# Bankruptcy Legislation Amendment Act 2004

**No. 80, 2004**

## An Act to amend the *Bankruptcy Act 1966*, and for other purposes

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN htm)

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# Bankruptcy Legislation Amendment Act 2004

**No. 80, 2004**

## An Act to amend the *Bankruptcy Act 1966*, and for other purposes

[*Assented to 23 June 2004*]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Bankruptcy Legislation Amendment Act 2004*.

## 2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| **Commencement information** | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provision(s)** | **Commencement** | **Date/Details** |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 23 June 2004 |
| 2. Schedules 1, 2, 3 and 4 | A single day to be fixed by Proclamation.<br>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | |
| 3. Schedule 5 | A single day to be fixed by Proclamation.<br>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | |
| 4. Schedule 6 | The day on which this Act receives the Royal Assent. | 23 June 2004 |
| 5. Schedule 7, items 1 and 2 | Immediately after the commencement of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2002*. | 5 May 2003 |
| 6. Schedule 7, item 3 | The day on which this Act receives the Royal Assent. | 23 June 2004 |

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

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

## 3 Schedule(s)

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

# Schedule 1—Amendments relating to statements of affairs and Part X agreements

## Part 1—Amendment of the Bankruptcy Act 1966

### Division 1—Amendments relating to statements of affairs

#### 1 Subsection 5(1)

Insert:

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

(a) a relative of the person;

(b) a body corporate of which the person, or a relative of the person, is a director;

(c) a body corporate that is related to the body corporate referred to in paragraph (b);

(d) a director, or a relative of a director, of a body corporate referred to in paragraph (b) or (c);

(e) a beneficiary under a trust of which the person, or a relative of the person, is a trustee;

(f) a relative of such a beneficiary;

(g) a relative of the spouse of such a beneficiary;

(h) a trustee of a trust under which the person, or a relative of the person, is a beneficiary;

(i) a member of a partnership of which the person, or a relative of the person, is a member;

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

#### 2 Subsection 5(1)

Insert:

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

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

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

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

## 3 Subsection 6A(1)

Omit "188A", substitute "Part X".

## 4 After paragraph 6A(2)(a)

Insert:

(b) includes a statement identifying any creditor who is a related entity of the debtor or bankrupt; and

## 5 At the end of section 6A

Add:

(4) For the purposes of the application of subsection (3) to a statement of affairs that is required to be given under Part X, a reference in that subsection to the ***trustee*** is a reference to whichever of the following is applicable:
(a) the controlling trustee within the meaning of that Part;
(b) the trustee of the personal insolvency agreement concerned.

## Division 2—Amendments relating to Part X agreements

### 6 Subsection 5(1) (at the *end* of paragraph (a) of the definition of *end*)

Add "or".

### 7 Subsection 5(1) (paragraph (b) of the definition of *end*)

Repeal the paragraph, substitute:

(b) in relation to a composition or scheme of arrangement under Division 6 of Part IV—the time when the composition or scheme, as the case may be, ceases to be in effect; or

(ba) in relation to a personal insolvency agreement—the time when all the obligations that the agreement created have been discharged; or

### 8 Subsection 5(1)

Insert:

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

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

### 9 Subsection 5(1) (at the end of paragraphs (a) and (b) of the definition of *the trustee*)

Add "or".

### 10 Subsection 5(1) (paragraph (c) of the definition of *the trustee*)

Repeal the paragraph, substitute:

(c) in relation to a personal insolvency agreement—the trustee of the agreement; or

### 11 Subsection 5(4)

Omit "deed of assignment or deed of arrangement executed, or of a composition accepted, under Part X", substitute "personal insolvency agreement".

## 12 Paragraphs 5(4)(a) and (b)

Omit "deed or composition", substitute "personal insolvency agreement".

## 13 Subsection 5AA(2)

Repeal the subsection, substitute:

(2) For the purposes of item 6 of the table, an authority under section 188 relates to a personal insolvency agreement if a special resolution relating to the agreement was passed at a meeting of creditors called under the authority.

## 14 Subsection 5AA(3) (paragraphs (b), (c) and (d) of the definition of *Part X administration*)

Repeal the paragraphs, substitute:

(b) a personal insolvency agreement.

## 15 Subparagraph 5H(b)(iv)

Omit "a deed of assignment, deed of arrangement, or composition,", substitute "a personal insolvency agreement".

## 16 Paragraph 5H(c)

Omit "deed of assignment or arrangement, a person acting under such an authority or a person administering such a composition", substitute "personal insolvency agreement or a person acting under such an authority".

## 17 Subparagraph 12(1)(b)(iii)

Repeal the subparagraph, substitute:

(iii) a personal insolvency agreement; or

## 18 Subparagraph 12(1)(ba)(iii)

Repeal the subparagraph, substitute:

(iii) a debtor under a personal insolvency agreement;

## 19 Paragraph 12(1)(ba)

Omit "deed of assignment, scheme or deed of arrangement, or composition", substitute "composition, scheme or agreement".

## 20 Subsection 12(1BA)

Omit "deed of assignment, scheme or deed of arrangement, composition", substitute "composition, scheme or agreement".

## 21 Subparagraph 12(2)(b)(iv)

Omit "deed of assignment, deed of arrangement", substitute "personal insolvency agreement".

## 22 Subsection 18(10)

Omit "deed of assignment, deed of arrangement", substitute "personal insolvency agreement".

## 23 Paragraph 18A(1)(e)

Omit "deed of assignment or deed of arrangement executed, or a composition accepted, under Part X", substitute "personal insolvency agreement".

## 24 Subparagraph 20J(1)(b)(ii)

Repeal the subparagraph, substitute:

(ii) the trustee of a personal insolvency agreement;

## 25 Paragraph 31(1)(j)

Repeal the paragraph, substitute:

(j) applications under Part X:

(i) for an order setting aside or terminating a personal insolvency agreement; or

(ii) for a sequestration order against the estate of a debtor;

## 26 Paragraph 40(1)(l)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

## 27 Subparagraph 40(1)(l)(i)

Omit "deed", substitute "agreement".

## 28 Paragraph 40(1)(m)

Repeal the paragraph, substitute:

(m) if a personal insolvency agreement executed by him or her under Part X is:
  (i) set aside by the Court; or
  (ii) terminated;

## 29 Subsection 40(5)

Omit “deed”, substitute “agreement”.

## 30 Subsection 40(6)

Omit “deed or composition is declared void or terminated or the composition is set aside”, substitute “agreement is set aside or terminated”.

## 31 Subsection 55(6)

Repeal the subsection, substitute:

(6) A debtor who has executed a personal insolvency agreement is not, except with the leave of the Court, entitled to present a petition against himself or herself unless:
  (a) the agreement has been set aside; or
  (b) the agreement has been terminated; or
  (c) all the obligations that the agreement created have been discharged.

## 32 Subsections 56A(3), (4) and (5)

Repeal the subsections, substitute:

(3) A member of a partnership who has executed a personal insolvency agreement must not join in presenting a petition against the partnership unless:
  (a) the agreement has been set aside; or
  (b) the agreement has been terminated; or
  (c) all the obligations that the agreement created have been discharged; or
  (d) the Court gives permission for the member to join in presenting a petition against the partnership.

## 33 Subsection 57(7)

Repeal the subsection, substitute:

(7) A debtor who has executed a personal insolvency agreement is not entitled to join in presenting a petition under this section unless:

(a) the agreement has been set aside; or

(b) the agreement has been terminated; or

(c) all the obligations that the agreement created have been discharged; or

(d) the Court grants leave for the debtor to join in presenting a petition under this section.

## 34 At the end of paragraph 71(2)(a)

Add “or”.

## 35 Paragraph 71(2)(b)

Repeal the paragraph, substitute:

(b) he or she executes a personal insolvency agreement; or

## 36 Paragraph 109(1)(c)

Omit “deed of assignment or a deed of arrangement”, substitute “personal insolvency agreement”.

## 37 Paragraph 109(1)(c)

Omit “been declared to be void or”.

## 38 Subsection 114(1)

Omit “deed of assignment or a deed of arrangement”, substitute “personal insolvency agreement”.

## 39 Subsection 114(1)

Omit “been declared to be void or”.

## 40 Paragraphs 114(1)(a), (b) and (c)

Omit “deed”, substitute “agreement”.

## 41 Subsection 114(2)

Repeal the subsection, substitute:

(2) In this section:

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

### 42 Section 163 (note)

Omit "deed of arrangement", substitute "personal insolvency agreement".

### 43 Paragraph 185S(b)

Omit "231(2)", substitute "188A(4)".

### 44 Part X (heading)

Repeal the heading, substitute:

## Part X—Personal insolvency agreements

### 45 Subsection 187(1) (definition of *composition*)

Repeal the definition.

### 46 Subsection 187(1) (definition of *deed of arrangement*)

Repeal the definition.

### 47 Subsection 187(1) (definition of *deed of assignment*)

Repeal the definition.

### 48 Subsection 187(1) (definition of *divisible property*)

Omit "deed of assignment", substitute "personal insolvency agreement".

### 49 Subsection 187(1) (definition of *divisible property*)

Omit "the deed", substitute "the agreement".

### 50 Subsection 187(2)

Omit "deed or a composition", substitute "personal insolvency agreement".

## 51 Subsection 187(2)

Omit "deed or on which the special resolution accepting the composition was passed, as the case may be", substitute "personal insolvency agreement".

## 52 After subsection 188(2)

Insert:

(2AA) If the person authorised is a registered trustee or a solicitor, then, before the person consents to exercise the powers given by the authority, the person must give the debtor the information prescribed by the regulations.

(2AB) If the person authorised is the Official Trustee, then, before the Official Receiver gives approval to name the Official Trustee in the authority, the Official Receiver must give the debtor the information prescribed by the regulations.

Note: The heading to section 188 is altered by omitting "**authorize**" and substituting "**authorise**".

## 53 After subsection 188(2B)

Insert:

(2C) If the person authorised is a registered trustee or solicitor, the authority signed by the debtor under this section is not effective for the purposes of this Part unless, before the person authorised consents to exercise the powers given by the authority, the debtor gives to the person authorised:

(a) a statement of the debtor's affairs; and

(b) a proposal for dealing with them under this Part.

Note: Section 6A sets out requirements for statements of affairs.

(2D) If the person authorised is the Official Trustee, the authority signed by the debtor under this section is not effective for the purposes of this Part unless, before an Official Receiver gives approval to name the Official Trustee in the authority, the debtor gives to the Official Receiver:

(a) a statement of the debtor's affairs; and

(b) a proposal for dealing with them under this Part.

Note: Section 6A sets out requirements for statements of affairs.

(2E) A proposal for dealing with the debtor's affairs under this Part must include a draft personal insolvency agreement.

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

## 54 Subsection 188(5)

Repeal the subsection, substitute:

(5) A registered trustee or solicitor who consents to exercise the powers given by an authority must, within 2 working days of consenting, give a copy of:

(a) the authority; and

(b) the debtor's statement of affairs;

to the Official Receiver for the District in which the debtor resides.

(5A) For the purposes of subsection (5), a ***working day*** is a day that is not a Saturday, Sunday or public holiday in the place where the registered trustee or solicitor consented to exercise the powers given by the authority.

## 55 Section 188A

Repeal the section, substitute:

### 188A Personal insolvency agreement

*Requirements for a personal insolvency agreement*

(1) A personal insolvency agreement is a deed that:

(a) is expressed to be entered into under this Part; and

(b) complies with subsection (2).

(2) A personal insolvency agreement must:

(a) identify the debtor's property (whether or not already owned by the debtor when he or she executes the agreement) that is to be available to pay creditors' claims; and

(b) specify how the property is to be dealt with; and

(c) identify the debtor's income (whether or not already derived by the debtor when he or she executes the agreement) that is to be available to pay creditors' claims; and

(d) specify how the income is to be dealt with; and

(e) specify the extent (if any) to which the debtor is to be released from his or her provable debts; and

(f) specify the conditions (if any) for the agreement to come into operation; and

(g) specify the circumstances in which, or the events on which, the agreement terminates; and

(h) specify the order in which proceeds of realising the property referred to in paragraph (a) are to be distributed among creditors; and

(i) specify the order in which income referred to in paragraph (c) is to be distributed among creditors; and

(j) specify whether or not the antecedent transactions provisions of this Act apply to the debtor; and

(k) make provision for a person or persons to be trustee or trustees of the agreement; and

(l) provide that the debtor will execute such instruments and generally do all such acts and things in relation to his or her property and income as is required by the agreement.

(3) Subsection (2) does not limit the provisions that may be included in a personal insolvency agreement.

*Antecedent transactions provisions*

(4) If a personal insolvency agreement specifies that the antecedent transactions provisions of this Act apply to the debtor, sections 120 to 125 apply, with any modifications prescribed by the regulations, in relation to the debtor as if:

(a) a creditor's petition had been presented against the debtor on the day on which the special resolution requiring the execution of the agreement was passed; and

(b) a sequestration order had been made against the debtor on that petition on the day on which the debtor executed the agreement; and

(c) the trustee of the agreement were the trustee in the debtor's bankruptcy.

(5) In the application, by virtue of subsection (4), of the provisions referred to in that subsection:

(a) a reference to the property of the bankrupt is to be read as a reference to the divisible property of the debtor; and
(b) a reference to a provable debt is to be read as a reference to a provable debt within the meaning of this Part; and
(c) a reference to the end of the bankruptcy is to be read as a reference to the end of the personal insolvency agreement.

*Definition*

(6) In this section:

***income*** has the meaning given by section 139L.

## 188B Inspection of statement of debtor's affairs

(1) This section applies to the following documents relating to a debtor:
(a) a copy of a statement of the debtor's affairs given to an Official Receiver under subsection 188(5);
(b) a statement of the debtor's affairs given to the Official Receiver under subsection 188(2D).

(2) A person who states in writing that he or she is a creditor of the debtor, may, without fee:
(a) inspect, personally or by an agent, the document; and
(b) obtain a copy of, or make extracts from, the document.

(3) A person who does not state in writing that he or she is a creditor of the debtor, may, on payment of the fee prescribed by the regulations:
(a) inspect, personally or by an agent, the document; and
(b) obtain a copy of, or make extracts from, the document.

(4) The debtor may, without fee and either personally or by an agent:
(a) inspect the document; or
(b) obtain a copy of, or make extracts from, the document.

(5) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the Official Receiver must ensure that the

information is not made available under this section to any person (other than the debtor or an agent of the debtor).

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

## 56 Paragraphs 189(1A)(b) and (c)

Repeal the paragraphs, substitute:

(b) the debtor and a trustee execute a personal insolvency agreement following a special resolution of creditors;

## 57 After section 189

Insert:

### 189AAA Stay of proceedings relating to creditor's petition until meeting of debtor's creditors

(1) If:

(a) an authority signed by a debtor under section 188 has become effective; and

(b) either:

(i) a creditor's petition was presented against the debtor before the authority became effective; or

(ii) a creditor's petition is presented against the debtor after the authority became effective but before the first or only meeting of the debtor's creditors called under the authority;

proceedings relating to that petition are, by force of this subsection, stayed until:

(c) the conclusion of the meeting; or

(d) the adjournment of the meeting;

whichever is the earlier.

(2) This section does not limit subsection 206(1).

## 58 After section 189AB

Insert:

### 189AC Right of indemnity for controlling trustee

(1) The controlling trustee is entitled to be indemnified out of the debtor's property for:
  (a) his or her remuneration; and
  (b) any costs, charges or expenses properly and reasonably incurred by the controlling trustee while the debtor's property was subject to control under this Division.

(2) To secure a right of indemnity under subsection (1), the controlling trustee has a lien on the debtor's property.

(3) A lien under subsection (2) ceases to have effect if the debtor becomes a bankrupt.

## 59 Paragraph 189A(1)(b)

Repeal the paragraph, substitute:

  (b) stating whether the controlling trustee believes that the creditors' interests would be better served:
    (i) by accepting the debtor's proposal for dealing with his or her affairs under this Part; or
    (ii) by the bankruptcy of the debtor; and
  (c) naming each creditor who was identified as a related entity of the debtor in the debtor's statement of affairs.

## 60 At the end of subsection 189A(2)

Add:

*Declaration of relationships*

(3) The controlling trustee must make a written declaration stating whether the debtor is a related entity of:
  (a) the controlling trustee; or
  (b) a related entity of the controlling trustee.

(4) The controlling trustee must:
  (a) give a copy of the declaration to the Official Receiver; and
  (b) give a copy of the declaration to each of the creditors at the same time as the controlling trustee gives a copy of the subsection (1) report to each creditor; and

(c) keep a copy of the declaration.

Note: The heading to section 189A is altered by inserting "**and declaration**" after "**Report**".

## 61 Subsection 190(5)

Omit all the words after "but,", substitute "if a personal insolvency agreement is executed by him or her in accordance with a special resolution of a meeting of creditors called in accordance with the authority, does not include property that is acquired by, or devolves on, him or her on or after the day on which he or she executes the agreement.".

## 62 After section 190

Insert:

### 190A Additional duties of controlling trustee

(1) The duties of the controlling trustee include the following:

(a) notifying the debtor's creditors of the giving by the debtor of an authority under section 188;

(b) giving information about the administration of the controlling trusteeship to a creditor who makes a reasonable request for it;

(c) taking whatever action is practicable to try to ensure that the debtor discharges all of the debtor's duties under this Act;

(d) considering whether the debtor has committed an offence against this Act;

(e) referring to the Inspector-General or to relevant law enforcement authorities any evidence of an offence by the debtor against this Act;

(f) making appropriate inquiries and investigations in connection with the debtor's property and examinable affairs;

(g) disclosing to creditors any material personal interests held by the trustee that could conflict with the proper exercise of his or her powers or the proper performance of his or her functions;

(h) exercising powers and performing functions in a commercially sound way;

(i) exercising powers and performing functions in an impartial and independent manner.

## 63 Paragraph 192(3)(a)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

## 64 Subsection 192(3)

Omit "the deed", substitute "the agreement".

## 65 Section 194

Repeal the section, substitute:

### 194 Time for calling meeting

(1) The meeting that is to be called under an authority under section 188 must be held:

(a) not more than 25 working days after the relevant consent or approval was given; or

(b) if the relevant consent or approval was given in December—not more than 30 working days after the relevant consent or approval was given.

(2) For the purposes of subsection (1), the ***relevant consent or approval*** is:

(a) if the person authorised is a registered trustee or solicitor—the consent of the person to exercise the powers given by the authority; or

(b) if the person authorised is the Official Trustee—the approval given by the Official Receiver to name the Official Trustee in the authority.

(3) For the purposes of subsection (1), a ***working day*** is a day that is not a Saturday, Sunday or public holiday in the place where the meeting is to be held.

### 194A Statement of affairs and declarations of relationships to be tabled at meeting

*Scope*

(1) This section applies to a meeting that is called under an authority under section 188.

*Debtor's statement of affairs*

(2) The controlling trustee must table at the meeting a copy of the debtor's statement of affairs.

(3) If, assuming that the debtor had been required, immediately before the start of the meeting, to prepare a statement of affairs, that statement would have differed in one or more material respects from the statement given by the debtor under subsection 188(2C) or (2D), the debtor must table at the meeting a written statement identifying those differences.

*Controlling trustee's declaration*

(4) The controlling trustee must table at the meeting a copy of the declaration made by the controlling trustee under subsection 189A(3).

(5) If, assuming that the controlling trustee had been required, immediately before the start of the meeting, to make a declaration stating whether the debtor is a related entity of:

(a) the controlling trustee; or

(b) a related entity of the controlling trustee;

that declaration would have differed in one or more material respects from the declaration made by the controlling trustee under subsection 189A(3), the controlling trustee must table at the meeting a written statement identifying those differences.

## 66 Paragraphs 204(1)(b) and (c)

Repeal the paragraphs, substitute:

(b) require the debtor to execute a personal insolvency agreement; or

Note: The heading to section 204 is altered by omitting "**deed of assignment etc.**" and substituting "**personal insolvency agreement**".

## 67 Subsections 204(2), (3) and (4)

Repeal the subsections, substitute:

(2) A special resolution requiring a debtor to execute a personal insolvency agreement must specify the provisions to be included in the agreement.

(3) If a special resolution requiring the debtor to execute a personal insolvency agreement has been passed, the creditors must, by resolution, nominate a trustee or trustees to be trustee or trustees of the agreement.

### 68 Subsection 204(5)

Omit “subsection (4)”, substitute “subsection (3)”.

### 69 Paragraph 204(5)(b)

Omit “deed or composition”, substitute “personal insolvency agreement”.

### 70 Subsection 204(6)

Omit “deed or composition”, substitute “personal insolvency agreement”.

### 71 Subsection 205(1)

Omit “deed of assignment or a deed of arrangement or present a debtor’s petition or accepting a composition”, substitute “personal insolvency agreement or present a debtor’s petition”.

### 72 Subsection 205(3)

Omit “deed of assignment or a deed of arrangement or present a debtor’s petition or accepting a composition”, substitute “personal insolvency agreement or present a debtor’s petition”.

### 73 Paragraph 205(5)(a)

Omit “deed of assignment or a deed of arrangement or present a debtor’s petition or accepting a composition”, substitute “personal insolvency agreement or present a debtor’s petition”.

### 74 Paragraph 205(5)(d)

Omit “(not being a special resolution accepting a composition)”.

### 75 Paragraph 205(5)(d)

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

## 76 Paragraph 205(6)(a)

Omit "deed of assignment or a deed of arrangement under this Part, or a special resolution is passed under section 204 accepting a composition in relation to the debtor, and the property vests in the trustee of the deed or is subject to the terms of the composition, as the case may be", substitute "personal insolvency agreement, and the property vests in the trustee of the agreement".

## 77 Subsections 205A(1), (2) and (3)

Repeal the subsections.

Note: The heading to section 205A is altered by omitting "**deed**" and substituting "**personal insolvency agreement**".

## 78 Subparagraph 205A(4)(a)(i)

Repeal the subparagraph, substitute:

(i) that a debtor has executed a personal insolvency agreement; and

## 79 At the end of sub-subparagraph 205A(4)(a)(ii)(A)

Add "or".

## 80 Sub-subparagraph 205A(4)(a)(ii)(B)

Omit "passing of the special resolution" (wherever occurring), substitute "execution of the agreement".

## 81 Subparagraph 205A(4)(a)(ii)

Omit "terms of the composition", substitute "the agreement".

## 82 Subparagraph 205A(4)(b)(i)

Repeal the subparagraph, substitute:

(i) that a debtor has executed a personal insolvency agreement; and

## 83 Sub-subparagraphs 205A(4)(b)(ii)(A) and (B)

Omit "passing of the special resolution" (wherever occurring), substitute "execution of the agreement".

### 84 Subparagraph 205A(4)(b)(ii)

Omit “terms of the composition”, substitute “the agreement”.

### 85 Paragraph 205A(5)(c)

Omit “special resolution accepting the composition was passed”, substitute “personal insolvency agreement was executed”.

### 86 Paragraph 205A(5)(d)

Omit “the composition”, substitute “or terminate the agreement”.

### 87 Subparagraph 205A(6)(a)(i)

Repeal the subparagraph, substitute:

(i) that a debtor has executed a personal insolvency agreement; and

### 88 At the end of sub-subparagraph 205A(6)(a)(ii)(A)

Add “or”.

### 89 Sub-subparagraph 205A(6)(a)(ii)(B)

Omit “passing of the special resolution” (wherever occurring), substitute “execution of the agreement”.

### 90 Subparagraph 205A(6)(a)(ii)

Omit “terms of the composition”, substitute “the agreement”.

### 91 Paragraph 205A(6)(a)

Omit “trustee of the composition”, substitute “trustee of the agreement”.

### 92 Subparagraph 205A(6)(b)(i)

Repeal the subparagraph, substitute:

(i) that a debtor has executed a personal insolvency agreement; and

### 93 Sub-subparagraphs 205A(6)(b)(ii)(A) and (B)

Omit “passing of the special resolution” (wherever occurring), substitute “execution of the agreement”.

### 94 Subparagraph 205A(6)(b)(ii)

Omit “terms of the composition”, substitute “the agreement”.

### 95 Paragraph 205A(6)(b)

Omit “trustee of the composition”, substitute “trustee of the agreement”.

### 96 Subsection 205A(7)

Omit “trustee of the composition”, substitute “trustee of the agreement”.

### 97 Paragraph 205A(7)(c)

Omit “special resolution accepting the composition was passed”, substitute “personal insolvency agreement was executed”.

### 98 Paragraph 205A(7)(d)

Omit “the composition”, substitute “or terminate the agreement”.

### 99 Subsection 205A(8)

Omit “(1), (2), (3),”.

### 100 Subsection 205A(8)

Omit “a deed or a composition”, substitute “a personal insolvency agreement”.

### 101 Subsection 205A(10)

Omit “(1), (2), (3),”.

### 102 Subsection 205A(10)

Omit “a deed or a composition”, substitute “a personal insolvency agreement”.

### 103 Subsection 205A(10)

Omit “the deed or composition”, substitute “the agreement”.

### 104 Subsection 205A(11)

Repeal the subsection.

### 105 Subparagraphs 205A(12)(a)(i), (ii), (iii) and (iv)

Repeal the subparagraphs, substitute:

(i) to a debtor, or a person authorised by the debtor under subsection (4); or

(ii) to the trustee of a personal insolvency agreement under subsection (6); and

## 106 Paragraph 206(1)(a)

Omit "deed of assignment or a deed of arrangement under this Part", substitute "personal insolvency agreement".

Note: The heading to section 206 is altered by omitting "**deed**" and substituting "**personal insolvency agreement**".

## 107 Subsection 206(1)

Omit "the proposed deed", substitute "the proposed agreement".

## 108 Subsection 206(1)

Omit "the deed" (wherever occurring), substitute "the agreement".

## 109 Subsection 206(2)

Omit "deed of assignment or a deed of arrangement under this Part", substitute "personal insolvency agreement".

## 110 Subsection 206(2)

Omit "the deed", substitute "the agreement".

## 111 Subsection 207(1)

Omit "deed of assignment or a deed of arrangement or accepting a composition", substitute "personal insolvency agreement".

## 112 Paragraph 207(1)(a)

Omit "deed or composition", substitute "agreement".

## 113 Paragraph 207(1)(b)

Omit "deed executed in pursuance of the special resolution or of the composition, as the case may be", substitute "personal insolvency agreement executed in accordance with the special resolution".

## 114 Paragraph 207(3)(b)

Omit "deed executed in pursuance of the special resolution or the trustee of the composition, as the case may be", substitute "personal insolvency agreement executed in accordance with the special resolution".

## 115 Paragraph 207(4)(b)

Omit "deed or composition", substitute "personal insolvency agreement".

## 116 Subsection 207(6)

Omit "deeds of assignment, deeds of arrangement and compositions under this Part", substitute "personal insolvency agreements".

## 117 Subsection 207(6)

Omit "a deed or composition", substitute "an agreement".

## 118 Paragraph 209(b)

Repeal the paragraph, substitute:

(b) subsequently a personal insolvency agreement is entered into by the debtor or the debtor becomes a bankrupt;

Note: The heading to section 209 is altered by omitting "**deed, composition**" and substituting "**personal insolvency agreement**".

## 119 Section 209

Omit "deed or composition", substitute "personal insolvency agreement".

## 120 At the end of Division 2 of Part X

Add:

### 211 Other provisions about debtor

(1) Sections 77, 77A, 77C, 77D, 77E, 77F, 78 (other than paragraphs 78(1)(a), (b) and (c)) and 81, with any modifications prescribed by the regulations, apply in relation to a debtor whose property is subject to control under this Division as if:

(a) the debtor were a bankrupt; and

(b) the controlling trustee were the trustee of the estate of the bankrupt debtor.

(2) Section 78 (other than paragraphs 78(1)(d) and (f)), with any modifications prescribed by the regulations, applies in relation to a debtor whose property is subject to control under this Division as if the debtor were a debtor against whom a bankruptcy notice has been presented.

## 121 Sections 213 and 214

Repeal the sections.

## 122 Section 215

Repeal the section, substitute:

### 215 Eligibility to be trustee of personal insolvency agreement

Only a registered trustee or the Official Trustee can be a trustee of a personal insolvency agreement.

## 123 Paragraph 215A(1)(a)

Omit "204(4)", substitute "204(3)".

Note: The heading to section 215A is altered by omitting "**deed or composition**" and substituting "**personal insolvency agreement**".

## 124 Paragraph 215A(1)(b)

Omit "deed of assignment, deed of arrangement or composition", substitute "personal insolvency agreement".

## 125 Subsection 215A(1)

Omit "deed or composition", substitute "agreement".

## 126 At the end of section 215A

Add:

(3) Before a resolution is passed at a meeting of creditors that nominates one or more persons under subsection 204(3) to be a trustee or trustees:

(a) the person or each of those persons must make a written declaration stating whether the debtor is a related entity of:

(i) the person concerned; or
(ii) a related entity of the person concerned; and

(b) the person or each of those persons must:
(i) give his or her declaration to the controlling trustee; and
(ii) keep a copy of his or her declaration; and

(c) the controlling trustee must table at the meeting a copy of each declaration given to the controlling trustee; and

(d) the controlling trustee must give a copy of each such declaration to each of the creditors at the same time as the controlling trustee gives a copy of the subsection 189A(1) report to each creditor.

(4) Before a resolution is passed at a meeting of creditors that appoints a person under subsection 220(1) to a vacant office of trustee of a personal insolvency agreement:

(a) the person must make a written declaration stating whether the debtor is a related entity of:
(i) the person; or
(ii) a related entity of the person; and

(b) the person must:
(i) give his or her declaration to the person presiding at the meeting; and
(ii) keep a copy of his or her declaration; and

(c) the person presiding at the meeting must table at the meeting a copy of the declaration.

## 127 Subsection 216(1)

Omit "deed of assignment or a deed of arrangement shall", substitute "personal insolvency agreement must".

Note: The heading to section 216 is altered by omitting "**deeds**" and substituting "**personal insolvency agreements**".

## 128 Subsections 216(1) and (2)

Omit "the deed", substitute "the agreement".

## 129 Subsection 217(1)

Omit "deed of assignment or deed of arrangement", substitute "personal insolvency agreement".

Note: The heading to section 217 is altered by omitting "**deed**" and substituting "**personal insolvency agreement**".

## 130 Subsections 217(1), (2) and (3)

Omit "the deed" (wherever occurring), substitute "the agreement".

## 131 Subsection 218(1)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

Note: The heading to section 218 is altered by omitting "**deed or acceptance of composition**" and substituting "**personal insolvency agreement**".

## 132 Paragraphs 218(1)(a) and (b)

Omit "the deed" (wherever occurring), substitute "the agreement".

## 133 Subsection 218(2)

Repeal the subsection.

## 134 Subsection 218(3)

Omit "or subsection (2)".

## 135 Subsection 219(1)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

## 136 Subsection 220(1)

Omit "deed of assignment or a deed of arrangement entered into in pursuance of this Part or of a composition accepted under this Part", substitute "personal insolvency agreement entered into under this Part".

Note: The heading to section 220 is altered by omitting "**deed**" and substituting "**personal insolvency agreement**".

## 137 Subsection 220(2)

Omit "deed of assignment or deed of arrangement or of such a composition", substitute "personal insolvency agreement".

## 138 Paragraph 220(5)(a)

Omit "deed or composition", substitute "personal insolvency agreement".

## 139 Subsection 220(6)

Omit "deed or composition", substitute "personal insolvency agreement".

## 140 Paragraph 221(1)(b)

Omit "deed of assignment or a deed of arrangement, has failed without sufficient cause to execute the deed", substitute "personal insolvency agreement, has failed without sufficient cause to execute the agreement".

Note: The heading to section 221 is altered by omitting "**deed etc.**" and substituting "**personal insolvency agreement etc.**".

## 141 After section 221

Insert:

### 221A Variation of personal insolvency agreement

*Variation by special resolution of creditors*

(1) The creditors, with the written consent of the debtor, may vary a personal insolvency agreement by special resolution at a meeting called for the purpose.

*Variation by trustee*

(2) The trustee, with the written consent of the debtor, may, in writing, propose a variation of a personal insolvency agreement.

(3) The trustee must give notice of the proposed variation to all the creditors who would be entitled under section 64A (as that section applies in accordance with section 223A) to receive notice of a meeting of creditors.

(4) The notice must:

(a) include a statement of the reasons for the variation and the likely impact it will have on creditors (if it takes effect); and

(b) specify a date (at least 14 days after the notice is given) from which it is proposed that the variation will take effect; and

(c) state that any creditor may, by written notice to the trustee at least 2 days before the specified date, object to the variation taking effect without there being a meeting of creditors.

(5) If no creditor lodges a written notice of objection with the trustee at least 2 days before the specified date, then the proposed variation takes effect on the date specified in the notice.

(6) A certificate signed by the trustee stating any matter relating to a proposed variation under subsection (2) is prima facie evidence of the matter.

## 142 Section 222

Repeal the section, substitute:

### 222 Court may set aside personal insolvency agreement

*Setting aside on grounds of unreasonableness etc.*

(1) If a personal insolvency agreement is in force, the Court may, on application by:

(a) the Inspector-General; or

(b) the trustee; or

(c) a creditor;

make an order setting the agreement aside if the Court is satisfied that:

(d) the terms of the agreement are unreasonable or are not calculated to benefit the creditors generally; or

(e) for any other reason, the agreement ought to be set aside.

*Setting aside on grounds of non-compliance with this Part etc.*

(2) If a personal insolvency agreement is in force, the Court may, on application by:

(a) the Inspector-General; or

(b) the trustee; or

(c) a creditor; or

(d) the debtor;

make an order setting the agreement aside if the Court is satisfied that:

(e) the agreement was not entered into in accordance with this Part; or

(f) the agreement does not comply with the requirements of this Part.

(3) The Court must not make an order setting aside a personal insolvency agreement on the ground that it does not comply with the requirements of this Part if the agreement complies substantially with those requirements.

(4) The Court must not make an order under subsection (2) unless the application for the order is made before all the obligations that the personal insolvency agreement created have been discharged.

*Setting aside on grounds of false or misleading information etc.*

(5) If a personal insolvency agreement is in force, the Court may, on application by:

(a) the Inspector-General; or

(b) the trustee; or

(c) a creditor;

make an order setting the agreement aside if the Court is satisfied that:

(d) the debtor has given false or misleading information in answer to a question put to the debtor with respect to any of the debtor's conduct or examinable affairs at the meeting of creditors at which the resolution requiring the debtor to execute the agreement was passed; or

(e) the debtor has:

(i) omitted a material particular from the statement of the debtor's affairs given under subsection 188(2C) or (2D); or

(ii) included an incorrect and material particular in that statement; or

(f) the debtor was subject to a requirement under subsection 194A(3) to table a statement, and the debtor has:

(i) omitted a material particular from that statement; or

(ii) included an incorrect and material particular in that statement; or

(g) the controlling trustee has:

(i) omitted a material particular from the declaration given by the controlling trustee under subsection 189A(3); or

(ii) included an incorrect and material particular in that declaration; or

(h) the controlling trustee was subject to a requirement under subsection 194A(5) to table a statement, and the controlling trustee has:

(i) omitted a material particular from that statement; or

(ii) included an incorrect and material particular in that statement; or

(i) a person who became the trustee of the agreement has:

(i) omitted a material particular from the declaration given by the person under subsection 215A(3) or (4); or

(ii) included an incorrect and material particular in that declaration.

(6) The Court must not make an order under subsection (5) unless it is satisfied that it would be in the interests of the creditors to do so.

(7) The Court must not make an order under subsection (5) unless the application for the order is made before all the obligations that the personal insolvency agreement created have been discharged.

*Ancillary orders*

(8) If the Court makes an order under subsection (1), (2) or (5), the Court may make such other orders as the Court thinks fit.

(9) An order under subsection (8) may be an order directing a person to pay another person compensation of such amount as is specified in the order. This subsection does not limit subsection (8).

*Application for sequestration order*

(10) The trustee or a creditor may include in an application under subsection (1), (2) or (5) an application for a sequestration order against the estate of the debtor. If the Court, on the first-mentioned application, makes an order under this section setting the personal insolvency agreement aside, it may, if it thinks fit, immediately make the sequestration order sought.

(11) The making of an application by the trustee or a creditor for a sequestration order under this section is taken, for the purposes of this Act, to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to such an application.

*Court may dispense with service on debtor of notice of application*

(12) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application by the Inspector-General, the trustee or a creditor under this section, either unconditionally or subject to conditions.

## 222A Termination of personal insolvency agreement by trustee

(1) The trustee of a personal insolvency agreement may, in writing, propose the termination of the agreement if the trustee is satisfied that the debtor is in default.

(2) The trustee must give notice of the proposed termination to all the creditors who would be entitled under section 64A (as that section applies in accordance with section 223A) to receive notice of a meeting of creditors.

(3) The notice must:
   (a) include a statement of the reasons for the termination and the likely impact it will have on creditors (if it takes effect); and
   (b) specify a date (at least 14 days after the notice is given) from which it is proposed that the termination will take effect; and
   (c) state that any creditor may, by written notice to the trustee at least 2 days before the specified date, object to the termination taking effect without there being a meeting of creditors.

(4) If:
   (a) the debtor is in default; and
   (b) no creditor lodges a written notice of objection with the trustee at least 2 days before the specified date;

   then the proposed termination takes effect on the date specified in the notice.

(5) For the purposes of this section, the debtor is ***in default*** if, and only if:

(a) the debtor has failed to carry out or comply with a term of the personal insolvency agreement; or

(b) if the debtor has died—the debtor or the person administering the estate of the debtor has failed to carry out or comply with a term of the agreement.

(6) A certificate signed by the trustee stating any matter relating to a proposed termination under this section is prima facie evidence of the matter.

## 222B Termination of personal insolvency agreement by creditors

(1) The creditors may, by resolution at a meeting called for the purpose, terminate a personal insolvency agreement if:

(a) the debtor is in default; and

(b) before the passage of the resolution, the trustee of the agreement tabled at the meeting a written declaration to the effect that the trustee is satisfied that the debtor is in default.

(2) The creditors may, by special resolution at a meeting called for the purpose, terminate the personal insolvency agreement if:

(a) property of the debtor is covered by a restraining order or a forfeiture order; or

(b) a pecuniary penalty order made against the debtor is in force.

(3) However:

(a) paragraph (2)(a) does not apply if, when the personal insolvency agreement was made, the restraining order or forfeiture order already covered the property in question; and

(b) paragraph (2)(b) does not apply if, when the personal insolvency agreement was made, the pecuniary penalty order was already in force against the debtor.

(4) For the purposes of this section, the debtor is ***in default*** if, and only if:

(a) the debtor has failed to carry out or comply with a term of the personal insolvency agreement; or

(b) if the debtor has died—the debtor or the person administering the estate of the debtor has failed to carry out or comply with a term of the agreement.

## 222C Court may terminate personal insolvency agreement

(1) If a personal insolvency agreement is in force, the Court may, on application by:

(a) the trustee; or

(b) a creditor; or

(c) the debtor; or

(d) if the debtor has died—the person administering the estate of the debtor;

make an order terminating the agreement if the Court is satisfied:

(e) that:

(i) the debtor; or

(ii) if the debtor has died—the debtor or the person administering the estate of the debtor;

has failed to carry out or comply with a term of the agreement; or

(f) that the agreement cannot be proceeded with without injustice or undue delay to:

(i) the creditors; or

(ii) the debtor; or

(iii) if the debtor has died—the estate of the debtor; or

(g) that, for any other reason, the agreement ought to be terminated.

(2) The Court must not make an order terminating a personal insolvency agreement on the ground specified in paragraph (1)(e) or (g) unless it is satisfied that it would be in the interests of the creditors to do so.

*Ancillary orders*

(3) If the Court makes an order terminating a personal insolvency agreement, the Court may make such other orders as the Court thinks fit.

(4) An order under subsection (3) may be an order directing a person to pay another person compensation of such amount as is specified in the order. This subsection does not limit subsection (3).

*Application for sequestration order*

(5) The trustee or a creditor may include in an application under subsection (1) an application for a sequestration order against the estate of the debtor. If the Court, on the first-mentioned application, makes an order under this section terminating the personal insolvency agreement, it may, if it thinks fit, immediately make the sequestration order sought.

(6) The making of an application by the trustee or a creditor for a sequestration order under this section is taken, for the purposes of this Act, to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of subsection 43(1), sections 44 and 47, subsections 52(1) and (2) and Part XIA do not apply in relation to such an application.

*Court may dispense with service on debtor of notice of application*

(7) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application by the trustee or a creditor under this section, either unconditionally or subject to conditions.

### 222D Termination of personal insolvency agreement by occurrence of terminating event

A personal insolvency agreement is terminated by the occurrence of any circumstance or event on the occurrence of which the agreement provides that it is to terminate.

## 143 Subsection 223(1)

Omit "deed of assignment, a deed of arrangement or a composition", substitute "personal insolvency agreement".

## 144 Subsection 223(3)

Omit "deed of assignment, a deed of arrangement or a composition", substitute "personal insolvency agreement".

## 145 Subsection 223(3)

Omit “deed or composition”, substitute “agreement”.

## 146 Subsection 223A(2)

Omit “deed of assignment, a deed of arrangement or a composition”, substitute “personal insolvency agreement”.

## 147 Sections 224 and 224A

Repeal the sections, substitute:

### 224 Validity of acts if personal insolvency agreement set aside or terminated

*Scope*

(1) This section applies if a personal insolvency agreement is:
  (a) set aside by the Court; or
  (b) terminated.

*Validity of acts*

(2) All payments made, acts and things done and transactions entered into in good faith under, or for the purposes of, the agreement by:
  (a) the trustee; or
  (b) any other person;

before he or she had notice of the order of the Court or of the termination of the agreement, as the case may be, are valid and effectual and are not liable to be set aside by the trustee of a later personal insolvency agreement or in a subsequent bankruptcy.

### 224A Notice that a personal insolvency agreement has been set aside, varied or terminated

(1) If a personal insolvency agreement is terminated or varied by a resolution or special resolution at a meeting of creditors called for the purpose, the trustee of the agreement must immediately file a copy of the resolution or special resolution in the office of the Official Receiver.

(2) If a personal insolvency agreement is varied in accordance with subsection 221A(5), the trustee of the agreement must immediately file a copy of the variation in the office of the Official Receiver.

(3) If a personal insolvency agreement is terminated by the occurrence of any circumstance or event on the occurrence of which the deed provides that it is to terminate, the trustee of the agreement must immediately give written notice of that fact to the Official Receiver.

(4) If:
  (a) the Court makes an order setting aside or terminating a personal insolvency agreement; and
  (b) a registered trustee was the trustee of the personal insolvency agreement;

the registered trustee must give written notice of the order to the Official Receiver.

(5) If:
  (a) the Court makes an order setting aside or terminating a personal insolvency agreement; or
  (b) a personal insolvency agreement is terminated otherwise than because of an order of the Court;

the trustee of the personal insolvency agreement must give written notice of the order or termination to each of the creditors within 2 working days of the making of the order or of the termination, as the case may be.

(6) For the purposes of subsection (5), a ***working day*** is a day that is not a Saturday, Sunday or public holiday in:
  (a) in the case of an order made by the Court—the place where the order is made; or
  (b) in the case of a termination otherwise than because of an order of the Court:
    (i) if the trustee of the personal insolvency agreement has only one office—the place where that office is located; or
    (ii) if the trustee of the personal insolvency agreement has 2 or more offices—the place where the principal office is located.

## 148 Subsection 225(1)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

Note: The heading to section 225 is altered by omitting "**deed**" and substituting "**personal insolvency agreement**".

## 149 Subsection 226(1)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

Note: The heading to section 226 is altered by omitting "**deed**" and substituting "**personal insolvency agreement**".

## 150 Subsection 226(1)

Omit "the deed" (wherever occurring), substitute "the agreement".

## 151 Subsection 226(1)

Omit "section 188A", substitute "subsection 188(2C) or (2D)".

## 152 Subsection 226(2)

Repeal the subsection.

## 153 Subsection 226(3)

Omit "deed of assignment or a deed of arrangement, or made a composition,", substitute "personal insolvency agreement".

## 154 Paragraph 227(b)

Repeal the paragraph, substitute:

(b) a personal insolvency agreement.

Note: The heading to section 227 is altered by omitting "**deeds**" and substituting "**personal insolvency agreements**".

## 155 After section 227

Insert:

### 229 Personal insolvency agreement to bind all creditors

(1) A personal insolvency agreement that:

(a) is entered into in accordance with this Part; and

(b) complies with the requirements of this Part;

is, upon being duly executed by the debtor and the trustee, binding on all the creditors of the debtor.

(2) If a personal insolvency agreement has become binding on the creditors of the debtor, it is not competent for a creditor, so long as the agreement remains valid:

(a) to present a creditor's petition against the debtor, or to proceed with such a petition presented before the agreement became so binding, in respect of a provable debt; or

(b) to enforce any remedy against the person or property of the debtor in respect of a provable debt; or

(c) to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

(3) This section does not:

(a) affect the right of a secured creditor to realise or otherwise deal with the creditor's security; or

(b) prevent a creditor, after all the obligations that a personal insolvency agreement created have been discharged, from taking any proceeding or enforcing any remedy in respect of a provable debt from which the debtor is not released by the operation of the agreement.

(4) This section does not prevent a creditor from enforcing any remedy against:

(a) a debtor who has executed a personal insolvency agreement; or

(b) any property of such a debtor that is not subject to the agreement;

in respect of any liability of the debtor under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this subsection).

## 230 Release of provable debts

(1) If a personal insolvency agreement provides for a debtor to be released from a provable debt, the agreement operates to release

the debtor from that provable debt unless the agreement is set aside or terminated under this Part.

(2) Subsection (1) has effect subject to subsections (3), (4) and (5).

*Exceptions*

(3) Subsection (1) does not operate to release the debtor from a debt that would not be released by his or her discharge from bankruptcy if he or she had become a bankrupt on the day on which he or she executed the personal insolvency agreement.

(4) Subsection (1) does not affect the right of a secured creditor, or a person claiming through or under a secured creditor, to realise or otherwise deal with the creditor's security:

(a) if the secured creditor has not proved under the agreement for any part of the secured debt—for the purpose of obtaining payment of the secured debt; or

(b) if the secured creditor has proved under the agreement for part of the secured debt—for the purpose of obtaining payment of the part of the secured debt for which the creditor has not proved under the agreement;

and, for the purposes of enabling the secured creditor, or a person claiming through or under a secured creditor, so to realise or deal with the creditor's security, but not otherwise, the secured debt, or the part of the secured debt, as the case may be, is taken not to have been released.

(5) A personal insolvency agreement does not release from any liability a person who, at the date on which the debtor executed the agreement, was:

(a) a partner or a co-trustee with the debtor; or

(b) jointly bound or had made a joint contract with the debtor; or

(c) surety or in the nature of a surety for the debtor.

## 231 Application of general provisions of Act to personal insolvency agreements

(1) Sections 77, 77A, 77AA, 77C, 77D, 77E, 77F, 78 (other than paragraphs 78(1)(a), (b) and (c)) and 81 apply, with the prescribed

modifications (if any), in relation to a debtor who has executed a personal insolvency agreement as if:

(a) the debtor were a bankrupt; and

(b) the trustee of the agreement were the trustee of the estate of the bankrupt debtor.

(2) Section 78 (other than paragraphs 78(1)(d) and (f)) applies, with the prescribed modifications (if any), in relation to a debtor who has executed a personal insolvency agreement as if the debtor were a debtor against whom a bankruptcy notice has been presented.

(3) Subsection 58(4) and sections 60, 61, 62, 70, 71, 72, 82 to 118, 127 to 130 and 133 to 139H, Subdivisions I and J of Division 4B of Part VI and sections 140 to 147 apply, with the prescribed modifications (if any), in relation to such an agreement as if:

(a) a creditor's petition had been presented against the debtor by whom the agreement was executed on the day on which the special resolution requiring the execution of the agreement was passed; and

(b) a sequestration order had been made against him or her on that petition on the day on which he or she executed the agreement; and

(c) the trustee of the agreement were the trustee in his or her bankruptcy.

(4) In the application, by virtue of subsections (1), (2) and (3), of the provisions referred to in those subsections:

(a) a reference to the property of the bankrupt is to be read as a reference to the divisible property of the debtor; and

(b) a reference to a provable debt is to be read as a reference to a provable debt within the meaning of this Part; and

(c) a reference to the end of the bankruptcy is to be read as a reference to the end of the personal insolvency agreement.

(5) Part VIII applies, with any modifications prescribed by the regulations, in relation to a trustee of a personal insolvency agreement as if:

(a) the debtor by whom the agreement was executed were a bankrupt; and

(b) the trustee of the agreement were the trustee in his or her bankruptcy.

(6) If, after taking into account the prescribed modifications and the provisions of subsection (4), a provision specified in subsection (1), (2), (3) or (5) is incapable of application in relation to a personal insolvency agreement, or the trustee of such an agreement, as the case requires, or is inconsistent with this Part, that provision does not so have application.

(7) This Division does not empower the Court to stay any proceedings under a proceeds of crime law.

## 231A Right of debtor to remaining property

(1) The debtor to whom a personal insolvency agreement relates is entitled to any property remaining after payment in full of:
  (a) the costs, charges and expenses of the administration of the agreement; and
  (b) all provable debts; and
  (c) interest on interest-bearing provable debts.

(2) The Court may make an order directing the trustee not to pay or transfer the property, or a specified part of the property, referred to in subsection (1), to the debtor if:
  (a) the Director of Public Prosecutions, or a person who is entitled to apply for an interstate confiscation order under a corresponding law, applies to the Court for an order under this subsection; and
  (b) the Court is satisfied that proceedings are pending under a proceeds of crime law; and
  (c) the Court is satisfied that property of the debtor may:
    (i) become subject to a forfeiture order or interstate forfeiture order made in the proceedings; or
    (ii) be required to satisfy a pecuniary penalty order or interstate pecuniary penalty order made in the proceedings.

(3) The Court, on application made to it, may vary or revoke an order made under subsection (2).

### 232 Certificate relating to discharge of obligations

(1) If the trustee of a personal insolvency agreement is satisfied that all the obligations that the agreement created have been discharged, the trustee must, on written request by the debtor, give the debtor a certificate signed by the trustee to that effect.

(2) A certificate signed by a trustee under this section is prima facie evidence of the facts stated in it.

### 156 Divisions 4, 5 and 6 of Part X

Repeal the Divisions.

### 157 Paragraph 254(1)(b)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

### 158 Subparagraphs 263(1)(a)(iii) and (b)(i)

After "executed", insert "a personal insolvency agreement,".

### 159 Subparagraph 263(1)(b)(iii)

Omit "a deed", substitute "an agreement or deed,"

### 160 Subparagraph 263(1)(d)(iii)

After "under", insert "a personal insolvency agreement,".

### 161 Subparagraph 263(2)(a)(iii)

After "under", insert "a personal insolvency agreement,".

### 162 Subsection 263C(2) (paragraph (e) of the definition of *trustee*)

Repeal the paragraph, substitute:

(e) a trustee of a personal insolvency agreement under Part X; or

### 163 Paragraph 267(1)(f)

Omit "to the controlling trustee under section 188A", substitute "under subsection 188(2C) or (2D)".

## 164 Subsection 268(2)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

Note: The heading to section 268 is altered by omitting "**deeds and compositions**" and substituting "**personal insolvency agreements**".

## 165 Paragraph 268(2)(a)

Omit "deed all the property assigned by the deed", substitute "agreement all the property subject to the agreement".

## 166 Paragraph 268(2)(b)

Omit "deed to deliver up to the trustee property assigned by the deed", substitute "agreement to deliver up to the trustee property subject to the agreement".

## 167 Paragraphs 268(2)(ba), (c), (d) and (e)

Omit "the deed" (wherever occurring), substitute "the agreement".

## 168 Paragraph 268(2)(f)

Omit "assigned by the deed", substitute "subject to the agreement".

## 169 Paragraph 268(2)(g)

Omit "the deed", substitute "the agreement".

## 170 Subsection 268(3)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

## 171 Subsection 268(4)

Repeal the subsection, substitute:

(4) Subsections (2) and (3) do not apply to an act or omission that is done or made after:

(a) all the obligations that the personal insolvency agreement created have been discharged; or

(b) the personal insolvency agreement has been set aside or terminated.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

## 172 Subsection 268(5)

Omit "A debtor who has executed a deed of assignment under Part X shall fully and truly disclose to the trustee of the deed", substitute "If a personal insolvency agreement specifies that the antecedent transactions provisions of this Act apply to the debtor, the debtor must fully and truly disclose to the trustee of the agreement".

## 173 Subsection 268(5)

Omit "deed" (last occurring), substitute "agreement".

## 174 Paragraph 270(1)(c)

After "administered under", insert "a personal insolvency agreement,".

## 175 Paragraph 275(c)

Repeal the paragraph, substitute:

(c) a personal insolvency agreement has become binding on his or her creditors.

## 176 Subsection 276(1)

Omit "deed of assignment or a deed of arrangement under Part X that has, to his or her knowledge, been declared to be void", substitute "personal insolvency agreement that has, to his or her knowledge, been set aside".

Note: The heading to section 276 is altered by omitting "**void deed**" and substituting "**a personal insolvency agreement that has been set aside**".

## 177 Subsection 280(5) (paragraphs (b), (c) and (d) of the definition of *trustee account*)

Repeal the paragraphs, substitute:

(b) subsection 231(5) (which applies section 169 to a personal insolvency agreement).

## 178 Subsection 301(1)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

### 179 Subsection 302(1)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

### 180 Paragraph 302A(1)(e)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

### 181 Paragraph 302AB(1)(e)

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

### 182 Section 302B

Omit "deed of assignment or a deed of arrangement", substitute "personal insolvency agreement".

### 183 Subsection 305(4) (definition of *estate*)

Repeal the definition, substitute:

> ***estate***, in relation to a personal insolvency agreement under Part X, means the property and income subject to the agreement.

### 184 Subsection 306(2)

Omit "deed", substitute "personal insolvency agreement".

### 185 At the end of paragraph 311(1)(a)

Add "or".

### 186 Paragraph 311(1)(b)

Repeal the paragraph, substitute:

(b) a trustee of a personal insolvency agreement; or

### 187 Subsection 312(8) (paragraph (b) of the definition of *end of the administration*)

Omit "deed or composition", substitute "personal insolvency agreement".

# Part 2—Amendment of other Acts

## *Aboriginal and Torres Strait Islander Commission Act 1989*

### 188 Paragraph 102(1)(g)

Omit "composition, deed of arrangement or deed of assignment", substitute "personal insolvency agreement".

### 189 Paragraph 142V(1)(d)

Omit "composition, deed of arrangement or deed of assignment", substitute "personal insolvency agreement".

## *ACIS Administration Act 1999*

### 190 Subsection 6(1) (paragraphs (d) and (e) of the definition of *insolvent under administration*)

Repeal the paragraphs, substitute:

(d) a person who has, at any time during the preceding 3 years, executed a personal insolvency agreement under:

(i) Part X of the *Bankruptcy Act 1966*; or

(ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.

## *Australian National University Act 1991*

### 191 Paragraph 11(b)

Omit "composition, deed of arrangement or deed of assignment", substitute "personal insolvency agreement".

## *Corporations Act 2001*

### 191A Section 9 (paragraphs (d) and (e) of the definition of *insolvent under administration*)

Repeal the paragraphs, substitute:

(d) a person who has executed a personal insolvency agreement under:
  (i) Part X of the *Bankruptcy Act 1966*; or
  (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country;

where the terms of the agreement have not been fully complied with.

### 191B Subparagraph 53AB(b)(iv)

Omit "deed of assignment, deed of arrangement, or composition,", substitute "personal insolvency agreement".

### 191C Paragraph 53AB(c)

Omit "deed of assignment or arrangement, a person acting under such an authority or a person administering such a composition", substitute "personal insolvency agreement or a person acting under such an authority".

### 191D Subsection 206B(4)

Repeal the subsection, substitute:

(4) A person is disqualified from managing corporations if:
  (a) the person has executed a personal insolvency agreement under:
    (i) Part X of the *Bankruptcy Act 1966*; or
    (ii) a similar law of an external Territory or a foreign country; and
  (b) the terms of the agreement have not been fully complied with.

Note: The heading to subsection 206B(3) is replaced by the heading "*Bankruptcy or personal insolvency agreement*".

## *Customs Act 1901*

### 192 Subsection 4(1) (paragraphs (d) and (e) of the definition of *insolvent under administration*)

Repeal the paragraphs, substitute:

(d) a person who has, at any time during the preceding 3 years, executed a personal insolvency agreement under:

(i) Part X of the *Bankruptcy Act 1966*; or

(ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.

### 193 Subsection 243A(1) (at the end of paragraphs (a) and (b) of the definition of *trustee in bankruptcy*)

Add "or".

### 194 Subsection 243A(1) (paragraph (c) of the definition of *trustee in bankruptcy*)

Repeal the paragraph, substitute:

(c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or

## *Defence Act 1903*

### 195 Paragraph 120B(15)(b)

Repeal the paragraph, substitute:

(b) in relation to whom a personal insolvency agreement is in force under the *Bankruptcy Act 1966*.

## *Export Market Development Grants Act 1997*

### 196 Subparagraphs 87B(a)(iii) and (iv)

Repeal the subparagraphs, substitute:

(iii) the individual has, in the previous 3 years, executed a personal insolvency agreement under Part X of that Act; or

## *Income Tax Assessment Act 1997*

### 197 Paragraph 106-30(2)(b)

Omit "deed of assignment or arrangement", substitute "personal insolvency agreement".

## *Petroleum Resource Rent Tax Assessment Act 1987*

### 198 Subsection 40(2)

Omit "deed of assignment or arrangement", substitute "personal insolvency agreement".

## *Proceeds of Crime Act 1987*

### 199 Subsection 27(1) (paragraph (c) of the definition of *insolvency trustee*)

Repeal the paragraph, substitute:

(c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or

## *Proceeds of Crime Act 2002*

### 200 Paragraph 129(c)

Repeal the paragraph, substitute:

(c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or

## *Social Security Act 1991*

### 201 Paragraph 1061ZZFQ(b)

Repeal the paragraph, substitute:

(b) the person enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*.

### 202 Subsection 1061ZZFR(1)

Omit "deed of assignment, deed of arrangement or composition", substitute "personal insolvency agreement".

### 203 Subsection 1061ZZFR(2)

Omit "bankruptcy, deed of assignment, deed of arrangement or composition", substitute "bankruptcy or personal insolvency agreement".

### 204 Subsection 1061ZZFR(3)

Omit "deed of assignment, deed of arrangement or composition", substitute "personal insolvency agreement".

## *Student Assistance Act 1973*

### 205 Paragraph 12ZW(1)(b)

Repeal the paragraph, substitute:

(b) the student enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*.

### 206 Subsection 12ZW(2)

Omit "deed of assignment, deed of arrangement or composition", substitute "personal insolvency agreement".

### 207 Subsection 12ZW(3)

Omit "bankruptcy, deed of assignment, deed of arrangement or composition", substitute "bankruptcy or personal insolvency agreement".

### 208 Subsection 12ZW(4)

Omit "deed of assignment, deed of arrangement or composition", substitute "personal insolvency agreement".

## *Superannuation Industry (Supervision) Act 1993*

### 209 Subsection 10(1) (paragraphs (d), (e) and (f) of the definition of *insolvent under administration*)

Repeal the paragraphs, substitute:

(d) a person who has executed a personal insolvency agreement under:

(i) Part X of the *Bankruptcy Act 1966*; or

(ii) the corresponding provisions of the law of an external Territory or the law of a foreign country;

if a certificate has not been given under section 232 of that Act or the corresponding provision of the law of the external

Territory or foreign country, as the case may be, in respect of the agreement.

## *Tradex Scheme Act 1999*

### 210 Section 4 (definition of *insolvent under administration*)

Omit all the words after "and" (first occurring), substitute:

includes a person who has executed a personal insolvency agreement under:

(c) Part X of the *Bankruptcy Act 1966*; or

(d) the corresponding provisions of the law of an external Territory or the law of a foreign country;

where the terms of the agreement have not been fully complied with.

## *Witness Protection Act 1994*

### 211 Paragraph 7(2)(g)

Omit "a composition with creditors, a deed of arrangement or a deed of assignment", substitute "a personal insolvency agreement".

# Part 3—Application and transitional provisions

## 212 Transitional—pre-commencement deeds and compositions

(1) For the purposes of this item, if a deed of assignment or a deed of arrangement was executed by a debtor and a trustee under Part X of the *Bankruptcy Act 1966* before the commencement of this item, the deed is a ***pre-commencement deed***.

(2) For the purposes of this item, if a composition was accepted before the commencement of this item by a special resolution of a meeting of creditors under section 204 of the *Bankruptcy Act 1966*, the composition is a ***pre-commencement composition***.

(3) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:

(a) the *Bankruptcy Act 1966* and regulations under that Act; and

(b) the Acts amended by Part 2 of this Schedule;

continue to apply, in relation to:

(c) a pre-commencement deed; and

(d) a pre-commencement composition; and

(e) any matter connected with, or arising out of:

(i) a pre-commencement deed; or

(ii) a pre-commencement composition;

as if those repeals had not happened and those amendments had not been made.

## 213 Transitional—pre-commencement authorities

(1) For the purposes of this item, if:

(a) an authority given by a debtor under section 188 of the *Bankruptcy Act 1966* became effective before the commencement of this item; and

(b) as at the commencement of this item, none of the following had happened:

(i) the execution by the debtor and the trustee of a deed of assignment under Part X of the *Bankruptcy Act 1966*;

(ii) the execution by the debtor and the trustee of a deed of arrangement under Part X of the *Bankruptcy Act 1966*;

(iii) the acceptance of a composition by a special resolution of a meeting of the debtor's creditors under section 204 of the *Bankruptcy Act 1966*;

the authority is a ***pre-commencement authority***.

(2) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:

(a) the *Bankruptcy Act 1966* and regulations under that Act; and

(b) the Acts amended by Part 2 of this Schedule;

continue to apply, in relation to:

(c) a pre-commencement authority; and

(d) the control of the debtor's property following a pre-commencement authority becoming effective; and

(e) a meeting of the debtor's creditors called under a pre-commencement authority; and

(f) whichever of the following is applicable:

(i) a deed of assignment executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;

(ii) a deed of arrangement executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;

(iii) a composition accepted after the commencement of this item by a special resolution of such a meeting; and

(g) any other matter connected with, or arising out of:

(i) a pre-commencement authority; or

(ii) a deed of assignment mentioned in subparagraph (f)(i); or

(iii) a deed of arrangement mentioned in subparagraph (f)(ii); or

(iv) a composition mentioned in subparagraph (f)(iii);

as if those repeals had not happened and those amendments had not been made.

## 214 Application—statements of affairs

(1) The amendment made by item 4 of this Schedule, in so far as it relates to subsection 54(1) or (2) of the *Bankruptcy Act 1966*, applies to a statement filed after the commencement of this item.

(2) The amendment made by item 4 of this Schedule, in so far as it relates to paragraph 55(2)(b), 56B(3)(a) or (b), 56F(1)(a) or (b) or 57(2)(a) or (b) of the *Bankruptcy Act 1966*, applies in relation to a statement that accompanies a petition presented after the commencement of this item.

(3) The amendment made by item 4 of this Schedule, in so far as it relates to section 185D of the *Bankruptcy Act 1966*, applies to a statement given after the commencement of this item.

## 215 Transitional—regulations

(1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Parts 1 and 2 of this Schedule.

(2) The Governor-General may make regulations for the purposes of subitem (1).

# Schedule 2—Amendments relating to compositions and schemes of arrangement

## *Bankruptcy Act 1966*

### 1 Paragraph 31(1)(da)

Repeal the paragraph, substitute:

(d) applications under:

(i) section 222 (as applied by section 76B); or

(ii) section 222C (as applied by section 76B);

for an order setting aside or terminating a composition or scheme of arrangement under Division 6 of Part IV;

### 2 Paragraph 40(1)(n)

Repeal the paragraph, substitute:

(n) if a composition or scheme of arrangement accepted by the debtor's creditors under Division 6 of Part IV is:

(i) set aside by the Court; or

(ii) terminated.

### 3 Subsection 40(7)

Omit "annulled", substitute "set aside or terminated".

### 4 After subsection 73(1)

Insert:

(1A) The trustee must, within 2 working days after receiving the proposal, give a copy of the proposal to the Official Receiver for the District in which the bankrupt resides.

(1B) For the purposes of subsection (1A), a ***working day*** is a day that is not a Saturday, Sunday or public holiday in the District in which the bankrupt resides.

## 5 After subsection 73(2A)

Insert:

(2AA) The report must name each creditor who was identified as a related entity of the bankrupt in the bankrupt's statement of affairs.

## 6 After section 73A

Insert:

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

(1) This section applies if the proposal provides that a person (the ***proposed trustee***) other than the trustee of the bankrupt's estate is to become the trustee of the composition or scheme of arrangement.

(2) The proposed trustee must make a written declaration stating whether the bankrupt is a related entity of:
  (a) the proposed trustee; or
  (b) a related entity of the proposed trustee.

(3) The proposed trustee must:
  (a) give a copy of the declaration to the Official Receiver; and
  (b) give a copy of the declaration to the trustee of the bankrupt's estate; and
  (c) keep a copy of the declaration.

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

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

*Scope*

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

*Bankrupt's statement of affairs*

(2) The trustee must table at the meeting a copy of the bankrupt's statement of affairs.

(3) If:

(a) the bankrupt had been required, immediately before the start of the meeting, to prepare a statement of affairs; and

(b) that statement would have differed in one or more material respects from the statement a copy of which was tabled under subsection (2);

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

*Proposed trustee's declaration*

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

(5) If:

(a) the proposal provides that a person (the ***proposed trustee***) other than the trustee of the bankrupt's estate is to become the trustee of the composition or scheme of arrangement; and

(b) assuming that the proposed trustee had been required, immediately before the start of the meeting, to make a declaration stating whether the bankrupt is a related entity of:

(i) the proposed trustee; or

(ii) a related entity of the proposed trustee;

that declaration would have differed in one or more material respects from the declaration made by the proposed trustee under subsection 73B(2);

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

## 7 Subsections 75(4), (5), (6), (7) and (8)

Repeal the subsections.

## 8 At the end of Division 6 of Part IV

Add:

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

Sections 222 to 222D, 224 and 224A apply, with such modifications (if any) as are prescribed by the regulations, in relation to a composition or scheme of arrangement under this Division as if:

(a) the composition or scheme were a personal insolvency agreement executed by the debtor; and

(b) the trustee of the composition or scheme were the trustee of the personal insolvency agreement.

## 9 Paragraph 109(1)(c)

Omit “annulled,”.

## 10 Subsection 114(1)

Omit “annulled,”.

## 11 Application—notification of proposals

The amendment made by item 4 applies to a proposal lodged with a trustee after the commencement of this item.

## 12 Transitional—annulments

(1) For the purposes of this item, if a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966* was annulled before the commencement of this item, the annulment is a ***pre-commencement annulment***.

(2) For the purposes of this item, if:

(a) an application is made before the commencement of this item under subsection 75(4) of the *Bankruptcy Act 1966* for the annulment of a composition or scheme of arrangement; and

(b) as at the commencement of this item, proceedings in relation to that application have not been finally determined;

the application is a ***pre-commencement annulment application***.

(3) Despite the repeals and amendments made by items 1, 2, 3, 7, 8, 9 and 10 of this Schedule and item 41 of Schedule 1, the *Bankruptcy Act 1966* and regulations under that Act continue to apply, in relation to:

(a) a pre-commencement annulment; and

(b) a pre-commencement annulment application; and

(c) an annulment that results from a pre-commencement annulment application;

as if those repeals had not happened and those amendments had not been made.

## 13 Application—proposals for compositions or schemes of arrangement

The amendments made by items 5 and 6 of this Schedule apply in relation to a bankrupt's proposal for a composition or scheme of arrangement unless a copy of the trustee's report on the proposal was sent to a creditor before the commencement of this item.

# Schedule 3—Amendments relating to performance standards

## *Bankruptcy Act 1966*

### 1 At the end of subsection 155H(1)

Add:

; or (g) the trustee has failed to comply with a standard prescribed for the purposes of subsection (5).

### 2 Subsection 155H(4)

Omit “paragraphs (1)(a) to (f)”, substitute “paragraphs (1)(a) to (g)”.

### 3 At the end of section 155H

Add:

(5) The regulations may prescribe standards applicable to the exercise of powers, or the carrying out of duties, of registered trustees.

# Schedule 4—Amendments relating to voting documents

## *Bankruptcy Act 1966*

### 1 Subsection 263C(1)

Omit “section 64D statement knowing or reckless that the statement”, substitute “voting document knowing or reckless that the document”.

### 2 Subsection 263C(2) (definition of *section 64D statement*)

Repeal the definition.

### 3 Subsection 263C(2)

Insert:

***voting document*** means:

(a) a statement that is:

(i) described in section 64D, as that section applies of its own force, or as it is applied by another provision of this Act; and

(ii) given to the trustee at or before a meeting called for the purposes of Part IV, IX, X or XI; or

(b) a form that is:

(i) described in section 64E, as that section applies of its own force, or as it is applied by another provision of this Act; and

(ii) given to the trustee at or before a meeting called for the purposes of Part IV, IX, X or XI.

# Schedule 5—Amendments relating to notice of meetings

## *Bankruptcy Act 1966*

### 1 After subparagraph 64A(1)(b)(v)

Insert:

(vi) an e-mail address to which notices may be sent to the person;

### 2 Subsection 64A(2)

Repeal the subsection, substitute:

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

### 3 Application of amendments

The amendments made by this Schedule apply in relation to a trustee if, after the commencement of this item, the bankrupt tells the trustee, or the trustee otherwise finds out, that a person is a creditor of the bankrupt.

# Schedule 6—Minor and technical amendments

## *Bankruptcy Act 1966*

### 1 Paragraph 41(3)(c)

Omit “made by the Court in the exercise of the jurisdiction conferred on it by this Act”.

### 2 Paragraph 139W(2)(c)

Omit “who were wholly or partly dependent on the bankrupt for economic support”.

### 3 Subsection 267E(2)

Repeal the subsection, substitute:

(2) The Registrar must not issue a warrant under subsection (1) for the arrest of a person unless:

(a) the Registrar is satisfied, on proof by affidavit, that the person was offered an advance in accordance with subsection 77E(1); or

(b) both:

(i) the person is or has been a bankrupt; and

(ii) the person’s attendance was required for the purpose of giving evidence or producing books relating to the person’s bankruptcy.

### 4 Application of amendments

(1) The amendment made by item 1 applies to a bankruptcy notice issued after the commencement of this item.

(2) The amendment made by item 3 applies to a warrant issued after the commencement of this item.

# Schedule 7—Amendment of the Bankruptcy Legislation Amendment Act 2002

## 1 Item 198 of Schedule 1 (definition of *commencing date*)

Omit "section 1", substitute "this Schedule".

## 2 Item 198 of Schedule 1 (definition of *commencing time*)

Omit "section 1", substitute "this Schedule".

## 3 Validation of acts

*Past acts*

(1) For the purposes of this item, a ***past act*** is an act or thing that was done on either or both of the following assumptions:

(a) the assumption that the commencing date defined in item 198 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2002* was the date on which that Schedule commenced;

(b) the assumption that the commencing time defined in item 198 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2002* was the time when that Schedule commenced.

*Validation of past acts*

(2) To avoid doubt, past acts are as valid, and are taken always to have been as valid, as they would have been if:

(a) the commencing date defined in item 198 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2002* had been the date on which that Schedule commenced; and

(b) the commencing time defined in item 198 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2002* had been the time when that Schedule commenced.

Note: Schedule 1 to the *Bankruptcy Legislation Amendment Act 2002* commenced on 5 May 2003.

[*Minister's second reading speech made in—*
*House of Representatives on 24 March 2004*
*Senate on 15 June 2004*]

(34/04)