





# **Bankruptcy Legislation Amendment Act 2010**

**No. 106, 2010**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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

[Assented to 14 July 2010]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Bankruptcy Legislation Amendment Act 2010*.

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## 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.

| <b>Commencement information</b>   |   |                     |
|---|---|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>   | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>   | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.   | 14 July 2010        |
| 2. Schedules 1 and 2  | A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. |                     |
| 3. Schedule 3   | The day after this Act receives the Royal Assent.   | 15 July 2010        |
| 4. Schedule 4, Part 1   | The 28th day after this Act receives the Royal Assent.  | 11 August 2010      |
| 5. Schedule 4, Part 2   | A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. |                     |

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

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

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

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—Remuneration of trustees of estates of bankrupts**

### ***Bankruptcy Act 1966***

#### **1 Subsections 64U(2) to (4)**

Repeal the subsections.

#### **2 Subsection 64U(5)**

Omit “A statement to be made by the trustee as mentioned in subsection (3)”, substitute “The trustee must then state the basis on which the trustee wishes to be remunerated. The statement”.

#### **3 Subsection 64U(5A)**

Omit “subsection (3)”, substitute “subsection (5)”.

#### **4 After subsection 64U(6)**

Insert:

- (6A) The President must invite the creditors and their representatives to propose a motion that the trustee be remunerated in accordance with the statement and, if no such motion is proposed, the trustee may propose such a motion.

#### **5 Subsection 64U(7)**

Omit “subsection (4)”, substitute “subsection (6A)”.

#### **6 After subsection 64U(7)**

Insert:

- (7A) If:
- (a) the meeting is the first meeting of the bankrupt’s creditors and the trustee is a registered trustee; and
  - (b) the following apply:
    - (i) before the meeting the trustee had given a notice under section 64ZBA that contained a proposal relating to how the trustee was to be remunerated;

- (ii) the notice satisfied subsections 64ZBA(2) and (2A);
- (iii) the proposal was taken to have been passed under subsection 64ZBA(3);

then subsections (1) to (7) of this section do not apply in relation to the meeting.

## **7 After subsection 64ZBA(2)**

Insert:

- (2A) If the proposal relates to how the trustee is to be remunerated, the notice must also:
  - (a) if the trustee proposes to charge on a time-cost basis:
    - (i) if there is only one rate at which the remuneration is to be calculated—state that rate; or
    - (ii) otherwise—state the respective rates at which the remuneration of the trustee and the other persons who will be assisting, or will be likely to assist, the trustee in the performance of his or her duties are to be calculated; and
  - (b) if the trustee proposes to charge on the basis of a commission upon money received by the trustee—state the rate of that commission; and
  - (c) state the periods at which the trustee proposes to withdraw funds from the bankrupt’s estate in respect of the trustee’s remuneration; and
  - (d) include an estimate of the total amount of the trustee’s remuneration and an explanation of the likely impact of that remuneration on the dividends (if any) to creditors.

## **8 Subsection 64ZD(1)**

Omit “subsection 64U(4)”, substitute “subsection 64U(6A)”.

## **9 Subsection 161B(1)**

Repeal the subsection, substitute:

- (1) If the total remuneration payable to the trustee under section 162 would be less than the following amount (the *statutory minimum*):
  - (a) \$5,000;
  - (b) if another amount is prescribed by the regulations for the purposes of this paragraph—that other amount;

the trustee is entitled to be paid, from the funds in the bankrupt's estate, additional remuneration equal to the shortfall.

**10 Subsection 161B(1A)**

Omit "(as affected by section 304A)".

**11 Subsections 161B(2) and (3)**

Repeal the subsections.

**12 Subsection 162(4)**

Repeal the subsection, substitute:

- (4) If the remuneration of the trustee is not fixed by the creditors or the committee of inspection, the trustee may, in the circumstances prescribed by the regulations, make an application, in accordance with the regulations, to the Inspector-General for the Inspector-General to decide the trustee's remuneration.
- (4A) If an application is made to the Inspector-General under subsection (4), the Inspector-General must, by writing, decide the trustee's remuneration, having regard to the matters prescribed by the regulations.
- (4B) The Inspector-General must give written notice of his or her decision under subsection (4A) to the trustee and to the bankrupt and creditors.

**13 Section 167**

Repeal the section, substitute:

**166 Payment to third parties**

The trustee must, in relation to the payment for services provided by another person in relation to the administration of a bankrupt's estate, give such notices to the bankrupt and creditors of the bankrupt as are required by the regulations.

**167 Review of remuneration etc.**

*Trustee's remuneration*

- (1) The regulations may make provision for and in relation to:

- (a) the Inspector-General reviewing decisions of the trustee of the estate of a bankrupt to withdraw, or to propose to withdraw, funds from the estate for payment of the trustee's remuneration; and
- (b) the bankrupt or a creditor of the bankrupt applying for the review.

*Payment to third parties*

- (2) The regulations may make provision for and in relation to:
  - (a) the Inspector-General reviewing a bill of costs for services provided by a person (the *third party*) in relation to the administration of a bankrupt's estate; and
  - (b) the trustee of the estate applying for the review.

*Content of regulations*

- (3) The regulations may provide for:
  - (a) the powers available to the Inspector-General in relation to the review; and
  - (b) the trustee or the third party to provide information or documents to the Inspector-General; and
  - (c) the decisions that may be made by the Inspector-General in relation to the review; and
  - (d) the notification of decisions made by the Inspector-General.

*Repayment—trustee*

- (4) The regulations may provide that, if the Inspector-General is satisfied that a withdrawal by the trustee of funds from the estate of the bankrupt for payment of the trustee's remuneration exceeds the amount of remuneration the trustee is entitled to under this Division, the Inspector-General may require the trustee to repay the excess to that estate.
- (5) The amount of the excess is recoverable by the Inspector-General, as a debt due to the estate of the bankrupt, by action against the trustee in a court of competent jurisdiction.

*Appeal to the Court*

- (6) The trustee, the bankrupt or a creditor of the bankrupt may appeal to the Court from a decision of the Inspector-General in relation to the review. In addition, if the review is of the kind mentioned in subsection (2), the third party may also appeal to the Court from a decision of the Inspector-General in relation to the review.

*Interpretation*

- (7) Subsections (3) and (4) do not limit subsections (1) and (2).

**14 Subsection 304A(1) (paragraph (i) of the definition of *indexable amount*)**

Repeal the paragraph.

**15 Subsection 304A(4)**

Repeal the subsection.

**16 Subsection 304A(6)**

Omit “, (4)”.

**17 Application**

The amendments made by this Schedule apply in relation to bankruptcies for which the date of the bankruptcy is on or after the day on which this item commences.

## **Schedule 2—Offence provisions etc.**

### ***Bankruptcy Act 1966***

#### **1 Subsection 6A(1)**

After “sections”, insert “77CA and”.

#### **2 After paragraph 12(1)(bb)**

Insert:

- (bc) may make such inquiries and investigations as the Inspector-General thinks fit with respect to whether a person has committed an offence against this Act; and

#### **3 Subsections 12(1BA) and (1B)**

Omit “or (bb)”, substitute “, (bb) or (bc)”.

#### **4 After subsection 12(2)**

Insert:

- (2A) If the Inspector-General believes on reasonable grounds that a person has information that is relevant to an inquiry or investigation under paragraph (1)(bc), the Inspector-General may, by written notice given to the person, require the person to give to the Inspector-General, within the period and in the manner specified in the notice, any such information.
- (2B) The period specified in a notice given under subsection (2A) must be at least 14 days after the notice is given.
- (2C) A person commits an offence if:
  - (a) the person has been given a notice under subsection (2A); and
  - (b) the person fails to comply with the notice.

Penalty: Imprisonment for 12 months.

- (2D) A notice under subsection (2A) must set out the effect of the following provisions:
  - (a) subsection (2C);

(b) section 137.1 of the *Criminal Code* (about giving false or misleading information).

(2E) Subsection (2A) does not limit the application of subsection (2) in relation to an inquiry or investigation under paragraph (1)(bc).

**5 Subsection 52(1A)**

After “Receiver”, insert “before the end of the period of 2 days beginning on the day the order was made”.

**6 At the end of subsection 52(1A)**

Add:

Penalty: 5 penalty units.

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

**7 After subsection 52(1A)**

Insert:

(1B) Subsection (1A) is an offence of strict liability.

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

**8 Subsection 54(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 25 penalty units.

**9 Subsection 56F(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 25 penalty units.

**10 At the end of subsection 73(1A)**

Add:

Penalty: 5 penalty units.

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

**11 After subsection 73(1B)**

Insert:

(1C) Subsection (1A) is an offence of strict liability.

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

## **12 Subsection 74(5A)**

Omit “as soon as practicable after that date”, substitute “before the end of the period of 2 days beginning on that date”.

## **13 At the end of subsection 74(5A)**

Add:

Penalty: 5 penalty units.

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

## **14 After subsection 74(5A)**

Insert:

(5B) Subsection (5A) is an offence of strict liability.

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

## **15 After section 77C**

Insert:

### **77CA Power of Official Receiver to obtain statement of affairs**

The Official Receiver may, by written notice given to a bankrupt, require the bankrupt to give the Official Receiver a statement of the bankrupt’s affairs within 14 days after receiving the notice.

Note 1: Section 6A sets out requirements for statements of affairs.

Note 2: A failure to comply with the notice is an offence: see section 267B.

## **16 Subparagraph 149A(2)(a)(i)**

After “(ha),”, insert “(ia),”.

## **17 Subsection 149C(1A)**

After “(ha),”, insert “(ia),”.

## **18 After paragraph 149D(1)(i)**

Insert:

(ia) the bankrupt failed to comply with subparagraph 77(1)(a)(ii);

**19 Subsection 149N(1A)**

After “(ha),” insert “(ia),”.

**20 Subsection 153A(2)**

Omit “as soon as practicable after that date”, substitute “before the end of the period of 2 days beginning on that date”.

**21 At the end of subsection 153A(2)**

Add:

Penalty: 5 penalty units.

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

**22 After subsection 153A(2)**

Insert:

(3) Subsection (2) is an offence of strict liability.

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

**23 At the end of section 153B**

Add:

(3) The trustee must, before the end of the period of 2 days beginning on the day the trustee becomes aware of the order, give to the Official Receiver a written certificate setting out the former bankrupt’s name and bankruptcy number and the date of the annulment.

Penalty: 5 penalty units.

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

(4) Subsection (3) is an offence of strict liability.

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

**24 At the end of subsection 155J(1) (before the penalty)**

Add “before the end of the period of 7 days beginning on the day the person ceased to be registered”.

**25 Subsection 155J(1) (penalty)**

Repeal the penalty, substitute:

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Penalty: 5 penalty units.

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

## **26 Subsection 168(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 10 penalty units.

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

## **27 After section 170**

Insert:

### **170A Annual return**

- (1) If, during a financial year, the trustee of the estate of a bankrupt administered the estate, the trustee must, within the period of 35 days after the end of that year, give the Inspector-General a return, in the approved form, in relation to the administration of that estate during that year.

Penalty: 5 penalty units.

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

- (2) Subsection (1) is an offence of strict liability.

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

- (3) This section does not apply in relation to the Official Trustee.

## **28 At the end of subsection 173(1) (after the penalty)**

Add:

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

## **29 At the end of subsection 175(5) (after the penalty)**

Add:

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

## **30 Subsection 182(4)**

After “the person”, insert “(the *affected person*)”.

## **31 Subsection 182(4)**

Omit “shall forthwith notify, in writing, the Official Receiver of that fact”, substitute “must, before the end of the period of 28 days beginning on the day the affected person started to administer the estate, give written notice of that death to the Official Receiver”.

### **32 Subsection 182(4) (penalty)**

Repeal the penalty, substitute:

Penalty: 5 penalty units.

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

### **33 After section 185LE**

Insert:

#### **185LEA Annual return**

- (1) If, during a financial year, an administrator of a debt agreement administered the agreement, the administrator must, within the period of 35 days after the end of that year, give the Inspector-General a return, in the approved form, in relation to the administration of that agreement during that year.

Penalty: 5 penalty units.

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

- (2) Subsection (1) is an offence of strict liability.

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

### **34 Subsection 185ZA(1)**

After “the person”, insert “(the *affected person*)”.

### **35 Subsection 185ZA(1)**

Omit “as soon as practicable, give written notice of that fact”, substitute “before the end of the period of 28 days beginning on the day the affected person started to administer the estate, give written notice of that death”.

### **36 Subsection 185ZA(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 5 penalty units.

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

**37 Paragraph 186N(1)(c)**

Omit “as soon as practicable after”, substitute “before the end of the period of 7 days beginning on the day”.

**38 Subsection 186N(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 5 penalty units.

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

**39 Paragraph 186N(3)(c)**

Omit “as soon as practicable after”, substitute “before the end of the period of 7 days beginning on the day”.

**40 Subsection 186N(3) (penalty)**

Repeal the penalty, substitute:

Penalty: 5 penalty units.

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

**41 Paragraph 186N(5)(c)**

Omit “as soon as practicable after”, substitute “before the end of the period of 7 days beginning on the day”.

**42 Subsection 186N(5) (penalty)**

Repeal the penalty, substitute:

Penalty: 5 penalty units.

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

**43 Paragraph 186N(6A)(c)**

Omit “as soon as practicable after”, substitute “before the end of the period of 7 days beginning on the day of”.

**44 Subsection 186N(6A) (penalty)**

Repeal the penalty, substitute:

Penalty: 5 penalty units.

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

#### **45 Paragraph 218(1)(b)**

Omit “21”, substitute “2”.

#### **46 After subsection 218(1)**

Insert:

(2) The trustee commits an offence if the trustee fails to comply with a requirement under paragraph (1)(b).

Penalty: 5 penalty units.

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

(2A) Subsection (2) is an offence of strict liability.

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

#### **47 Subsection 224A(1)**

Omit “immediately”, substitute “, before the end of the period of 2 days beginning on the day of the termination or variation,”.

#### **48 At the end of subsection 224A(1)**

Add:

Penalty: 5 penalty units.

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

#### **49 Subsection 224A(2)**

Omit “immediately”, substitute “, before the end of the period of 2 days beginning on the day of the variation,”.

#### **50 At the end of subsection 224A(2)**

Add:

Penalty: 5 penalty units.

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

#### **51 Subsection 224A(3)**

Omit “immediately”, substitute “, before the end of the period of 2 days beginning on the day of the termination,”.

**52 At the end of subsection 224A(3)**

Add:

Penalty: 5 penalty units.

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

**53 Subsection 224A(4)**

After “must”, insert “, before the end of the period of 2 days beginning on the day the trustee becomes aware of the order,”.

**54 At the end of subsection 224A(4)**

Add:

Penalty: 5 penalty units.

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

**55 At the end of subsection 224A(5)**

Add:

Penalty: 5 penalty units.

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

**56 At the end of section 224A**

Add:

(7) Subsections (1), (2), (3), (4) and (5) are offences of strict liability.

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

**57 Subsection 244(14)**

After “must”, insert “, before the end of the period of 2 days beginning on the day the order was made,”.

**58 At the end of subsection 244(14)**

Add:

Penalty: 5 penalty units.

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

**59 At the end of section 244**

Add:

(15) Subsection (14) is an offence of strict liability.

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

**60 Subsection 245(3)**

After “must”, insert “, before the end of the period of 2 days beginning on the day the order was made,”.

**61 At the end of subsection 245(3)**

Add:

Penalty: 5 penalty units.

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

**62 At the end of section 245**

Add:

(4) Subsection (3) is an offence of strict liability.

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

**63 Subsection 246(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 25 penalty units.

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

**64 At the end of section 247**

Add:

(3) If the Court makes an order upon hearing the petition, the person administering the estate of the deceased person must, before the end of the period of 2 days beginning on the day the order was made, give a copy of the order to the Official Receiver.

Penalty: 5 penalty units.

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

(4) Subsection (3) is an offence of strict liability.

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

**65 Subsection 252A(2)**

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Omit “as soon as practicable after that date”, substitute “before the end of the period of 2 days beginning on that date”.

**66 At the end of subsection 252A(2)**

Add:

Penalty: 5 penalty units.

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

**67 After subsection 252A(2)**

Insert:

(3) Subsection (2) is an offence of strict liability.

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

**68 Subsection 263(1) (penalty)**

Omit “3”, substitute “5”.

**69 Subsection 265(3) (penalty)**

Omit “3”, substitute “5”.

**70 Subsection 265(5)**

After “bankrupt”, insert “, either alone or jointly with another person”.

**71 Paragraph 265(5)(b)**

Repeal the paragraph, substitute:

(b) incurs any debt or liability by fraud;

**72 Subsection 265(5)**

Omit “3”, substitute “5”.

**73 Subsections 266(1) and (3)**

Omit “3 years”, substitute “5 years”.

**74 After paragraph 267(1)(d)**

Insert:

(da) is given to the Official Receiver under section 77CA; or

**75 Subsection 267(2)**

Omit “sign”, substitute “make”.

**76 Subsection 267B(1)**

After “or section”, insert “77CA or”.

**77 Subsection 268(3) (penalty)**

Omit “3”, substitute “5”.

**78 Subsection 268(7)**

Omit “3”, substitute “5”.

**79 Subsection 269(1)**

After “An undischarged bankrupt”, insert “or a debtor who is a party to a debt agreement”.

Note: The heading to section 269 is replaced by the heading “**Bankrupt or debtor who is a party to a debt agreement obtaining credit etc. without disclosing bankruptcy or debt agreement**”.

**80 Paragraphs 269(1)(a), (aa), (ab), (ac), (ad) and (b)**

After “an undischarged bankrupt”, insert “or a party to a debt agreement (as the case requires)”.

**81 Subsection 272(1)**

Omit “by imprisonment for a period not exceeding 3 years”, substitute “if the offence relates to the doing of a thing specified in paragraph (a) or (b), by imprisonment for a period not exceeding 5 years or, in any other case, by imprisonment for a period not exceeding 3 years”.

**82 At the end of Part XIV**

Add:

**277B Infringement notices for offences**

- (1) The regulations may make provision in relation to enabling a person who is alleged to have committed an offence of a kind referred to in the table in subsection (2) to pay to the Commonwealth, as an alternative to prosecution, a penalty of an amount worked out in accordance with subsection (2).

- (2) The amount of penalty payable to the Commonwealth under regulations made for the purposes of subsection (1) in respect of an offence is determined using the following table:

| <b>Penalties payable</b> |                        |                        |
|--------------------------|------------------------|------------------------|
| <b>Item</b>              | <b>Alleged offence</b> | <b>Penalty payable</b> |
| 1                        | subsection 52(1A)      | 1 penalty unit         |
| 2                        | subsection 73(1A)      | 1 penalty unit         |
| 3                        | subsection 74(5A)      | 1 penalty unit         |
| 4                        | subsection 153A(2)     | 1 penalty unit         |
| 5                        | subsection 153B(3)     | 1 penalty unit         |
| 6                        | subsection 155J(1)     | 1 penalty unit         |
| 7                        | subsection 168(1)      | 2 penalty units        |
| 8                        | subsection 170A(1)     | 1 penalty unit         |
| 9                        | subsection 173(1)      | 1 penalty unit         |
| 10                       | subsection 175(5)      | 1 penalty unit         |
| 11                       | subsection 182(4)      | 1 penalty unit         |
| 12                       | subsection 185LEA(1)   | 1 penalty unit         |
| 13                       | subsection 185ZA(1)    | 1 penalty unit         |
| 14                       | subsection 186N(1)     | 1 penalty unit         |
| 15                       | subsection 186N(3)     | 1 penalty unit         |
| 16                       | subsection 186N(5)     | 1 penalty unit         |
| 17                       | subsection 186N(6A)    | 1 penalty unit         |
| 18                       | subsection 218(2)      | 1 penalty unit         |
| 19                       | subsection 224A(1)     | 1 penalty unit         |
| 20                       | subsection 224A(2)     | 1 penalty unit         |
| 21                       | subsection 224A(3)     | 1 penalty unit         |
| 22                       | subsection 224A(4)     | 1 penalty unit         |
| 23                       | subsection 224A(5)     | 1 penalty unit         |
| 24                       | subsection 244(14)     | 1 penalty unit         |
| 25                       | subsection 245(3)      | 1 penalty unit         |
| 26                       | subsection 246(1)      | 5 penalty units        |
| 27                       | subsection 247(3)      | 1 penalty unit         |
| 28                       | subsection 252A(2)     | 1 penalty unit         |

### **83 At the end of subsection 315(2)**

Add:

- ; and (1) provide for a person who is alleged to have committed an offence against the regulations to pay a penalty to the Commonwealth as an alternative to prosecution (being a penalty not exceeding one-fifth of the maximum fine that a court could impose on the person for that offence).

### **84 Application**

- (1) The amendment made by item 5 applies in relation to orders made on or after the commencement of that item.
- (2) The amendment made by item 12 applies in relation to special resolutions passed on or after the commencement of that item.
- (3) The amendment made by item 15 applies in relation to bankruptcies for which the date of the bankruptcy is before, on or after the day on which that item commences.
- (4) The amendments made by items 16 to 19 apply in relation to bankruptcies for which the date of the bankruptcy is on or after the day on which those items commence.
- (5) The amendments made by items 20 and 23 apply in relation to bankruptcies that are annulled on or after the commencement of those items.
- (6) The amendment made by item 24 applies in relation to persons ceasing to be registered as a trustee on or after the commencement of that item.
- (7) The amendments made by items 27 and 33 apply in relation to financial years ending on or after the commencement of those items.
- (8) The amendments made by items 31 and 35 apply in relation to deaths occurring on or after the commencement of those items.
- (9) The amendment made by item 37 applies in relation to notices given under subsection 186J(2) of the *Bankruptcy Act 1966* on or after the commencement of that item.
- (10) The amendments made by items 39, 41 and 43 apply in relation to cancellations made on or after the commencement of those items.

- (11) The amendments made by items 45 and 46 apply in relation to personal insolvency agreements entered into on or after the commencement of those items.
- (12) The amendment made by item 47 applies in relation to terminations or variations occurring on or after the commencement of that item.
- (13) The amendment made by item 49 applies in relation to variations occurring on or after the commencement of that item.
- (14) The amendment made by item 51 applies in relation to terminations occurring on or after the commencement of that item.
- (15) The amendments made by items 53, 57, 60 and 64 apply in relation to orders made on or after the commencement of those items.
- (16) The amendment made by item 65 applies in relation to annulments occurring on or after the commencement of that item.
- (17) The amendments made by items 70 and 71 apply in relation to the obtaining of property, and the incurring of debts or liabilities, on or after the commencement of those items.
- (18) The amendment made by item 75 applies in relation to declarations made on or after the commencement of that item.
- (19) The amendments made by items 79 and 80 apply in relation to debt agreements made on or after the commencement of those items.

## Schedule 3—Removal of Bankruptcy Districts

### *Bankruptcy Act 1966*

#### **1 Subsection 5(1) (definition of *District*)**

Repeal the definition.

#### **2 Subsection 5(1) (definition of *the Official Receiver*)**

Repeal the definition, substitute:

*the Official Receiver* means any Official Receiver.

#### **3 Section 5AA**

Repeal the section.

#### **4 Section 13**

Repeal the section.

#### **5 Subsection 15(1)**

Repeal the subsection, substitute:

- (1) There is to be such number of Official Receivers as the Minister thinks necessary.

#### **6 Subsection 18(8)**

Repeal the subsection, substitute:

- (8) The Official Receiver may exercise the powers, and perform the functions, of the Official Trustee.

#### **7 Subsection 18(8B)**

Omit “mentioned in subsection (8)”, substitute:

related to any of the following matters:

- (a) a bankruptcy;
- (b) control of a debtor’s property under section 50;
- (c) a scheme of arrangement or composition under Division 6 of Part IV;

- (d) a matter relating to a debt agreement proposal;
- (e) Part X administration;
- (f) administration under Part XI.

## **8 After subsection 18(8D)**

Insert:

(8E) In subsection (8B):

*matter relating to a debt agreement proposal* includes:

- (a) a debt agreement; and
- (b) an activity required or permitted by a debt agreement.

*Part X administration* means:

- (a) an activity that a controlling trustee may or must carry out after consenting to exercise powers given by an authority under section 188 (including control of a debtor's property under Division 2 of Part X); or
- (b) a personal insolvency agreement.

## **9 Subsection 20B(5)**

Repeal the subsection.

## **10 Subsection 52(1A)**

Omit "for the District in which the order was made".

## **11 Paragraphs 54(1)(a) and (2)(a)**

Omit "for the District in which the sequestration order was made".

## **12 Subsection 73(1A)**

Omit "for the District in which the bankrupt resides".

## **13 Subsection 73(1B)**

Omit "District", substitute "place".

## **14 Subsection 182(4)**

Omit "for the District in which the trustee was ordinarily resident".

## **15 Subsection 185ZA(1)**

Omit “for the District in which the debt agreement administrator was ordinarily resident”.

**16 Subsection 188(5)**

Omit “for the District in which the debtor resides”.

**17 Transitional**

- (1) A person who is an Official Receiver for a District immediately before the commencement of this item is taken to have been appointed, at the commencement of this item, under section 16 of the *Bankruptcy Act 1966* as an Official Receiver.
- (2) The amendment made by item 6 does not affect the validity of the exercise of a power or the performance of a function by an Official Receiver before the commencement of that item.

## **Schedule 4—Other amendments**

### **Part 1—Amendments commencing 28 days after Royal Assent**

#### ***Bankruptcy Act 1966***

##### **1 Subparagraphs 41(1)(a)(ii) and (b)(ii)**

Omit “\$2,000”, substitute “\$5,000”.

##### **2 Paragraph 44(1)(a)**

Omit “\$2,000” (wherever occurring), substitute “\$5,000”.

##### **3 Paragraphs 244(1)(a), (b) and (c)**

Omit “\$2,000”, substitute “\$5,000”.

##### **4 Application**

- (1) The amendment made by item 1 applies in relation to bankruptcy notices issued on or after the commencement of that item.
- (2) The amendment made by item 2 applies in relation to creditors’ petitions presented on or after the commencement of that item.
- (3) The amendment made by item 3 applies in relation to petitions presented on or after the commencement of that item.

## **Part 2—Amendments commencing on a day to be fixed by Proclamation**

### ***Bankruptcy Act 1966***

#### **5 Subsection 5(1) (paragraph (a) of the definition of *stay period*)**

Omit “7”, substitute “21”.

#### **6 Subsection 6A(1)**

After “subsections 54(1) and (2)”, insert “and subsection 54A(2)”.

#### **7 Section 54A**

Before “Subject”, insert “(1)”.

#### **8 At the end of section 54A**

Add:

- (2) A declaration presented by a debtor under this section must be accompanied by a statement of the debtor’s affairs and a copy of that statement.

#### **9 Section 54C**

Before “Subject”, insert “(1)”.

#### **10 At the end of section 54C**

Add:

- (2) If the Official Receiver accepts the declaration, the Official Receiver must give written notice of the acceptance of the declaration to each of the creditors disclosed in the debtor’s statement of affairs.

#### **12 After paragraph 267(1)(a)**

Insert:

- (aa) accompanies a declaration presented under section 54A; or

### **13 Application**

The amendments made by items 5, 6, 8, 10 and 12 apply in relation to declarations presented under section 54A of the *Bankruptcy Act 1966* on or after the commencement of those items.

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*[Minister's second reading speech made in—  
House of Representatives on 28 October 2009  
Senate on 2 December 2009]*