspector-General may specify:

- (a) the format in which the notice is to be made available; and
 - (b) the period of time for which the notice must remain on the website; and
 - (c) whether related documents are to be made available for downloading from the website or in hard copy.
- (5) An approval made by the Inspector-General for the purposes of paragraph (2) (a) or subsection (3) must be published on the Insolvency and Trustee Service Australia's website.

3B After section 64A

insert

64AA Immunity from civil actions and proceedings

- (1) A civil action or proceeding does not lie against a person who operates a website, specified in an approval for the purposes of paragraph 64A (2) (a) or subsection 64A (3), in respect of a publication of a notice of the first meeting of creditors (or a notice that appears to be a notice of the first meeting of creditors) if the publication was made in good faith and without negligence.
- (2) Nothing in this section affects by implication any other ground of defence.

4 After subsection 64B (5)

insert

- (6) If the meeting is the first meeting of creditors called under an authority given under section 188, the notice must state that an information sheet about Part X, dealing with the following matters, may be obtained from the Insolvency and Trustee Service Australia:
- (a) meetings under Part X;
 - (b) controlling trustees;
 - (c) the administration of an authority under section 188;
 - (d) the application of Part X to an authority under section 188;
 - (e) personal insolvency agreements;
 - (f) the rights of creditors under Part X.

5 After paragraph 64D (aa)

insert

- (ab) whether the creditor, in relation to the debtor, is a related entity; and

6 Paragraph 64G (g)

substitute

- (g) if the meeting is the first meeting — tabling of the following documents:
- (i) the statement of affairs, and the proposal for dealing with them, required by subsection 188 (2C) or (2D);
 - (ii) the report by the controlling trustee required by section 189A;
 - (iii) the written statement by the controlling trustee required by section 189B;

7 Section 64P, heading

substitute

64P Controlling trustee to preside at meeting under section 188

8 Subsections 64P (1) and (2)

substitute

- (1) Subject to subsection (2), the controlling trustee must preside at a meeting called under an authority under section 188.
- (2) The creditors and their representatives may:
 - (a) vote to remove the controlling trustee as President; and
 - (b) nominate another person to preside at the meeting.

9 Subsection 64P (6)

omit each mention of
the trustee

insert
the controlling trustee

10 Subsection 64P (7)

omit
the trustee

insert
the controlling trustee

11 Subsection 64R (1)

substitute

- (1) If the meeting is the first meeting, the President must then request the controlling trustee to lay before the meeting the documents specified in paragraph 64G (g), and the controlling trustee must comply with the request.

12 Subsection 64R (2)

omit
the statement of affairs,

insert
those documents,

13 Subsection 64U (1)

substitute

- (1) At the first meeting called under an authority under section 188 that is attended by:
- (a) the controlling trustee; or
 - (b) if the creditors have passed a special resolution under paragraph 204 (1) (b) — the trustee of a personal insolvency agreement;
- the President must ask the trustee to state the basis on which he or she wishes to be remunerated.

14 Before subsection 64Y (1)

insert

- (1A) The controlling trustee may adjourn a meeting to undertake further investigations, in relation to the controlling trusteeship, that the controlling trustee considers necessary.
- (1B) The creditors attending the meeting may, by special resolution, revoke the trustee's decision to adjourn the meeting.

15 After subsection 64ZC (5)

insert

- (5A) An instrument appointing a proxy must include:
- (a) a statement disclosing whether or not the creditor has received, or will receive, a financial incentive:
 - (i) to appoint the proxy; or
 - (ii) to direct the proxy as to the manner in which the proxy is to vote on a particular matter or matters that may arise, or on a particular motion or motions that may be proposed, at a meeting to which the proxy relates; and
 - (b) if the proxy or creditor has received, or will receive, a financial incentive in relation to a matter mentioned in paragraph (a) — a statement specifying the amount of financial incentive paid or to be paid and the name of the person who paid, or is to pay, the financial incentive.

16 After subsection 64ZE (2)

insert

- (3) This section applies in relation to a personal insolvency agreement only if:
- (a) a joint estate forms part of the property that is to be dealt with under the agreement; and
 - (b) the agreement does not specifically provide for distribution of the joint estate.

**Part 3 Modifications of Part VIII of the Act —
controlling trustees and trustees of
personal insolvency agreements**

1 Before Part VIII, Division 1

insert in Part VIII

Division 1A Interpretation

154AA Interpretation

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

2 Section 156A

omit

3 Subsection 157 (1)

substitute

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

- (b) the creditors wish to appoint, in place of the Official Trustee:
- (i) a registered trustee or a solicitor as the controlling trustee; or
 - (ii) a registered trustee as the trustee of the personal insolvency agreement;
- the creditors may do so by resolution at a meeting of creditors.

4 Section 158

substitute

158 Appointment of more than 1 controlling trustee

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

5 Section 159

omit

6 Section 160

substitute

160 Vacancy in position of trustee — Official Trustee to act

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

7 After subsection 161 (1)

insert

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

8 Subsection 173 (1)

substitute

- (1) A controlling trustee who has consented to exercise powers given by an authority under section 188 must keep such accounts and records as are necessary to exhibit a full and correct account of the debtor's affairs and must permit a creditor:
- (a) to inspect, at all reasonable times, either personally or by an agent, the accounts and records relating to the controlling trusteeship; and
 - (b) to take a copy of those accounts and records.

Penalty: 5 penalty units.

9 Section 180

omit

trustee of an estate.

insert

trustee, other than controlling trustee, under Part X.

10 Section 181

substitute

181 Removal of trustee

The creditors may, by resolution, at a meeting of which at least 7 days notice has been given, remove a controlling trustee or the trustee of a personal insolvency agreement and may, at that meeting or a later meeting, appoint another trustee to replace the removed trustee.

11 Subsection 181A (1)

substitute

- (1) The current controlling trustee or the current trustee of a personal insolvency agreement may, with the written consent

of another trustee (either a registered trustee or the Official Trustee), nominate the other trustee as the new trustee.

12 Subsection 181A (4)

substitute

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

Part 4 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

1 Section 77F

substitute

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

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

2 Subsection 81 (1)

substitute

- (1) Where a person (in this section called the *relevant person*) becomes a debtor whose property is subject to control under Division 2 of Part X, the Court or a Registrar may at any time (whether before or after control over that property has ended), on the application of:

-
- (a) a person (in this section called a *creditor*) who has or had a debt that would be provable if the debtor were a bankrupt;
 - (b) the controlling trustee; or
 - (c) the Official Receiver;
- summon the relevant person for examination in relation to the property that is subject to control under Division 2 of Part X.

**Part 5 Modification under subsection 231 (1) of
the Act — personal insolvency
agreements**

1 Section 77F

substitute

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

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

**Part 6 Modifications under subsection 231 (3) of
the Act — personal insolvency
agreements**

1 Subsection 113 (1)

omit

presentation of a petition on which, or by virtue of the presentation of which, a person became a bankrupt,

insert

making of a sequestration order,

2 Subsection 113 (1)

omit

or, in the case of a debtor's petition, the presentation of the petition

3 After subsection 133 (13)

insert

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

4 After paragraph 134 (1) (b)

insert

- (ba) carry on a business of the debtor in accordance with an authorisation given under subsection (5);

5 After subsection 134 (4)

insert

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

6 Subsection 136 (1)

omit

Where any property of the bankrupt is subject to a mortgage,

insert

Where any property of the debtor that is subject to the personal insolvency agreement is also subject to a mortgage,

7 Subsection 137 (1)

omit

Where goods of a bankrupt

insert

Where goods of a debtor that are subject to a personal insolvency agreement

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

substitute

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

9 Paragraph 138 (1) (c)

omit

the bankrupt;

insert

the debtor;

10 Paragraph 138 (1) (d)

omit

the bankrupt

insert

the debtor

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

substitute

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

12 Subsection 139 (2)

omit everything after

in respect of property

insert

that is subject to the personal insolvency agreement, being rates, land tax or municipal or other statutory charges that fall due on or after the date of execution of the personal insolvency agreement, except to the extent, if any, of the rents and profits received by the trustee in respect of that property on or after the date of execution of the personal insolvency agreement.

13 Subsection 139 (3)

substitute

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

14 Subsection 139 (4)

omit

trustee of the estate of a bankrupt

insert

trustee of a personal insolvency agreement

15 Section 139ZJ

omit

In this Subdivision:

insert

(1) In this Subdivision:

16 Section 139ZJ

insert

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

(3) In subsection (2):

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

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

omit

bankruptcy,

insert

personal insolvency agreement,

18 Subsection 139ZL (1)

omit everything before paragraph (a), insert

(1) If a debtor is liable to pay a specified amount of his or her income to the trustee in accordance with a personal insolvency agreement, the Official Receiver:

19 Subsection 139ZL (1)

omit

make the contribution.

insert

pay that amount.

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

omit

the contribution

insert

the amount of income

21 Subsection 139ZQ (1)

omit

bankrupt under Division 3,

insert

personal insolvency agreement because of the application of
any of sections 120 to 125,

22 Subsection 139ZR (3)

omit

Division 3.

insert

any of sections 120 to 125.

**Part 7 Modification under subsection 231 (5) of
the Act — trustees of personal
insolvency agreements**

1 Subsection 173 (1)

substitute

- (1) The trustee of a personal insolvency agreement must keep such accounts and records as are necessary to exhibit a full and correct account of the administration of the agreement and must permit a creditor of the debtor:
- (a) to inspect, at all reasonable times, either personally or by an agent, the accounts and records relating to the personal insolvency agreement; and
 - (b) to take a copy of those accounts and records.

Penalty: 5 penalty units.

Schedule 7 Modifications under Part XI of the Act — administration of estates of deceased persons

(regulation 11.02)

1 Section 49 (Change of petitioners):

- 1.1 Omit ‘debtor’, substitute ‘deceased debtor’s estate’.

2 Section 50 (Taking control of debtor’s property before sequestration)

- 2.1 Subsection 50 (1):

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

- 2.2 Paragraph 50 (1) (a):

Omit ‘debtor’s property;’, substitute ‘deceased debtor’s estate;’.

- 2.3 Paragraph 50 (1) (b):

Omit ‘property.’, substitute ‘estate.’.

- 2.4 Paragraph 50 (1A) (c):

Omit ‘debtor’, substitute ‘deceased debtor’s legal personal representative’.

- 2.5 Subsection 50 (1B):

Omit ‘debtor’s property’, insert ‘deceased debtor’s estate’.

- 2.6 Subsection 50 (2):

Omit ‘debtor’ (first occurring), substitute ‘legal personal representative of the deceased debtor’.

2.7 Subsection 50 (2):

Before ‘debtor’ (second and third occurring), insert ‘deceased debtor’.

2.8 Subsection 50 (3):

Omit ‘debtor and the debtor’s’, substitute ‘deceased debtor and the debtor’s’.

2.9 Subsection 50 (4):

Before ‘debtor’ (twice occurring) and ‘debtor’s’, insert ‘deceased’.

2.10 Paragraph 50 (5) (a):

Omit ‘a sequestration order had been made against the debtor’, insert ‘an order had been made for the administration of the estate of the deceased debtor’.

2.11 Paragraph 50 (5) (c):

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

2.12 Section 50:

Add at the end:

‘(6) In this section:

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

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

of the deceased debtor’s estate, or a part of that estate.’.

3 Section 63A (Definitions)

3. Insert the following definition:

‘*legal personal representative*, in relation to a deceased person, means:

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

4 Section 64A (Persons to whom notice of meeting to be given)

4.1 Paragraph 64A (1) (a):

Omit 'the bankrupt has told the trustee,', substitute 'before his or her death the deceased person had told the trustee,'.

5 Section 64B (Certain matters to be included in notice of meeting)

5.1 Subsection 64B (1):

Before 'place', insert 'former'.

6 Section 64G (Agenda to be set out in notice of meeting)

6.1 Paragraphs 64G (a) and (i):

Omit 'bankrupt;', substitute 'legal personal representative of the deceased person;'.

7 Section 64J (Preparation of attendance record)

7.1 Subsection 64J (3):

Omit 'bankrupt', substitute 'legal personal representative of the deceased person'.

8 Section 64K (Opening of meeting)

8.1 Subsection 64K (2):

Omit 'bankrupt' (first occurring), substitute 'legal personal representative of the deceased person'.

8.2 Subsections 64K (2):

Omit ‘the bankrupt.’ (second occurring), substitute ‘the legal personal representative.’.

8.3 Subsections 64K (3) and (6):

Omit ‘the bankrupt’ (wherever occurring), substitute ‘the legal personal representative’.

9 Section 64L (Appointment of minutes secretary)

9.1 Subsection 64L (2):

Omit ‘bankrupt’, substitute ‘legal personal representative of the deceased person’.

10 Section 64P (Election of person to preside at meeting)

10.1 Subsection 64P (2):

Omit ‘bankrupt’, substitute ‘legal personal representative of the deceased person’.

11 Section 64S (Statements and questions)

11.1 Subsection 64S (2):

Omit ‘bankrupt’ (first occurring), substitute ‘legal personal representative of the deceased person’.

11.2 Subsection 64S (2):

Omit ‘the bankrupt.’ (second occurring), substitute ‘the legal personal representative.’.

11.3 Subsection 64S (3):

Omit ‘bankrupt’, substitute ‘legal personal representative’.

12 Section 64Z (Duties of minutes secretary)

12.1 Paragraph 64Z (5) (d):

Omit 'bankrupt,', substitute 'legal personal representative of the deceased person,'.

13 Section 64ZC (Appointment of proxies)

13.1 Subsection 64ZC (6):

Omit 'bankrupt' (first occurring), substitute 'legal personal representative of the deceased person'.

13.2 Subsection 64ZC (6):

Omit 'the bankrupt' (second occurring), substitute 'the legal personal representative'.

14 Section 73 (Composition or arrangement)

14.1 Subsection 73 (1):

Omit 'a bankrupt', substitute 'the legal personal representative of a deceased person'.

14.2 Subsection 73 (1):

Omit 'his or her' (wherever occurring), substitute 'the deceased person's'.

14.3 Subsection 73 (2A):

Omit 'bankrupt's', substitute 'deceased person's'.

14.4 Subsection 73 (3):

Omit 'bankrupt', substitute 'legal person representative'.

14.5 Section 73:

Add at the end:

'(6) In this section:

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

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

15 Section 74 (Annulment of bankruptcy)

15.1 Omit the section, substitute:

'74 Annulment of administration

- '(1) A special resolution under subsection 73 (4) takes effect on the date on which it is passed to annul the administration of the estate to which it relates.
- '(2) As soon as practicable after that date the trustee of the estate must give to the Official Receiver a certificate, signed by the trustee, of the following matters:
 - (a) the name of the estate;
 - (b) the number of the administration;
 - (c) the terms and date of the special resolution.
- '(3) The Official Receiver must enter those matters in the official records.'

16 Section 75 (Effect of composition or scheme of arrangement)

16. Subsection 75 (2):

Omit the subsection.

16.2 Subparagraphs 75 (4) (b) (i), (ii), (iii) and (iv):

Omit the subparagraphs, substitute:

- '(i) the creditors or the estate of the deceased person will suffer injustice or undue delay if the composition or scheme of arrangement proceeds; or

-
- (ii) the approval of the creditors resulted from a misrepresentation by the legal personal representative; or
 - (iii) it is desirable that the deceased person's:
 - (A) affairs be investigated; or
 - (B) estate be administered; orunder this Act; or
 - (iv) it is likely that the creditors will receive a greater dividend if the estate is again administered under this Act;’.

16.3 Subsection 75 (4):

Omit ‘trustee’, substitute ‘trustee, the legal personal representative’.

16.4 Subsection 75 (6), (7) and (8):

Omit the subsections, substitute:

‘(6) In this section:

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

- (a) the executor under the deceased person's will; or
- (b) the administrator under letters of administration or court order;

of the deceased person's estate, or a part of that estate.’

17 Section 81 (Discovery of bankrupt's property etc)

17.1 Subsection 81 (1):

Omit the subsection, substitute:

‘(1) At any time during or after the administration under Part XI of the estate of a deceased person (in this section called ‘the relevant person’), the Court may, on the application of:

- (a) a person (in this section called a ‘creditor’) who has or had a debt provable in the administration; or
- (b) the trustee of the estate; or

(c) the Official Receiver;
summon an examinable person in relation to the estate for
examination in relation to the administration.

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

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

- (a) a person who is believed to be indebted to the estate; or
- (b) a person who may be able to give information the relevant
person or the examinable affairs of the relevant person; or
- (c) a person who has possession of books that may relate to:
 - (i) the relevant person; or
 - (ii) the examinable affairs of the relevant person; or
 - (iii) the estate; or
- (d) the executor under the relevant person’s will; or
- (e) the administrator under letters of administration or court
order;
of the relevant person’s estate, or a part of that estate.’.

17.2 Subsection 81 (1B):

Omit paragraph (b), substitute:

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

17.3 Subsection 81 (11AA):

Omit the subsection.

17.4 Subsection 81 (12):

Before ‘relevant person’ (first occurring), insert ‘estate of the’.

17.5 Subsection 81 (14):

Omit ‘person, other than the relevant person,’, substitute
‘person’.

18 Section 82 (Debts provable in bankruptcy)

18.1 Subsection 82 (1):

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

18.2 Subsection 82 (1A):

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

18.3 Paragraph 82 (8) (b):

Omit ‘discharge of the bankrupt;’, substitute ‘end of the administration of the deceased person’s estate;’.

19 Section 87 (Deduction of discounts)

19.1 Omit ‘debtor had not become a bankrupt.’, substitute ‘estate had not become subject to administration under Part XI.’.

20 Section 88 (Apportionment to principal and interest of payments made before bankruptcy)

20.1 Omit ‘by a debtor to a creditor before the debtor became a bankrupt’, substitute:

‘to a creditor by:

- (a) the deceased person before his or her death; or
- (b) the deceased person’s estate before the date of the order for the administration of the estate;’.

21 Section 95 (Proof in respect of distinct contracts)

21.1 Omit ‘person was, at the time when he or she became a bankrupt,’ substitute ‘deceased person whose estate is being administered under Part XI was, at the date of his or her death,’.

22 Section 104 (Appeal against decision of trustee in respect of proof)

22.1 Subsection 104 (1):

omit

bankrupt

insert

legal personal representative of the bankrupt

22.2 After subsection 104 (1):

insert

‘(1A) An application may be made under subsection (1) on the grounds that the proof was wrongly admitted.’.

22.2 After subsection 104 (3):

insert

‘(4) In this section:

legal personal representative, for a deceased person, means:

- (a) the executor under the deceased person’s will; or
- (b) the administrator under letters of administration or court order;

of the deceased person’s estate, or a part of that estate.’.

23 Section 109 (Priority payments)

23.1 Paragraph 109 (1) (a):

After ‘petitioning creditor’, insert ‘or the trustee of the deceased person’s estate’.

23.2 Paragraph 109 (1) (b):

Omit the paragraph.

24 Section 109A (Debts due to employees)

24.1 Subsection 109A (1):

Omit the subsection, substitute:

‘Where:

- (a) a contract of employment with a person who has since died and whose estate is being administered under Part XI was subsisting immediately before the date of the person’s death; or
- (b) a contract of employment with the trustee, in his or her capacity as trustee, of an estate that is being administered under Part XI was subsisting immediately before the date of the order for the administration;

the employee under the contract is, whether or not the employee is a person referred to in subsection (2), entitled to payment under section 109 as if the employee’s employment had been terminated:

- (c) where paragraph (a) applies:
 - (i) by the person; and
 - (ii) on the date; mentioned in that paragraph; or
- (d) where paragraph (b) applies:
 - (i) by the trustee; and
 - (ii) on the date; mentioned in that paragraph.’.

24.2 Subsection 109A (2):

After ‘trustee (twice occurring), insert ‘or legal personal representative’.

24.3 After subsection 109A (2), insert:

‘(2A) In subsection (2):

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

- (a) the executor under the deceased person’s will; or
- (b) the administrator under letters of administration or court order;

of the deceased person’s estate, or a part of that estate.’.

25 Section 110 (Application of estates of joint debtors)

25.1 Omit the section.

26 Section 114 (Payment of liabilities etc incurred under terminated deed etc)

26.1 Omit ‘becomes a bankrupt’, substitute ‘dies, and his or her estate becomes subject to administration under Part XI,’.

27 Section 116 (Property divisible among creditors)

27.1 After subsection 116 (1), insert:

‘(1A) In the application of this section to Part XI, a reference in subsection (1) to the discharge of a bankrupt is taken to be a reference to the termination of the administration, under that Part, of the estate of the deceased person.’.

27.2 Paragraphs 116 (2) (c) and (ca):

Omit the paragraph.

27.3 Paragraph 116 (2) (g):

Omit the paragraph, substitute:

- ‘(g) any right of the estate of the deceased person to recover damages or compensation:
- (i) for personal injury (including injury resulting in death) or wrong done to the deceased person in his or her lifetime; or

-
- (ii) for personal injury (including injury resulting in death) or wrong done to the spouse or a member of the family of the deceased person (whether the injury or wrong was done before or after the death of the deceased person);
- ‘(h) any damages or compensation recovered by the deceased person in his or her lifetime, or by the estate of the deceased person, in respect of an injury or wrong specified in subparagraph (g) (i) or (ii);’.

27.4 Subsection 116 (2B):

Omit ‘(c) or (ca),’.

27.5 Subsection 116 (2C):

Omit the subsection.

28 Section 117 (Policies of insurance against liabilities to third parties)

28.1 Paragraph 117 (1) (b):

Omit ‘(whether before or after he or she became a bankrupt);’, substitute ‘at any time;’.

29 Section 118 (Execution by creditor against property of debtor who becomes a bankrupt etc)

29.1 Paragraph 118 (1) (i) (a):

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

29.2 Subparagraph 118 (1) (a) (ii):

Omit ‘and’.

29.3 Paragraph 118 (1) (b):

Omit the paragraph.

29.4 Subsections 118 (1), (3) and (4):

Omit 'bankrupt' (wherever occurring), substitute 'debtor'.

29.5 Subsection 118 (3):

Omit 'bankruptcy', substitute 'administration of the estate'.

29.6 Paragraph 118 (9) (a):

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

29.7 Subsection 118 (9):

Omit 'in the bankruptcy.', substitute 'of the estate.'.

29.8 Subsection 118 (10):

Omit 'debtor,' (twice occurring), substitute 'deceased person's estate'.

29.9 Paragraphs 118 (11) (a) and (b):

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

29.10 Subsection 118 (11):

Omit 'of the bankrupt'.

30 Section 119 (Duties of sheriff after receiving notice of presentation of petition etc)

30.1 Subsection 119 (1):

Omit 'against a debtor', substitute 'for an order for the administration of a deceased person's estate'.

30.2 Paragraphs 119 (1) (a) and (b):

Omit 'debtor' (wherever occurring), substitute 'estate'.

30.3 Subsection 119 (2):

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

30.4 Paragraphs 119 (2) (a) and (b):

Omit ‘debtor’ (wherever occurring), substitute ‘estate’.

30.5 Subsection 119 (3):

Omit ‘a creditor’s petition against a debtor has been given under subsection (1) to a sheriff or notice of the reference to the Court of a debtor’s petition against a debtor has been given under subsection’, substitute ‘a petition has been given under subsection (1) or’.

30.6 Subsection 119 (3):

Omit ‘the debtor’ (wherever occurring), substitute ‘the estate’.

30.7 Subsection 119 (4):

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

30.8 Paragraphs 119 (4) (a) and (b):

Omit ‘debtor’ (wherever occurring), substitute ‘estate’.

30.9 Subsection 119 (5):

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

30.10 Paragraphs 119 (5) (a) and (b):

Omit ‘debtor’ (wherever occurring), substitute ‘estate’.

30.11 Subsection 119 (6):

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

30.12 Subsection 119 (6):

Omit 'the debtor' (wherever occurring), substitute 'the estate'.

30.13 Subsection 119 (7):

Omit 'a debtor', substitute 'a deceased person's estate'.

30.14 Subsection 119 (7):

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

31 Section 119A (Duties of sheriff after receiving notice of bankruptcy etc)

31.1 Subsection 119A (1):

Omit 'has become a bankrupt', substitute 'has died, and his or her estate has become subject to administration under Part XI,'.

31.2 Subparagraph 119A (1) (a) (i):

Omit 'bankrupt', substitute 'estate'.

31.3 Subparagraph 119A (1) (a) (ii):

Omit 'bankrupt' (first occurring), substitute 'estate'.

31.4 Subparagraph 119A (1) (a) (ii):

Omit 'bankrupt became a bankrupt,' (twice occurring), substitute 'debtor died,'.

31.5 Subparagraph 119A (1) (a) (ii):

Omit 'bankrupt' (third occurring), substitute 'debtor or estate'.

31.6 Subparagraph 119A (1) (a) (iii):

Omit 'bankrupt;', substitute 'estate;'.

31.7 Subparagraph 119A (1) (b) (i):

Omit 'the bankrupt' (first and third occurring), substitute 'the estate'.

-
- 31.8 Subparagraphs 119A (1) (b) (i) and (ii):
Omit ‘bankrupt became a bankrupt,’ substitute ‘debtor died.’
- 31.9 Subparagraph 119A (1) (b) (ii):
Omit ‘to the bankrupt,’ substitute ‘to the estate.’
- 31.10 Subsection 119A (5):
Omit the subsection.
- 31.11 Paragraph 119A (6) (a):
Omit ‘bankrupt,’ substitute ‘deceased person’.
- 31.12 Paragraph 119A (6) (b):
Omit ‘bankrupt,’ substitute ‘estate’.
- 31.13 Subsection 119A (7):
Omit ‘a bankrupt,’ substitute ‘the estate of a deceased person’.

32 Section 122 (Avoidance of preferences)

- 32.1 Subsection 122 (1):
Omit ‘insolvent (the *debtor*)’, substitute ‘insolvent and who subsequently dies (the *deceased debtor*)’.
- 32.2 Subsection 122 (1):
Omit ‘in the debtor’s bankruptcy’, substitute ‘of the deceased debtor’s estate being administered under Part XI’.
- 32.3 Paragraph 122 (1) (b):
Omit the paragraph (including the table), substitute:
‘(b) was made in the period beginning 6 months before the presentation of the petition for an order for the administration of the estate and ending immediately before the date of the order.’

32.4 Subsection 122 (1A):

Omit ‘debtor’, substitute ‘deceased debtor before his or her death’.

32.5 Paragraphs 122 (1A) (a) and (b):

Before ‘debtor’, insert ‘deceased’.

32.6 Paragraph 122 (1A) (b):

Before ‘debtor’s’, insert ‘deceased’.

32.7 Paragraph 122 (2) (b):

After ‘debtor’, insert ‘or the estate of the deceased debtor’.

32.8 Subsection 122 (4A):

After ‘debtor’ (twice occurring), insert ‘or the estate of the deceased debtor’.

33 Section 123 (Protection of certain transfers of property against relation back etc)

33.1 Subsection 123 (1):

Omit ‘becomes a bankrupt.’, substitute ‘has died, and his or her estate has become subject to administration under Part XI.’.

33.2 Paragraphs 123 (1) (a), (b) and (c):

After ‘debtor’ insert ‘before he or she died’.

33.3 Paragraph 123 (1) (e):

Omit ‘before the day on which the debtor became a bankrupt.’, substitute ‘on or before the day on which the debtor died.’.

33.4 Subsection 123 (4):

Before ‘debtor’, insert ‘deceased’.

33.5 Subsection 123 (4):

Omit ‘became a bankrupt.’, substitute ‘died.’.

33.6 Subsection 123 (6):

Omit ‘a debtor becomes’, substitute ‘a deceased debtor before his or her death became’.

33.7 Subsection 123 (6):

Before ‘debtor’ (second and third occurring), insert ‘deceased’.

34 Section 124 (Protection of certain payments to bankrupt etc)

34.1 Subsection 124 (1):

Omit ‘becomes, or has become, a bankrupt’, substitute ‘has died, and his or her estate has become subject to administration under Part XI’.

34.2 Paragraph 124 (1) (a):

After ‘made’, insert ‘on or’.

34.3 Paragraph 124 (1) (a):

Omit ‘becomes a bankrupt’, substitute ‘dies’.

34.4 Paragraph 124 (1) (b):

Omit ‘on or’.

34.5 Paragraph 124 (1) (b):

Omit ‘became a bankrupt’, substitute ‘died’.

35 Section 125 (Certain accounts of undischarged bankrupt)

35.1 Subsection 125 (1):

Omit ‘an undischarged bankrupt’, substitute ‘deceased and that his or her estate is being administered under Part XI’.

36 Section 126 (Dealings with undischarged bankrupt in respect of after-acquired property)

36.1 Omit the section.

37 Section 127 (Limitation of time for making of claims by trustee etc)

37.1 After subsection 127 (1), insert:

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

38 Section 134 (Powers exercisable at discretion of trustee)

38.1 Paragraph 134 (1) (m):

Omit ‘the bankrupt: (first occurring), substitute ‘the legal personal representative of a deceased person:’.

38.2 Subparagraph 134 (1) (m) (i):

Omit ‘the bankrupt;’, substitute ‘the estate of the deceased person;’.

38.3 Subparagraph 134 (1) (m) (ii):

Omit ‘bankrupt’s’ (twice occurring), substitute ‘estate’s’.

38.4 Subparagraph 134 (1) (m) (iii):

Omit ‘bankrupt;’, substitute ‘estate’.

38.5 Paragraph 134 (1) (m):

Omit ‘bankrupt’s services, make such allowance to the bankrupt’, substitute ‘services of the legal personal representative of the deceased person, pay such remuneration to him or her’.

38.6 Paragraphs 134 (1) (n) and (o):

Omit ‘the bankrupt’, substitute ‘the estate of the deceased person’.

38.7 After subsection 134 (1), insert:

‘(1AA) In subsection (1):

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

- (a) the executor under the deceased person’s will; or
- (b) the administrator under letters of administration or court order;

of the deceased person’s estate, or a part of that estate.’.

38.7 Subsection 134 (1A):

Omit ‘An allowance made to the bankrupt’, substitute ‘Remuneration paid to the legal personal representative of a deceased person’.

39 Section 134 (Powers exercisable at discretion of trustee)

39.1 Paragraphs 134 (1) (b) and (c):

Omit ‘the bankrupt;’, substitute ‘the estate of the deceased person;’.

39.2 Paragraph 134 (1) (ma):

Omit the paragraph, substitute:

‘(j) pay such remuneration out of the estate of the deceased person as he or she thinks fit to the legal personal representative of the deceased person.’.

39.3 Section 134:

Add at the end:

‘(5) In this section:

legal personal representative, for a deceased person, means:

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

40 Section 138 (Limitation on trustee's power in respect of copyright, patents etc)

40.1 Paragraph 138 (1) (a):

Omit 'bankrupt', substitute 'estate of a deceased person'.

40.2 Paragraphs 138 (1) (b), (c) and (d):

Omit 'bankrupt', substitute 'estate'.

41 Section 139ZL (Official Receiver may require persons to make payments)

41.1 Subsection 139ZL (6):

Omit 'bankrupt', substitute 'legal personal representative of the deceased person'.

41.2 After subsection 139ZL (6), insert:

'(6A) In subsection (6):

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

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

42 Section 139ZQ (Official Receiver may require payment)

42.1 Subsection 139ZQ (5):

Omit 'bankrupt', substitute 'legal personal representative of the deceased person'.

42.2 After subsection 139ZQ (5), insert:

‘(5A) In subsection (5):

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

- (a) the executor under the deceased person’s will; or
- (b) the administrator under letters of administration or court order;

of the deceased person’s estate, or a part of that estate.’.

43 Section 143 (Provision to be made for creditors residing at a distance etc)

43.1 Paragraph 143 (a):

Omit ‘bankrupt’s statement of’, substitute ‘statement of a deceased person’s’.

44 Section 146 (Distribution of dividends where bankrupt fails to file statement of affairs)

44.1 Omit ‘a bankrupt’, substitute ‘the legal personal representative of a deceased person’.

44.2 Omit ‘his or her affairs’ (twice occurring), substitute ‘the deceased person’s affairs’.

44.3 Omit ‘bankrupt’ (second occurring), substitute ‘legal personal representative’.

45 Section 156A (Consent to act as trustee)

45.1 Paragraph 156A (1) (a):

Before ‘debtor’ (first occurring), insert ‘deceased’.

45.2 Paragraphs 156A (1) (a) and (3) (a):

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

45.3 Paragraph 156A (3) (a):

Omit ‘estate of the bankrupt;’, substitute ‘estate;’.

46 Section 161B (Trustee’s remuneration — minimum entitlement)

46.1 Subsection 161B (2):

Omit the subsection.

47 Section 162 (Trustee’s remuneration — general)

47.1 Subsection 162 (3):

Omit ‘bankrupt’ (second occurring), substitute ‘legal personal representative of the deceased person’.

47.2 After subsection 162 (3), insert:

‘(3A) In subsection (3):

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

- (a) the executor under the deceased person’s will; or
- (b) the administrator under letters of administration or court order;

of the deceased person’s estate, or a part of that estate.’.

48 Section 170 (Trustee to give Official Receiver and bankrupt information etc)

48.1 Subsection 170 (2):

Omit the subsection, substitute:

‘(2) At the request of the legal personal representative of the deceased person, the trustee must give to the legal personal representative information reasonably required by the legal personal representative concerning the affairs of the deceased person.

‘(3) In subsection (2):

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

- (a) the executor under the deceased person’s will; or
- (b) the administrator under letters of administration or court order;

of the deceased person’s estate, or a part of that estate.’

Schedule 8 Information on the National Personal Insolvency Index

(regulation 13.03)

Note References in this Schedule to sections, subsections and paragraphs are references to those provisions of the Act.

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
1	Section 50 trustee to take control of debtor's property before sequestration	court order	applicant (creditor)	as soon as practicable	<ul style="list-style-type: none"> • date of order • particulars of debtor • date when trustee's control ends (subsection 50 (1B))
2	Sections 43 and 47 creditor's petition	creditor's petition and verifying affidavit (subsections 47 (1) and (1A))	petitioning creditor	within 3 working days	<ul style="list-style-type: none"> • date of petition • particulars of debtor • name of petitioning creditor • name and telephone number of petitioning creditor's solicitors • date of court hearing for sequestration order

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
3	Section 43 sequestration order	sequestration order (subsection 43 (1), section 52)	Creditor who obtained the order (subsection 52 (1A))	within 2 days	<ul style="list-style-type: none"> • date of order • particulars of bankrupt • name of petitioning creditor • name and telephone number of petitioning creditor's solicitors • name of trustee • date of filing of Statement of Affairs
4	Section 55 debtor's petition	debtor's petition and statement of affairs (subsection 55 (2))	debtor (subsection 55 (1))	not applicable	<ul style="list-style-type: none"> • particulars of debtor • date of acceptance (or, if the Court orders the Official Receiver to accept the petition, the date of commencement of the bankruptcy (subsection 55 (3B)) • name of trustee • date of filing of Statement of Affairs

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
5	Section 56B debtor's petition against partnership	debtor's petition and statements of affairs (section 56B)	petitioning partners (subsection 56A (1))	not applicable	<ul style="list-style-type: none"> • particulars of each debtor/partner • date of acceptance (or, if the Court orders the Official Receiver to accept the petition, the date of commencement of the bankruptcy of each partner (section 56C)) • name of trustee • date of filing of Statement of Affairs
6	Section 57 debtor's petition by joint debtors who are not partners	debtor's petition and statements of affairs (subsection 57 (2))	2 or more petitioning debtors (subsection 57 (1))	not applicable	<ul style="list-style-type: none"> • particulars of each debtor • date of acceptance (or, if the Court orders the Official Receiver to accept the petition, the date of commencement of the bankruptcy of each debtor subsection 57 (3B))

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
					<ul style="list-style-type: none"> • name of trustee • date of filing of Statement of Affairs
7	Section 74 annulment of bankruptcy by special resolution of creditors	written notice (subsection 74 (5A))	trustee (subsection 74 (5A))	as soon as practicable after passage of special resolution (subsection 74 (5A))	<ul style="list-style-type: none"> • date of annulment of the bankruptcy
7A	Section 76B record of the termination or setting aside of a composition or scheme of arrangement	copy of record	trustee	immediately	<ul style="list-style-type: none"> • date of termination or setting aside
8	Section 149 automatic discharge from bankruptcy	not applicable	not applicable	not applicable	<ul style="list-style-type: none"> • date of discharge
9	Sections 149B, 149C objection to discharge	Notice of objection (section 149B)	trustee (section 149B)	at any time before discharge	<ul style="list-style-type: none"> • date objection takes effect (ie day on which details of notice entered in the Index section 149G) • grounds of objection • person lodging the notice (i.e. trustee)

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
10	Section 149H trustee ceasing to object on a particular ground	notice of ceasing to object (subsection 149H (1))	trustee (subsection 149H (1))	at any time before discharge (subsection 149H (1))	<ul style="list-style-type: none"> • date objection ceases to have effect (if at all) (ie day on which details of notice entered in the Index subsection 149H (3)) • grounds of objection to which notice relates • person lodging the notice (i.e. trustee)
11	Section 149J trustee or Official Receiver withdrawing objection	notice of withdrawal (subsection 149J (1))	trustee (subsection 149J (1)) (see also subsection 149J (2) for Official Receiver)	at any time before discharge (subsections 149J (1) and (2))	<ul style="list-style-type: none"> • date withdrawal of objection takes effect (ie day on which details of notice entered in the Index subsection 149J (3)) • person lodging the notice (i.e. trustee or Official Receiver)

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
12	Section 149N Inspector-General's review of decision to object (also: section 149Q-AAT review of decision)	if the Inspector-General cancels the objection — written notice that objection cancelled	trustee	as soon as practicable after objection cancelled	<ul style="list-style-type: none"> date the cancellation takes effect (subsection 149N (2))
13	Sections 149S and 149ZF early discharge from bankruptcy	[application for early discharge (subsection 149S (2)) certificate of discharge (subsection 149ZF (3))	certificate — registered trustee (subsection 149ZF (3)) (see also Official Receiver: subsection 149ZF (3); see also subsection 149ZK (2) for decision on review)	as soon as practicable after trustee signs certificate (subsection 149ZF (3))	<ul style="list-style-type: none"> date on which bankruptcy is discharged (subsection 149ZF (1); see also subsection 149ZK (2))
14	Section 153A annulment of bankruptcy on payment of debts	certificate (subsection 153A (2))	trustee (subsection 153A (2))	as soon as practicable after debts paid in full (subsection 153A (2))	<ul style="list-style-type: none"> date of annulment
15	Section 153B annulment of bankruptcy by Court	court order (section 153B)	applicant (Rule 7.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	2 days (Rule 7.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	<ul style="list-style-type: none"> date of annulment

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
16	Section 154A application for trustee registration	application, and information prescribed by the regulations	applicant trustee	not applicable	<ul style="list-style-type: none"> • date of application
17	Section 155C trustee registration	application, and information prescribed by the regulations (subsection 155C (2))	applicant trustee (Note: Inspector-General to register trustee: sections 155B and 155C)	not applicable	<ul style="list-style-type: none"> • details of trustee
18	Section 155G trustee voluntarily terminating registration	written request (subsection 155G (1))	trustee	not applicable	<ul style="list-style-type: none"> • date trustee registration ceases (ie date of acceptance of request: subsection 155G (2))
19	Sections 155H and 155I involuntary termination of trustee registration	no document specified	Inspector-General (see subsection 155I (6))	not applicable	<ul style="list-style-type: none"> • date trustee registration ceases (Inspector-General to give effect to decision to terminate registration: subsection 155I (6))

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
20	Sections 184 and 184A release of trustee by operation of law after 7 years	no document specified	registered trustee	not applicable	<ul style="list-style-type: none"> • fact that the administration of an estate is finalised
21	Part IX debt agreement proposal	debt agreement proposal, explanatory statement and statement of affairs	debtor	not applicable	<ul style="list-style-type: none"> • date that acceptance of proposal for processing and name and address of debt agreement processor are entered in the Index • particulars of debtor • particulars of whether proposal accepted or rejected following processing • date that a proposal lapses (if at all) • date of withdrawal or cancellation of proposal

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
22	Part IX debt agreements	debt agreement notification of completion or termination of the debt agreement notification of a designated 6-month arrears default	notification of completion: the debt agreement administrator notification of 6-month arrears default: the debt agreement administrator	notification of completion: 5 working days after end of debt agreement notification of 6-month arrears default: 10 working days after occurrence of designated 6-month arrears default	<ul style="list-style-type: none"> • particulars of debtor (if different from particulars in debt agreement proposal) • date that making of debt agreement entered in the Index • date at end or termination of debt agreement • particulars of reason for debt agreement termination or end
22A	Section 185N ending a debt agreement by discharging obligations	certificate given under subsection 185N (3)	not applicable	not applicable	<ul style="list-style-type: none"> • date of giving of certificate
22B	Section 185P terminating a debt agreement by proposal	Minutes of creditors meeting called under section 185A, or the record made by the Official Receiver of acceptance of proposal under subsection 185B (3)	not applicable	not applicable	<ul style="list-style-type: none"> • date of acceptance of proposal

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
22C	Section 185Q terminating a debt agreement by court order	court order	applicant (Rule 9.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	2 days after order made (Rule 9.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	<ul style="list-style-type: none"> • date order made
22D	Section 185QA terminating a debt agreement by special resolution of creditors	Minutes of meeting called under section 185QA	not applicable	not applicable	<ul style="list-style-type: none"> • date of passing of special resolution
23	Sections 185T and 185U voiding a debt agreement	court order (subsection 185U (1))	applicant (Rule 9.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	2 days (Rule 9.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	<ul style="list-style-type: none"> • date of order • whether agreement is voided in whole or in part
23A	Section 186B Application for registration as a debt agreement administrator	application	Inspector-General	not applicable	<ul style="list-style-type: none"> • date of application • particulars of applicant

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
23B	Section 186D Registration as a debt agreement administrator	application approval or refusal of registration application under section 186C (including any conditions specified for subsection 186C (9)).	Inspector-General	not applicable	<ul style="list-style-type: none"> particulars of applicant details of the approval or refusal (including specified conditions applying to the debt agreement administrator on registration)
23C	Section 186F Conditions of registration	notice of imposition of conditions	Inspector-General	not applicable	<ul style="list-style-type: none"> particulars of conditions imposed on debt agreement administrator's registration
23D	Sections 185ZCA, 186J, 186K and 186L Debt agreement administrator registration ceases	approval of registration notice of request to accept surrender of registration (section 186J) notice of cancellation of registration (section 186K or 186L)	Inspector-General	not applicable	<ul style="list-style-type: none"> date debt agreement administrator registration ceases particulars of reason for end of registration

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
24	Section 188 and subsection 189 (1B) authority to be controlling trustee (personal insolvency agreement); notice of event causing end of control by trustee	authority (subsection 188 (1)); notice (subsection 189 (1B))	registered trustee or solicitor (subsection 188 (5); subsection 189 (1B))	authority: 2 working days of consent to act; notice: 7 days after becoming aware that control has ended	<ul style="list-style-type: none"> • date of authority • date of filing of statement of affairs • name of controlling trustee • particulars of debtor • date of termination of control
24A	Section 192 authority to be controlling trustee passing to Official Trustee	Evidence of event mentioned in subsection 192 (1) (death, cessation, incapacity written request)	Official Trustee	14 days of control passing	<ul style="list-style-type: none"> • particulars of debtor • date of passing of control
25	Section 204 and subsection 218 (1) personal insolvency agreement	copy of agreement (paragraph 218 (1) (b))	trustee (paragraph 218 (1) (b))	within 21 days after executing agreement	<ul style="list-style-type: none"> • date of execution of agreement • particulars of debtor (if different from particulars in section 188 authority) • name of each nominated trustee of the agreement

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
					<ul style="list-style-type: none"> • (subsection 204 (3); see also section 215A) • date of filing of statement of affairs
26	Section 221 sequestration order for certain failures under Part X	court order (subsection 221 (1))	applicant	2 days	<ul style="list-style-type: none"> • date of order • particulars of bankrupt (if different from particulars in section 188 authority)) • name of petitioning creditor (if any) • name and telephone number of petitioning creditor's solicitors (if any) • name of trustee • date of filing of Statement of Affairs
27	Subsection 222 (10) sequestration order against estate of debtor	sequestration order	applicant for sequestration order	2 days (regulation 10.11)	<ul style="list-style-type: none"> • date of order • particulars of debtor

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
28	Section 222A termination of personal insolvency agreement by trustee	copy of written notice of termination (regulation 10.12)	trustee of the agreement	immediately (regulation 10.12)	<ul style="list-style-type: none"> • date of termination
28A	Subsection 222C (5) sequestration order against estate of debtor	sequestration order	applicant for sequestration order	2 days (regulation 10.11)	<ul style="list-style-type: none"> • date of order • particulars of debtor
28B	Subsections 224A (1) and (3) terminating personal insolvency agreement by creditors or event specified in agreement	copy of resolution or special resolution (subsection 224A (1)); written notice (subsection 224A (3))	trustee (subsections 224A (1) and (3))	immediately (subsections 224A (1) and (3))	<ul style="list-style-type: none"> • date of termination
28C	Subsection 224A (4) court order setting aside or terminating a personal insolvency agreement	written notice	registered trustee	2 days (Rule 10.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	<ul style="list-style-type: none"> • date when agreement set aside or terminated

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
28D	Section 232 certificate relating to discharge of obligations under personal insolvency agreement	certificate given to debtor under subsection 232 (1)	trustee	not applicable	<ul style="list-style-type: none"> • date when trustee signed certificate
29	Section 244 creditor's petition for Part XI administration (deceased estates)	creditor's petition and verifying affidavit (subsections 244 (1) and (5))	petitioning creditor	not applicable	<ul style="list-style-type: none"> • date of petition • particulars of deceased • name of petitioning creditor • name and telephone number of petitioning creditor's solicitors • date of hearing for administration order • date of filing of Statement of Affairs
30	Section 244 and section 245 (death of debtor after creditor's petition under section 47) Part XI administration (deceased estates)	court order (subsections 244 (14); 245 (3))	petitioning creditor (subsections 244 (14); 245 (3))	2 days (Rule 11.04 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	<ul style="list-style-type: none"> • date of order • particulars of deceased (if particulars different from particulars in relevant creditor's petition) • name of trustee

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
31	Section 247 administrator's petition for Part XI administration of deceased estate	petition and statement of affairs (subsection 247 (1))	administrator (subsection 247 (1))	not applicable	<ul style="list-style-type: none"> • date of petition • particulars of deceased • name of administrator • name and telephone number of administrator's solicitors • date of filing of Statement of Affairs
32	Section 247 court order for Part XI administration on administrator's petition	court order (subsection 247 (1A))	applicant (Rule 11.04 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	2 days (Rule 11.04 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	<ul style="list-style-type: none"> • date of order • the following particulars if different from those in administrator's petition: <ul style="list-style-type: none"> • particulars of deceased • name of administrator • name and telephone number of administrator's solicitors • name of trustee • date of filing of Statement of Affairs

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
33	Section 253E stay of proceedings in relation to farmers' debts assistance	court order (subsection 253E (1))	applicant	7 days	<ul style="list-style-type: none">• date of order• period of stay (subsection 253E (3))

Table of Instruments**Notes to the *Bankruptcy Regulations 1996*****Note 1**

The *Bankruptcy Regulations 1996* (in force under the *Bankruptcy Act 1966*) as shown in this compilation comprise Statutory Rules 1996 No. 263 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
1996 No. 263	11 Dec 1996	16 Dec 1996	
1996 No. 278	12 Dec 1996	16 Dec 1996	—
1997 No. 76	14 Apr 1997	Rr. 18.1, 29 and 30: 16 Dec 1996 Rr. 18.2, 26, 32, 33, 34, 35.2, 38.3 and 40: 14 Apr 1997 (see r. 1.2 and <i>Gazette</i> 1997, No. S136) Remainder: 14 Apr 1997	R. 40
1997 No. 325	28 Nov 1997	1 Dec 1997	—
2000 No. 140	28 June 2000	1 July 2000	—
2000 No. 220	17 Aug 2000	1 July 2000	—
2001 No. 262	5 Oct 2001	5 Oct 2001	—
2002 No. 255	6 Nov 2002	6 Nov 2002	—
2003 No. 76	2 May 2003	5 May 2003	—
2004 No. 256	26 Aug 2004	1 Dec 2004 (see r. 2 and <i>Gazette</i> 2004, No. GN34)	—
2005 No. 218	7 Oct 2005 (see F2005L02918)	8 Oct 2005 (see r. 2 (a))	—

Table of Instruments

Year and number	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
2006 No. 4	16 Feb 2006 (see F2006L00521)	17 Feb 2006	Rr. 4–6 (see Table A)
2006 No. 50	17 Mar 2006 (see F2006L00820)	27 Mar 2006 (see r. 2)	—
2006 No. 137	23 June 2006 (see F2006L01854)	1 July 2006	—
2007 No. 91	26 Apr 2007 (see F2007L01128)	27 Apr 2007 (see r. 2)	—
2007 No. 138	13 June 2007 (see F2007L01540)	Rr. 1–4 and Schedule 1: 14 June 2007 Remainder: 1 July 2007	R. 4

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 1.01	rs. 2000 No. 140
R. 1.03	am. 2006 Nos. 4 and 137; 2007 No. 91
R. 1.04	ad. 2001 No. 262
Part 2	
R. 2.01	am. 1997 No. 76
Part 4	
Division 1	
R. 4.02A.....	ad. 1997 No. 76 rs. 2006 No. 4
Note to r. 4.02A.....	ad. 2006 No. 137
Division 2	
Heading to r. 4.05	am. 1997 No. 76
R. 4.05	am. 1997 No. 76; 2002 No. 255
R. 4.07	am. 2004 No. 256
R. 4.11	am. 1997 No. 76; 2004 No. 256; 2007 No. 138
Division 3	
Heading to r. 4.17	rs. 1997 No. 76
R. 4.17	rs. 1997 No. 76
Note to r. 4.17	am. 2006 No. 137
Part 6	
Division 1	
R. 6.01	am. 2002 No. 255
R. 6.02	am. 1997 No. 76
Division 2	
R. 6.03	am. 1996 No. 278; 1997 No. 76
R. 6.03A.....	ad. 2003 No. 76
R. 6.04	am. 1997 No. 76
Renumbered r. 6.03B.....	2007 No. 91
Division 2A	
Div. 2A of Part 6.....	ad. 2007 No. 91
R. 6.04A.....	ad. 2007 No. 91
R. 6.04B.....	ad. 2007 No. 91
Division 3	rep. 2007 No. 138
R. 6.05	rep. 2007 No. 138
R. 6.06	rep. 2007 No. 138

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 6.07	rep. 2007 No. 138
R. 6.08	am. 1996 No. 278 rep. 2007 No. 138
Division 6	
Heading to Div. 6 of Part 6..	rs. 2002 No. 255
Heading to r. 6.12	rs. 2002 No. 255
Heading to Div. 6A of	rep. 2002 No. 255
Part 6	
Div. 6A of Part 6.....	ad. 1997 No. 325
Heading to r. 6.12A	rs. 2002 No. 255
R. 6.12A.....	ad. 1997 No. 325 am. 2002 No. 255
R. 6.12B.....	ad. 2002 No. 255 am. 2006 No. 50
R. 6.12C.....	ad. 2003 No. 76
R. 6.12D.....	ad. 2007 No. 91
Division 7	
R. 6.15A.....	ad. 2003 No. 76
R. 6.16	am. 1997 No. 76 rep. 2004 No. 256
R. 6.18	am. 2001 No. 262
Note to r. 6.18	rep. 2001 No. 262
Division 8	
R. 6.20	am. 2001 No. 262
Note to r. 6.20 (2).....	rep. 2001 No. 262
Part 7	
R. 7.01	am. 1997 No. 76; 2001 No. 262
R. 7.01A.....	ad. 2002 No. 255
R. 7.02	am. 2001 No. 262
Note to r. 7.02 (3).....	rep. 2001 No. 262
Part 8	
Division 1	
Note to Heading to Div. 1....	rep. 2002 No. 255
of Part 8	
R. 8.01	am. 2003 No. 76
R. 8.02	am. 2003 No. 76
R. 8.03	am. 1997 No. 76
Division 1A	
Div. 1A of Part 8.....	ad. 1997 No. 76

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 8.04A.....	ad. 1997 No. 76 am. 2001 No. 262
Division 2	
Div. 2 of Part 8.....	rs. 2002 No. 255
Subdivision 1	
R. 8.05.....	rs. 2002 No. 255
Subdivision 2	
R. 8.05A.....	ad. 2002 No. 255
R. 8.05B.....	ad. 2002 No. 255
R. 8.05C.....	ad. 2002 No. 255
R. 8.05D.....	ad. 2002 No. 255
R. 8.05E.....	ad. 2002 No. 255
R. 8.05F.....	ad. 2002 No. 255
R. 8.05G.....	ad. 2002 No. 255
R. 8.05H.....	ad. 2002 No. 255
R. 8.05I.....	ad. 2002 No. 255
R. 8.05J.....	ad. 2002 No. 255
Subdivision 3	
R. 8.05K.....	ad. 2002 No. 255
R. 8.05L.....	ad. 2002 No. 255 am. 2003 No. 76
R. 8.05M.....	ad. 2002 No. 255
R. 8.05N.....	ad. 2002 No. 255
Subdivision 4	
R. 8.05O.....	ad. 2002 No. 255
R. 8.05P.....	ad. 2002 No. 255
Division 3	
Heading to Div. 3 of Part 8..	rs. 1997 No. 76
Div. 3 of Part 8.....	rs. 1997 No. 76
R. 8.06.....	rs. 1997 No. 76
R. 8.06A.....	ad. 1997 No. 76
Division 4	
Heading to Div. 4 of Part 8..	rs. 1997 No. 76
R. 8.08.....	am. 1997 No. 76
R. 8.09.....	am. 2002 No. 255
R. 8.10.....	am. 1996 No. 278
R. 8.11A.....	ad. 2002 No. 255
R. 8.12.....	rep. 2002 No. 255 ad. 2003 No. 76

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 5	
R. 8.13	am. 2001 No. 262
R. 8.14	am. 2001 No. 262
Note to r. 8.14 (1).....	rep. 2001 No. 262
Div. 5A of Part 8.....	ad. 1996 No. 278 rep. 1997 No. 76
R. 8.14A.....	ad. 1996 No. 278 am. 1997 No. 76 rep. 1997 No. 76
Division 6	
Div. 6 of Part 8	rs. 2002 No. 255
Subdivision 1	
R. 8.15	rs. 2002 No. 255
R. 8.16	ad. 2002 No. 255
Subdivision 2	
R. 8.17	ad. 2002 No. 255
R. 8.18	ad. 2002 No. 255
R. 8.19	ad. 2002 No. 255
R. 8.20	ad. 2002 No. 255
R. 8.21	ad. 2002 No. 255
R. 8.22	ad. 2002 No. 255
R. 8.23	ad. 2002 No. 255
R. 8.24	ad. 2002 No. 255
R. 8.25	ad. 2002 No. 255
R. 8.26	ad. 2002 No. 255
Subdivision 3	
R. 8.27	ad. 2002 No. 255
R. 8.28	ad. 2002 No. 255 am. 2003 No. 76
R. 8.29	ad. 2002 No. 255
R. 8.30	ad. 2002 No. 255 am. 2003 No. 76
R. 8.31	ad. 2002 No. 255
Subdivision 4	
Heading to Subdiv. 4 of..... Div. 6 of Part 8	rs. 2004 No. 256
R. 8.32	ad. 2002 No. 255
R. 8.33	ad. 2002 No. 255
R. 8.34	ad. 2002 No. 255

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 4A	
Subdiv. 4A of Div. 6 of Part 8	ad. 2004 No. 256
R. 8.34A.....	ad. 2004 No. 256
Subdivision 5	
Subdiv. 5 of Div. 6 of..... Part 8	ad. 2003 No. 76
R. 8.35	ad. 2003 No. 76 am. 2004 No. 256
R. 8.36	ad. 2003 No. 76
R. 8.37	ad. 2003 No. 76 am. 2006 No. 4
Part 9	
R. 9.01	rs. 2007 No. 138
R. 9.02	ad. 2003 No. 76 rep. 2007 No. 138
R. 9.03	ad. 2003 No. 76 rep. 2007 No. 138
R. 9.04	ad. 2003 No. 76 am. 2004 No. 256 rep. 2007 No. 138
R. 9.05	ad. 2003 No. 76 rep. 2007 No. 138
R. 9.06	ad. 2003 No. 76 am. 2006 No. 4 rep. 2007 No. 138
R. 9.07	ad. 2003 No. 76 rep. 2007 No. 138
R. 9.08	ad. 2007 No. 138
Renumbered r. 9.02	2007 No. 138
Part 10	
Part 10	rs. 2004 No. 256
R. 10.01	rs. 2004 No. 256
R. 10.02	rs. 2004 No. 256
R. 10.03	rs. 2004 No. 256 am. 2006 No. 4
Notes 1 and 2 to..... r. 10.03 (2)	rep. 2006 No. 4
Note to r. 10.03 (2).....	ad. 2006 No. 4
R. 10.04	rs. 2004 No. 256 am. 2006 No. 4
R. 10.05	rs. 2004 No. 256

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 10.06	rs. 2004 No. 256
R. 10.07	rs. 2004 No. 256
R. 10.08	rs. 2004 No. 256
R. 10.09	rs. 2004 No. 256
R. 10.10	am. 1997 No. 76; 2001 No. 262 rs. 2004 No. 256
Note to r. 10.10 (4).....	rep. 2001 No. 262
R. 10.11	rs. 2004 No. 256
R. 10.12	rs. 2004 No. 256
R. 10.13	am. 2001 No. 262 rs. 2004 No. 256
R. 10.14	rs. 2004 No. 256
R. 10.15	am. 2001 No. 262 rep. 2004 No. 256
R. 10.16	rep. 2004 No. 256
R. 10.17	am. 2001 No. 262 rep. 2004 No. 256
R. 10.18	am. 2001 No. 262; 2002 No. 255 rep. 2004 No. 256
Note to r. 10.18 (2).....	rep. 2001 No. 262
Part 12	
Heading to r. 12.01	rs. 2005 No. 218
R. 12.01	am. 1996 No. 278; 2001 No. 262; 2005 No. 218
Note to r. 12.01 (4).....	rep. 2001 No. 262
Part 13	
Division 2	
R. 13.03	am. 1997 No. 76; 2003 No. 76; 2004 No. 256
R. 13.04	am. 1996 No. 278
Division 3	
R. 13.06	am. 1997 No. 76 rs. 2002 No. 255; 2006 No. 137
Heading to r. 13.07	rs. 1997 No. 76
R. 13.07	am. 1997 No. 76
R. 13.11	ad. 1997 No. 76 rep. 2006 No. 137
Part 15	rep. 2002 No. 255
Rr. 15.01–15.12	rep. 2002 No. 255
Rr. 15.13, 15.14	am. 1997 No. 76 rep. 2002 No. 255
Rr. 15.15–15.19	rep. 2002 No. 255

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 15A	
Part 15A.....	ad. 1997 No. 76
R. 15A.01.....	ad. 1997 No. 76 am. 2007 No. 138
R. 15A.02.....	ad. 1997 No. 76
R. 15A.03.....	ad. 1997 No. 76
R. 15A.04.....	ad. 1997 No. 76
R. 15A.05.....	ad. 1997 No. 76
R. 15A.06.....	ad. 1997 No. 76 rep. 2006 No. 137
R. 15A.07.....	ad. 1997 No. 76
Part 16	
Division 1	
R. 16.02	am. 1997 No. 76
Division 2	
Heading to Div. 2 of Part 16	rs. 2006 No. 137
Note to Heading to Div. 2.... of Part 16	ad. 2006 No. 137
Heading to Subdiv. A of Div. 2 of Part 16 Renumbered Subdiv. 2.1. of Div. 2 of Part 16	2002 No. 255
Heading to Subdiv. 2.1 of.... Div. 2 of Part 16 (formerly Subdiv. A of Div. 2 of Part 16)	rep. 2006 No. 137
R. 16.04	rep. 2006 No. 137
R. 16.05 Renumbered r. 16.03A	2002 No. 255
R. 16.06	am. 2006 No. 4 rs. 2006 No. 137
Heading to Subdiv. 2.2 of.... Div. 2 of Part 16	ad. 2002 No. 255 rep. 2006 No. 137
R. 16.07	am. 1997 No. 76; 2000 No. 140 rs. 2002 No. 255; 2006 No. 137
Note to r. 16.07 (9).....	rep. 2000 No. 140
R. 16.07A.....	ad. 2002 No. 255 am. 2004 No. 256 rep. 2006 No. 137
R. 16.07B.....	ad. 2002 No. 255 rep. 2006 No. 137

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 16.07C.....	ad. 2002 No. 255 rep. 2006 No. 137
R. 16.07D.....	ad. 2002 No. 255 rep. 2006 No. 137
R. 16.07E.....	ad. 2002 No. 255 rep. 2006 No. 137
R. 16.08	am. 1997 No. 76 rs. 2002 No. 255; 2006 No. 137
R. 16.08A.....	ad. 2002 No. 255 rep. 2006 No. 137
Heading to Subdiv. 2.3 of.... Div. 2 of Part 16	ad. 2002 No. 255 rep. 2006 No. 137
R. 16.09	am. 1997 No. 325 rs. 2002 No. 255; 2006 No. 137
R. 16.10	rep. 2002 No. 255
R. 16.11	am. 1997 No. 76 rep. 2002 No. 255
Heading to Subdiv. B of	rep. 2002 No. 255
Div. 2 of Part 16	
R. 16.12	am. 1997 No. 76; 2000 No. 140; 2002 No. 255 rep. 2006 No. 137
R. 16.13	rep. 2006 No. 137
Heading to Subdiv. 2.4..... of Div. 2 of Part 16	rep. 2006 No. 137
Subdiv. 2.4 of Div. 2..... of Part 16	ad. 2002 No. 255
R. 16.13A.....	ad. 2002 No. 255 am. 2006 Nos. 4 and 137 2006 No. 137
Renumbered r. 16.11	
R. 16.13B.....	ad. 2002 No. 255 rs. 2006 No. 4 2006 No. 137
Renumbered r. 16.12.....	
Note to r. 16.13B became .. Note to r. 16.12	2006 No. 137
Div. 3 of Part 16	rep. 2006 No. 137
R. 16.14AA	ad. 1996 No. 278 rep. 2006 No. 137
Heading to r. 16.14	rs. 1997 No. 76
R. 16.14	am. 1997 No. 76; 2004 No. 256 rep. 2006 No. 137
R. 16.15	rs. 1997 No. 76 rep. 2006 No. 137
R. 16.16	rep. 2006 No. 137

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 16.17	rep. 1997 No. 76
Schedule 1	
Heading to Schedule 1	rs. 2000 No. 220
Schedule 1	am. 1997 No. 76
Form 1	rs. 1997 No. 76 am. 2000 No. 220; 2003 No. 76
Form 2	rep. 1997 No. 76
Schedule 2	
Schedule 2	am. 2004 No. 256; 2006 Nos. 4 and 137
Schedule 3	
Schedule 3	am. 2002 No. 255; 2006 No. 137
Schedule 4	
Schedule 4	am. 1997 No. 76; 2002 No. 255
Schedule 4A	
Schedule 4A	ad. 2004 No. 256
Schedule 5	
Schedule 5	rep. 2007 No. 138
Schedule 6	
Schedule 6	am. 2003 No. 76 rs. 2004 No. 256 am. 2006 Nos. 4 and 137
Schedule 7	
Schedule 7	am. 2003 No. 76
Schedule 8	
Schedule 8	am. 1997 No. 76; 2002 No. 255; 2003 No. 76; 2004 No. 256; 2006 No. 4; 2007 No. 138
Schedule 9	am. 1997 No. 76; 2004 No. 256 rep. 2006 No. 137
Schedule 10	am. 1997 No. 76 rep. 2002 No. 255

Table A Application, saving or transitional provisions

Statutory Rules 1997 No. 76

40 Transitional

- 40.1 An amount paid under Division 3 of Part 16 of the Bankruptcy Regulations in respect of an estate or a debtor is to be offset against an amount of charge payable under Part 3 of the *Bankruptcy (Estate Charges) Act 1997* in respect of the estate or debtor for the charge period (within the meaning of that Act) that commenced on 1 November 1996.

Select Legislative Instrument 2006 No. 4

4 Application — debt agreements

The amendment made by item [5] of Schedule 1 applies in relation to a debt agreement, the debt agreement proposal for which is given to the Official Receiver on or after 1 May 2006.

5 Transitional — waiver and remission of fees

- (1) Subregulations (2) to (7) apply despite the amendments made by items [10] and [11] of Schedule 1.
- (2) The Inspector-General may waive or remit the whole or part of any fee that became payable under Subdivision 2.2 of Part 16 of the *Bankruptcy Regulations 1996* before the commencement of these Regulations, if the Inspector-General is reasonably satisfied that:
- (a) payment of the fee by the person liable to pay it has imposed, or would impose, undue hardship on the person; or

Table A

- (b) because of other exceptional circumstances, it is proper and reasonable to do so.
- (3) For paragraph (2) (a), *undue hardship* means hardship that is unusual and exceptional in comparison to the hardship arising in the normal course of bankruptcy.
- (4) A decision under subregulation (2) must be notified in writing to:
 - (a) the person concerned; and
 - (b) the Official Trustee.
- (5) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General under subregulation (2) to refuse to waive or remit the whole or part of any fee that became payable under Subdivision 2.2 of Part 16 of the *Bankruptcy Regulations 1996* before the commencement of these Regulations.
- (6) A person who is aggrieved by a decision under subregulation 16.13A (1) of the *Bankruptcy Regulations 1996* in relation to a fee payable under Subdivision 2.2 of Part 16 of those Regulations (being a decision made before the commencement of these Regulations) may apply to the Administrative Appeals Tribunal for review of the decision if the time within which that decision may be reviewed has not ended.

Note 1 Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give any person whose interests are affected by the decision notice, in writing or otherwise, of the making of the decision and of the person's right to have the decision reviewed. In giving that notice, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act (*Gazette* No. S 432, 7 December 1994).

Note 2 Section 29 of the *Administrative Appeals Tribunal Act 1975* prescribes the time within which application may be made to the Administrative Appeals Tribunal for review of a decision.

- (7) The Inspector-General is taken to have delegated the power to waive or remit the whole or part of a fee under subregulation (2) to any person to whom the Inspector-General delegated the power to waive or remit a fee under subregulation 16.13A (1) of the *Bankruptcy Regulations 1996*, under a delegation:

- (a) that was made under subsection 11 (4) of the *Bankruptcy Act 1966*; and
- (b) that was in effect immediately before the commencement of these Regulations.

6 Application – notice of first meeting of creditors

The amendments made by items [12] and [14] of Schedule 1 apply in relation to a notice of the first meeting of creditors given on or after 3 April 2006.

Select Legislative Instrument 2007 No. 138

4 Transitional

Despite the repeal by these Regulations of regulations 9.01 to 9.07 and Schedule 5 of the *Bankruptcy Regulations 1996*, those regulations and Schedule continue to have effect in relation to a debt agreement made as a result of the acceptance of a debt agreement proposal given to the Official Receiver before 1 July 2007.
