

# Bankruptcy Amendment Act 1980

## No. 12 of 1980

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**SCHEDULE**

**FORMAL AND OTHER MINOR AMENDMENTS**

# Bankruptcy Amendment Act 1980

No. 12 of 1980

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

[Assented to 8 April 1980]

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

### Short title, &c.

1. (1) This Act may be cited as the *Bankruptcy Amendment Act 1980*.
- (2) The *Bankruptcy Act 1966*<sup>1</sup> is in this Act referred to as the Principal Act.

### Commencement

2. (1) Sections 1 and 2, sub-section 3 (1), sections 4, 5, 6, 8, 13, 14, 18, 19, 20, 23, 24, 25, 29, 30, 36, 37, 38, 39, 40, 41, 45 and 46, sub-sections 47 (1) and (3), sections 48, 52, 53, 54, 56, 63, 66, 67, 68 and 71, sub-section 73 (1), sections 79, 89, 91, 93, 94, 95, 97, 99, 105, 115, 117, 120, 121, 122, 123, 126, 128, 129, 131, 133, 135, 143, 149, 150, 153, 155, 156, 157, 158, 159, 160, 161, 162, 165, 166, 167, 168, 169, 170, 174 and 176 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on such date as is fixed by Proclamation.

### Interpretation

3. (1) Section 5 of the Principal Act is amended—
  - (a) by inserting after the definition of “bankruptcy” in sub-section (1) the following definition:

“ ‘books’ includes any account, deed, writing or document and any other record of information however compiled, recorded or stored, whether in writing, on microfilm, by electronic process or otherwise;” and
  - (b) by omitting “or that Act as amended as in force at any time” from the definition of “the repealed Act” in sub-section (1).
- (2) Section 5 of the Principal Act is amended—

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- (a) by inserting after the definition of “affidavit” in sub-section (1) the following definition:
- “ ‘approved bank’ means a trading bank as defined by sub-section 5 (1) of the *Banking Act* 1959 or another bank approved, by instrument in writing, for the purposes of this definition by the Treasurer or a person authorized by the Treasurer in writing to give approvals for the purposes of this definition;”;
- (b) by adding “and a petition presented by joint debtors against themselves in pursuance of section 57” at the end of the definition of “debtor’s petition” in sub-section (1);
- (c) by omitting from sub-section (1) the definition of “Deputy Registrar” and substituting the following definition:
- “ ‘Deputy Registrar’ means a Deputy Registrar in Bankruptcy, and includes a person acting as a Deputy Registrar;”;
- (d) by inserting after the definition of “goods” in sub-section (1) the following definition:
- “ ‘Inspector-General’ means the Inspector-General in Bankruptcy, and includes a person acting as the Inspector-General;”;
- (e) by omitting from sub-section (1) the definition of “magistrate” and substituting the following definitions:
- “ ‘magistrate’ means—
- (a) a person who holds office as a Magistrate of a State, being a person in respect of whom an arrangement under sub-section 17B (1) applies;
- (b) a person who holds office as a Magistrate of the Northern Territory, being a person in respect of whom an arrangement under sub-section 17B (2) applies; or
- (c) a person who holds office as a Magistrate of a Territory of the Commonwealth (other than the Northern Territory);
- “ ‘maintenance agreement’ means a maintenance agreement, within the meaning of the *Family Law Act* 1975, that has been registered in or approved by a court in Australia or an external Territory or any other agreement with respect to the maintenance of a person that has been so registered or approved;
- “ ‘maintenance order’ means an order with respect to the maintenance of a person made or registered under a law of the Commonwealth or of a State or Territory of the Commonwealth;”;
- (f) by omitting from sub-section (1) the definition of “Official Receiver” and substituting the following definitions:

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“ ‘Official Receiver’ includes a person acting as an Official Receiver;

“ ‘Official Trustee’ means the Official Trustee in Bankruptcy;”;

- (g) by omitting from sub-section (1) the definition of “Registrar” and substituting the following definition:

“ ‘Registrar’ means a Registrar in Bankruptcy, and includes a person acting as a Registrar;”;

- (h) by inserting in the definition of “the date of the bankruptcy” in sub-section (1) “, 56 or 57, as the case requires” after “section 55”;

- (j) by omitting from sub-section (1) the definition of “the Inspector-General”; and

- (k) by omitting sub-section (4) and substituting the following sub-section:

“(4) Unless the contrary intention appears, a reference in this Act to the trustee of the estate of a bankrupt, or to the trustee of a deed of assignment or deed of arrangement executed, or of a composition accepted, under Part X, shall—

(a) in relation to an estate or a deed or composition in respect of which there are 2 or more joint trustees—be read as a reference to all the trustees; or

(b) in relation to an estate or a deed or composition in respect of which there are 2 or more joint and several trustees—be read as a reference to all of the trustees or any one or more of the trustees.”.

**Application of Act**

4. Section 7 of the Principal Act is amended—

(a) by omitting from sub-section (1) “infants,”; and

(b) by inserting after sub-section (1) the following sub-section:

“(1A) This Act applies to debtors whether or not they have attained the age of 18 years.”.

5. Section 8 of the Principal Act is repealed and the following section substituted:

**Act to bind the Crown**

“8. This Act binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory.”.

**Laws of States and Territories not affected by Act**

6. Section 9 of the Principal Act is amended by omitting sub-sections (2), (3) and (4).

**Heading to Division 1 of Part II**

7. After the heading to Part II of the Principal Act the following heading is inserted:

**“Division 1—General”**

**Functions of Inspector-General**

- 8.** Section 12 of the Principal Act is amended—
- (a) by omitting sub-section (1) and substituting the following sub-section:
    - “(1) The Inspector-General—
      - (a) shall make such inquiries and investigations as the Minister directs;
      - (b) may make such other inquiries and investigations as he thinks fit with respect to the conduct of a trustee in relation to a bankruptcy, an administration under Part XI or a deed of assignment, deed of arrangement, scheme of arrangement or composition; and
      - (c) shall from time to time obtain from Registrars, Official Receivers and other officers reports as to the operation of this Act.”;
- (b) by omitting from paragraph (a) of sub-section (2) “or accounts”; and
- (c) by omitting from paragraph (c) of sub-section (2) “and vouchers”.

**Registrars and Deputy Registrars**

- 9.** Section 14 of the Principal Act is amended—
- (a) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:
    - “(b) such number of Deputy Registrars in Bankruptcy as is determined by the Governor-General by Proclamation.”; and
  - (b) by inserting after sub-section (2) the following sub-section:
    - “(2A) A power or function conferred or imposed on a Registrar by this Act, when exercised or performed by a Deputy Registrar, shall, for all purposes, be deemed to have been exercised or performed by the Registrar.”.
- 10.** After section 14 of the Principal Act the following section is inserted:

**Stamps of Registrars**

- “14A. (1) The Registrar for each District shall have a stamp.
- “(2) The design of the stamp shall be as determined by the Minister by writing under his hand.
- “(3) The stamp may be affixed on documents issued by the Registrar under this Act or the rules and on other documents as provided by the rules.
- “(4) All courts (whether exercising federal jurisdiction or not), and all persons acting judicially, shall take judicial notice of the mark of the stamp

affixed on a document and shall, in the absence of proof to the contrary, presume that it was duly affixed.”.

### **Official Receivers**

**11.** Section 15 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-sections:

“(4) The Inspector-General may, by writing under his hand, direct an officer to exercise or perform, for such period as is specified in the direction or until the direction is terminated, all of the powers, functions or duties of an Official Receiver under this Act or such of those powers, functions or duties as are specified in the direction.

“(5) A power, function or duty of an Official Receiver under this Act, when exercised or performed by an officer in accordance with a direction given by the Inspector-General under sub-section (4), shall, for the purposes of this Act, be deemed to have been exercised or performed, as the case requires, by an Official Receiver.”.

**12. (1)** Sections 17 and 18 of the Principal Act are repealed and the following sections are substituted:

### **Acting Inspector-General and acting Official Receivers**

“17. (1) The Minister may appoint a person to act as Inspector-General or Official Receiver—

- (a) during a vacancy in the office of Inspector-General or Official Receiver, as the case may be; or
- (b) during any period, or during all periods, when the Inspector-General or Official Receiver, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(3) The Minister may terminate such an appointment at any time.

“(4) Where a person is acting as Inspector-General or Official Receiver in accordance with paragraph (1)(b) and the office of Inspector-General or Official Receiver, as the case may be, becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(5) The appointment of a person to act as Inspector-General or Official Receiver ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

“(6) While a person is acting as Inspector-General or Official Receiver, he has and may exercise all the powers, and shall perform all the functions and duties, of the Inspector-General or Official Receiver as the case may be, under this Act or any other law of the Commonwealth.

“(7) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

### **Acting Registrars and acting Deputy Registrars**

“17A. (1) The Minister may appoint a person to act as Registrar or Deputy Registrar—

- (a) during a vacancy in the office of Registrar or Deputy Registrar, as the case may be; or
- (b) during any period, or during all periods, when the Registrar or Deputy Registrar, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(3) The Minister may terminate such an appointment at any time.

“(4) Where a person is acting as Registrar or Deputy Registrar in accordance with paragraph (1) (b) and the office of Registrar or Deputy Registrar, as the case may be, becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(5) The appointment of a person to act as Registrar or Deputy Registrar ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

“(6) While a person is acting as Registrar or Deputy Registrar, he has and may exercise all the powers, and shall perform all the functions, of the Registrar or Deputy Registrar, as the case may be, under this Act or any other law of the Commonwealth.

“(7) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion

for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

**Arrangements for services of State and Northern Territory Magistrates**

“17B. (1) The Governor-General may arrange with the Governor of a State for the performance of the functions of a magistrate under this Act by all or any of the persons who from time to time hold office as Magistrates of the State.

“(2) The Governor-General may arrange with the Administrator of the Northern Territory for the performance of the functions of a magistrate under this Act by all or any of the persons who from time to time hold office as Magistrates of the Territory.

**The Official Trustee in Bankruptcy**

“18. (1) The body corporate that existed immediately before the commencement of this section by virtue of section 18 of the *Bankruptcy Act* 1966, under the name of The Official Receiver in Bankruptcy, continues in existence, by force of this sub-section, as a body corporate under the name of the Official Trustee in Bankruptcy.

“(2) The body corporate continued in existence by force of sub-section (1)—

- (a) has perpetual succession;
- (b) may acquire, hold and dispose of real and personal property; and
- (c) may sue and be sued in its corporate name.

“(3) The Official Receivers together continue to constitute the body corporate continued in existence by force of sub-section (1).

“(4) The Official Trustee shall have such seals as the Minister directs by writing under his hand.

“(5) The designs of the seals of the Official Trustee shall be as determined by the Minister by writing under his hand.

“(6) A seal of the Official Trustee may be affixed on any document by, or with the authority of, any Official Receiver.

“(7) All courts (whether exercising federal jurisdiction or not), and all persons acting judicially, shall take judicial notice of the mark of such a seal affixed on a document and shall, in the absence of proof to the contrary, presume that it was duly affixed.

“(8) All acts and things done in the name of, or on behalf of, the Official Trustee by, or with the authority of, any Official Receiver shall be deemed to have been done by the Official Trustee.

“(9) Where, under a provision of this Act or of the *Bankruptcy Act* 1924-1965 in its continued application by virtue of this Act, the exercise of a power or performance of a function by the Official Trustee is dependent upon



the opinion, belief or state of mind of the Official Trustee in relation to a matter, the power may be exercised or the function performed by, or with the authority of, any Official Receiver in the name of, or on behalf of, the Official Trustee upon the opinion, belief or state of mind in relation to that matter of the person exercising the power or performing the function, and any act or thing done by, or with the authority of, any Official Receiver in the exercise of such a power, or performance of such a function, in accordance with this subsection shall be deemed to have been done by the Official Trustee.

“(10) Where the Official Trustee is one of the trustees of a deed of assignment, deed of arrangement, composition or scheme of arrangement, a power the exercise of which, or a function the performance of which, is dependent upon the opinion, belief or state of mind of those trustees in relation to a matter may be exercised or performed by those trustees as if the opinion, belief or state of mind in relation to that matter of an Official Receiver or another person who with the authority of an Official Receiver, acts in the name of, or on behalf of, the Official Trustee in the exercise of the power or the performance of the function were the opinion, belief or state of mind in relation to the matter of the Official Trustee.

“(11) A reference in a law of the Commonwealth to the Official Receiver of the estate of a bankrupt shall, in relation to the vesting, holding or disposal of property, be read as including a reference to the Official Trustee.

“(12) A reference in a law of the Commonwealth to The Official Receiver in Bankruptcy shall be read as including a reference to the Official Trustee.

### **Liability of the Official Trustee**

“18A. (1) The Official Trustee is subject to the same personal liability in respect of an act done, or omitted to be done, by it as—

- (a) the trustee of the estate of a bankrupt;
- (b) the trustee of the estate of a deceased debtor;
- (c) the trustee of a composition or scheme of arrangement accepted under Division 6 of Part IV;
- (d) the controlling trustee in relation to a debtor whose property is subject to control under Division 2 of Part X;
- (e) the trustee of a deed of assignment or deed of arrangement executed, or a composition accepted, under Part X; or
- (f) the trustee of—
  - (i) a composition or scheme of arrangement accepted and approved under Division 5 of Part IV of the repealed Act;
  - (ii) a composition or scheme of arrangement accepted, or a deed of assignment executed, under Part XI of the repealed Act; or
  - (iii) a deed of arrangement executed under Part XII of the repealed Act,

as an individual would be subject if the individual had done, or omitted to do, that act as such a trustee.

“(2) The Commonwealth is by force of this sub-section liable to indemnify the Official Trustee against any personal liability, including any personal liability as to costs, incurred by it—

- (a) by reason of sub-section (1); or
- (b) for any act done, or omitted to be done, by it in carrying out, or purporting to carry out, a direction given, or an order made, by the Court under section 50.

“(3) Nothing in sub-section (2) affects any right that the Official Trustee has, apart from that sub-section, to be reimbursed in respect of any personal liability referred to in that sub-section or any other indemnity given to the Official Trustee in respect of any such liability.

“(4) Where the Commonwealth makes a payment in accordance with the indemnity referred to in sub-section (2), the Commonwealth has the same right to reimbursement in respect of the payment (including reimbursement under another indemnity given to the Official Trustee) as the Official Trustee would have if the Official Trustee had made the payment.”

(2) The repeal of section 18 of the Principal Act effected by sub-section (1) of this section does not affect any property, powers, rights, authorizations, duties, functions, liabilities or obligations of the corporation continued in existence by force of sub-section 18 (1) of the Principal Act as amended by sub-section (1) of this section or render defective any legal or other proceeding instituted by or against the corporation by the name of The Official Receiver in Bankruptcy, and any legal or other proceedings that might, but for the repeal so effected, have been instituted or continued by or against the corporation by the name of The Official Receiver in Bankruptcy may be instituted or continued by or against the corporation by the name of The Official Trustee in Bankruptcy.

#### **Duties, &c., of Official Receiver**

13. Section 19 of the Principal Act is amended by inserting in paragraph (d) of sub-section (1) “, or other person authorized in writing by the Official Receiver,” after “officer”.

14. After section 19 of the Principal Act the following sections are inserted:

#### **Liability of Inspector-General, Registrars, Deputy Registrars, Official Receivers, &c.**

“19A. (1) The Commonwealth shall indemnify a person to whom this section applies against any liability incurred by him—

- (a) for any act done negligently, or negligently omitted to be done, by him in the course of the performance of his duties under this Act or under the *Bankruptcy Act 1924-1965* in its continued application by virtue of this Act; and

- (b) for any act done by him in good faith in the purported performance of his duties under this Act or under the *Bankruptcy Act 1924-1965* in its continued application by virtue of this Act.

“(2) The Commonwealth has the same liability for acts of, or omissions by, a person to whom this section applies in the course of the performance or purported performance of his duties under this Act or the *Bankruptcy Act 1924-1965* in its continued application by virtue of this Act as a master has for acts of, or omissions by, his servants.

“(3) A reference in this section to a person to whom this section applies shall be read as a reference to the Inspector-General, a Registrar, a Deputy Registrar, an Official Receiver, an officer performing any of the functions or duties, or exercising any of the powers, of an Official Receiver or an officer or other person assisting a Registrar, a Deputy Registrar or an Official Receiver in the performance of his functions or duties or the exercise of his powers.

#### **Officers to act in aid of each other**

“19B. All Registrars, Deputy Registrars, Official Receivers, officers and other persons having functions, powers or duties under this Act shall, within the limits of their respective functions, powers and duties under this Act, severally act in aid of and be auxiliary to each other in all matters of bankruptcy.”.

#### **Records, returns and bank accounts**

15. Section 20 of the Principal Act is amended—

- (a) by omitting “The Registrars and Official Receivers” and substituting “Subject to this Act, the Registrars, the Official Trustee and the Official Receivers”;
- (b) by omitting “from time to time directs” and substituting “directs by writing under his hand”; and
- (c) by adding at the end thereof the following sub-sections:

“(2) The Registrars, the Official Trustee and the Official Receivers shall open and maintain such bank accounts with an approved bank or approved banks as the Inspector-General directs by writing under his hand.

“(3) The Registrars, the Official Trustee and the Official Receivers shall comply with any directions given by the Inspector-General, by writing under his hand, with respect to the banking of moneys in bank accounts maintained in pursuance of sub-section (2).”.

16. After section 20 of the Principal Act the following Division is inserted in Part II:

#### **“Division 2—Common Investment Fund**

##### **Interpretation**

“20A. In this Division, unless the contrary intention appears—

‘Common Fund’ means the Common Investment Fund established in pursuance of section 20B;

‘Equalization Account’ means the Common Investment Fund Equalization Account established by section 20G;

‘Investment Board’ means the Investment Board established by section 20C.

### **The Common Investment Fund**

“20B. (1) The Official Trustee shall open and maintain an account to be known as the Common Investment Fund.

“(2) All moneys (other than moneys to which sub-section (8) applies) received by the Official Trustee after the commencement of this section shall be paid into the Common Fund.

“(3) All moneys (other than moneys to which sub-section (8) applies) held by the Official Trustee at the commencement of this section, including moneys that, at that time, are held on deposit with a bank under sub-section 172 (1), and all investments made under that sub-section and held by the Official Trustee at that time, shall form part of the Common Fund.

“(4) The Official Trustee shall open and maintain, with an approved bank or approved banks, such accounts for the purposes of the Common Fund as the Inspector-General directs by writing under his hand.

“(5) In giving directions to the Official Trustee under sub-section (4), and in varying or revoking any directions so given, the Inspector-General shall ensure that the Official Trustee at all times maintains one account referred to in that sub-section for each District.

“(6) The payment of moneys into an account referred to in sub-section (4) shall be deemed to be the payment of those moneys into the Common Fund.

“(7) Any payment that the Official Trustee is authorized, required or permitted, by or under a provision of this Act or of the *Bankruptcy Act 1924-1965* in its continued application by virtue of this Act, to make out of moneys standing to the credit of the estate of a bankrupt or a deceased debtor shall be made out of moneys in the Common Fund.

“(8) This sub-section applies to moneys held or received by the Official Trustee—

- (a) under a direction given, or order made, under section 50;
- (b) as the trustee of a composition or scheme of arrangement accepted under Division 6 of Part IV;
- (c) as the controlling trustee in relation to a debtor whose property is subject to control under Division 2 of Part X;
- (d) as the trustee of a deed of assignment or deed of arrangement executed, or a composition accepted, under Part X; or
- (e) as trustee of—

- (i) a composition or scheme of arrangement accepted and approved under Division 5 of Part IV of the repealed Act;
- (ii) a composition or scheme of arrangement accepted, or a deed of assignment executed, under Part XI of the repealed Act; or
- (iii) a deed of arrangement executed under Part XII of the repealed Act.

### **Investment Board**

“20C. (1) There shall be an Investment Board, consisting of—

- (a) the Permanent Head of the Department of State that deals with matters arising under this Division; and
- (b) the Inspector-General.

“(2) The person for the time being holding, or performing the duties of, an office specified in sub-section (1) may, by writing under his hand, appoint a person to be his deputy.

“(3) Where at any time the person for the time being holding, or performing the duties of, an office specified in sub-section (1) is absent from duty or from Australia or is, for any other reason, unable to act as a member of the Investment Board, the deputy of that person may act as a member of the Investment Board on his behalf and shall, while so acting, be deemed to be a member of the Investment Board in place of that person.

### **Investment of moneys in Common Fund**

“20D. (1) The moneys in the Common Fund not immediately required for the purposes of this Act may be invested by the Official Trustee—

- (a) in public securities;
- (b) in a loan the repayment of which is guaranteed by the Commonwealth, a State or a Territory;
- (c) in a loan to a municipal corporation or other local governing body in Australia; or
- (d) in a loan to, or on deposit with, an approved bank.

“(2) The Investment Board may, from time to time, give directions to the Official Trustee with respect to the investment of moneys in the Common Fund, and the Official Trustee shall comply with those directions.

“(3) The Investment Board may vary or revoke directions given by it to the Official Trustee under sub-section (2).

“(4) In giving directions to the Official Trustee under sub-section (2), and in varying or revoking directions so given, the Investment Board—

- (a) shall endeavour to ensure that the moneys in the Common Fund lodged in accounts at call with a bank or banks are, as far as practicable, at all times sufficient to meet the payments that under this Act are to be made out of moneys in the Common Fund; and

- (b) will ensure that moneys in the Common Fund that, in the opinion of the Investment Board, are not required to be kept in accounts at call with a bank or banks in accordance with paragraph (a) are, as far as practicable, invested by the Official Trustee in accordance with sub-section (1).

“(5) The Investment Board shall, from time to time, consult with the Official Receivers concerning the amount of moneys in the Common Fund that should be retained in accounts at call with a bank or banks.

“(6) Interest derived from the investment of moneys in the Common Fund is not subject to taxation under a law of the Commonwealth, a State or a Territory of the Commonwealth.

“(7) The Common Fund is not subject to taxation under a law of the Commonwealth, or to taxation under a law of a State or Territory of the Commonwealth to which the Commonwealth is not subject, and the Official Trustee is not otherwise subject to taxation under such a law in respect of anything done in the exercise of powers conferred on it by sub-section (1).

“(8) In this section, ‘public securities’ means—

- (a) bonds, debentures, stock and other securities issued under an Act;
- (b) bonds, debentures, stock and other securities issued by—
- (i) a State;
  - (ii) a Territory;
  - (iii) a municipal corporation or other local governing body; or
  - (iv) a public authority constituted by or under a law of a State or Territory of the Commonwealth;
- (c) securities issued in respect of a loan to a company the principal business of which is the supply and distribution, by a system of reticulation, in Australia or in a Territory of the Commonwealth, of water, gas or electricity; and
- (d) other securities specified in the regulations as public securities for the purposes of this section,

but does not include—

- (e) securities referred to in paragraph (a) or (b) that are issued in respect of a loan raised outside Australia and the Territories of the Commonwealth unless the securities are public securities for the purposes of the *Income Tax Assessment Act 1936*; or
- (f) securities issued after 12 April 1976 by a bank as defined by sub-section 5 (1) of the *Banking Act 1959*.

### **Borrowing for the Common Fund**

“20E. (1) Where the Investment Board is of the opinion—

- (a) that moneys in the Common Fund deposited in accounts at call with a bank or banks are likely to be insufficient to meet payments that

under this Act are to be made out of moneys in the Common Fund;  
and

- (b) that it would be undesirable to convert into money investments made under section 20D for the purpose of enabling those payments to be so made,

the Investment Board may, by instrument in writing, authorize the Official Trustee to borrow from the Commonwealth under this section moneys not exceeding such amount as is specified in the instrument.

“(2) The Minister for Finance may, on behalf of the Commonwealth, lend to the Official Trustee, on such terms and conditions as he determines, moneys that the Official Trustee is authorized under sub-section (1) to borrow.

“(3) Moneys borrowed by the Official Trustee from the Commonwealth under this section shall be paid into the Common Fund.

“(4) Interest is not payable on moneys lent to the Official Trustee by the Commonwealth under this section.

“(5) Moneys lent to the Official Trustee by the Commonwealth under this section shall be paid out of moneys available under an appropriation made by the Parliament.

**Moneys in Common Fund not held on account of particular estates, &c.**

“20F. (1) No moneys in the Common Fund shall be held, or be deemed for any purpose to be held, on account of any particular estate.

“(2) Investments made from moneys in the Common Fund shall not be made, and shall not be deemed for any purpose to be made, on account of any particular estate.

“(3) Any capital appreciation or depreciation in the value of investments made from moneys in the Common Fund shall not increase or decrease the amount payable under this Act in respect of any estate.

“(4) The making of a capital profit or capital loss on the realization of investments made from moneys in the Common Fund shall not increase or decrease the amount payable under this Act in respect of any estate.

“(5) Interest derived from the investment of moneys in the Common Fund shall not increase the amount payable under this Act in respect of any estate.

“(6) The Official Trustee shall cause accounts to be kept showing the amount in the Common Fund from time to time standing to the credit of each estate in respect of which moneys have been paid into the Common Fund.

“(7) Moneys received or held by the Official Trustee as trustee of any estate do not cease to be moneys in hand for the purposes of this Act by reason only that those moneys have been paid into or become part of the Common Fund.

“(8) In this section, ‘estate’ means the estate of a bankrupt or of a deceased debtor.

**Common Investment Fund Equalization Account**

“20G. (1) There shall be an account to be known as the Common Investment Fund Equalization Account.

“(2) The Equalization Account is a Trust Account for the purposes of section 62A of the *Audit Act* 1901.

**Payment of moneys into and out of Equalization Account**

“20H. (1) Interest derived from the investment of moneys in the Common Fund shall be paid into the Equalization Account.

“(2) An amount equal to the amount of any capital profit made upon the realization of an investment made from moneys in the Common Fund shall be paid out of the Common Fund into the Equalization Account.

“(3) An amount equal to—

- (a) the amount of any capital loss incurred upon the realization of an investment made from moneys in the Common Fund; or
- (b) each amount of interest that forms part of the estate of a bankrupt by virtue of sub-section 20J (2) or (3) or that is payable to a person by virtue of sub-section 20J (4),

is payable out of the Equalization Account into the Common Fund.

“(4) The Investment Board shall, at such intervals as the Minister directs by writing under his hand, determine the amount (if any) by which the amount standing to the credit of the Equalization Account exceeds the amount that should, in the opinion of the Investment Board, be retained in that Account for the purpose of making payments into the Common Fund in accordance with sub-section (3), and an amount equal to the excess is thereupon payable out of that Account into the Consolidated Revenue Fund.

“(5) Where, at any time, an amount required by sub-section (3) to be paid out of the Equalization Account exceeds the amount standing to the credit of that Account, an amount equal to the excess is payable into that Account out of moneys available under an appropriation made by the Parliament.

**Interest on moneys in Common Fund payable only in certain circumstances**

“20J. (1) Where the Official Trustee is the trustee of the estate of a bankrupt or of a deceased debtor, the estate is not entitled, except as provided by sub-sections (2) and (3), to interest on moneys held by the Official Trustee as the trustee of the estate.

“(2) Where moneys have been held, or are likely to be held, for a prescribed reason, or for one prescribed reason and then for another prescribed reason, by the Official Trustee as the trustee of the estate of a bankrupt or of a deceased debtor for not less than one year longer than those



moneys would have been held, or would be likely to be held, by the Official Trustee but for that reason or those reasons, the Registrar may direct, by writing under his hand, that interest on those moneys, at the rate prescribed for the purposes of this section and in respect of such period as he determines, shall form part of that estate.

“(3) Where, on or after the date of commencement of this section (in the sub-section referred to as the ‘commencing date’), the Official Trustee receives an amount by way of interest on moneys, or on investments, that form part of the Common Fund by virtue of sub-section 20B (3)—

- (a) if the interest accrued in respect of a period that ended before the commencing date—the amount of the interest forms part of the estate in respect of which those moneys or investments were held immediately before the commencing date; or
- (b) if the interest accrued in respect of a period that commenced before, but ended on or after, the commencing date—an amount that bears to the amount of that interest the same proportion as the number of days in the part of the period in respect of which the interest accrued that occurred before the commencing date bears to the number of days in that period forms part of the estate in respect of which those moneys or investments were held immediately before the commencing date.

“(4) Where it is established that moneys held by the Official Trustee as the trustee of the estate of a bankrupt or of a deceased debtor do not form part of the estate, interest on those moneys is payable to the person to whom those moneys are payable, out of the Common Fund, at the rate prescribed for the purposes of this section and in respect of the period during which those moneys are held by the Official Trustee.

“(5) For the purposes of sub-section (2), moneys shall be taken to have been held, or to be likely to be held, by the Official Trustee for a prescribed reason if the moneys have been held, or are likely to be held, as the case may be, by the Official Trustee—

- (a) by reason of the institution or defending of legal proceedings in good faith;
- (b) by reason that a person has, or has had, under consideration, in good faith, the institution or defending of legal proceedings; or
- (c) for any other reason declared by the regulations to be a prescribed reason for the purposes of this section.”

### **Seal of Federal Court of Bankruptcy**

**17. (1)** Section 26 of the Principal Act is amended by omitting sub-sections (4), (5) and (6).

**(2)** Notwithstanding the amendment of section 26 of the Principal Act made by sub-section (1) of this section, sub-sections 26 (5) and (6) of the Principal Act continue to apply, after the commencement of this section, to documents and copies of documents marked, before the commencement of

this section, with a stamp referred to in sub-section 26 (4) of the Principal Act as if that amendment had not been made.

### **Courts to act in aid of each other**

**18.** Section 29 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

“(2) In all matters of bankruptcy, the Court—

- (a) shall act in aid of and be auxiliary to the courts of the external Territories, and of prescribed countries, that have jurisdiction in bankruptcy; and
- (b) may act in aid of and be auxiliary to the courts of other countries that have jurisdiction in bankruptcy.

“(3) Where a letter of request from a court of an external Territory, or of a country other than Australia, requesting aid in a matter of bankruptcy is filed in the Court, the Court may exercise such powers with respect to the matter as it could exercise if the matter had arisen within its own jurisdiction.

“(4) The Court may request a court of an external Territory, or of a country other than Australia, that has jurisdiction in bankruptcy to act in aid of and be auxiliary to it in any matter of bankruptcy.

“(5) In this section, ‘prescribed country’ means—

- (a) the United Kingdom, Canada and New Zealand;
- (b) a country prescribed for the purposes of this sub-section; and
- (c) a colony, overseas territory or protectorate of a country specified in paragraph (a) or of a country so prescribed.”.

### **Exercise of jurisdiction**

**19.** Section 31 of the Principal Act is amended—

- (a) by inserting after paragraph (b) of sub-section (1) the following paragraph:

“(ba) applications for leave to enter or withdraw an objection to the discharge of a bankrupt from bankruptcy by force of section 149, for an order in respect of the period at the expiration of which such an objection will lapse or for an order that a bankrupt shall not be discharged from bankruptcy by force of section 149;”;

- (b) by inserting after paragraph (d) of sub-section (1) the following paragraph:

“(da) applications for an order of annulment of a composition or scheme of arrangement under Division 6 of Part IV;”;

- (c) by inserting in paragraph (e) of sub-section (1) “charge, charging order,” after “avoid a”;

- (d) by omitting paragraph (h) of sub-section (1) and substituting the following paragraph:

- “(h) applications to expunge a proof of debt, to reduce the amount of the admitted debt in respect of a proof of debt or to review a decision of the trustee in respect of a proof of debt, in cases where the amount involved in the proof exceeds \$500 or such amount as is prescribed for the purposes of this paragraph;”;
- (e) by omitting sub-paragraphs (i) and (ii) of paragraph (j) of sub-section (1) and substituting the following sub-paragraphs:
  - “(i) for an order under sub-section 222 (2) declaring a deed of assignment, a deed of arrangement or a composition, or a provision of such a deed, to be void or otherwise;
  - (ii) for an order under sub-section 222 (4) declaring a deed of assignment, a deed of arrangement or a composition, or a provision of such a deed or of a composition, to be void;”;
- (f) by omitting from sub-paragraph (iv) of paragraph (j) of sub-section (1) “and”; and
- (g) by inserting after paragraph (j) of sub-section (1) the following paragraph:
  - “(ja) applications for an order of annulment of the administration of the estate of a deceased person under Part XI; and”.

**Adjournment, amendment of process and extension and abridgment of times**

**20. Section 33 of the Principal Act is amended—**

- (a) by inserting in paragraph (c) of sub-section (1) “, or any time fixed by the Court or the Registrar under this Act (other than the time fixed for compliance with the requirements of a bankruptcy notice),” after “Act” (second occurring); and
- (b) by inserting in paragraph (c) of sub-section (2) “, or any time fixed by the Registrar under this Act (other than the time fixed for compliance with the requirements of a bankruptcy notice),” after “Act” (second occurring).

**21. Section 35 of the Principal Act is repealed and the following section substituted:**

**Transfer of proceedings**

“35. (1) Proceedings under this Act in a court having jurisdiction under this Act or any application in such proceedings may, upon the application of the Official Trustee or of any other person interested, be transferred by that court to another court having jurisdiction under this Act.

“(2) Where proceedings are so transferred or any application is so transferred—

- (a) all documents in respect of the proceedings or the application, as the case may be, filed with a Registrar shall, if it is appropriate having regard to the court to which the proceedings are, or the application is,

- transferred for another Registrar to have the custody of those documents, be transmitted by that Registrar to that other Registrar; and
- (b) the court to which the proceedings are, or the application is, transferred shall proceed—
- (i) in the case where proceedings are transferred—as if the same proceedings had been taken in that court as were taken in the court by which they are transferred; and
  - (ii) in the case where an application in any proceedings is transferred—as if the same proceedings had been taken in that court as were taken in the court by which the application is transferred and the application had been made in that court.”.

**Power of Court to rescind orders, &c.**

**22.** Section 37 of the Principal Act is amended—

- (a) by omitting “The” and substituting “Subject to sub-sections (2) and (3), the”; and
- (b) by adding at the end thereof the following sub-sections:

“(2) The Court shall not, after a sequestration order has been signed and sealed as provided by the rules, rescind or suspend the operation of the order.

“(3) The Court shall not, after an order for the administration of the estate of a deceased person under Part XI has been signed and sealed as provided by the rules, rescind or suspend the operation of the order.”.

**Acts of bankruptcy**

**23. (1)** Section 40 of the Principal Act is amended—

- (a) by omitting “and” from paragraph (c) of sub-section (3); and
- (b) by adding at the end of sub-section (3) the following word and paragraph:

“; and (e) a judgment or order for the payment of money made by the Court in the exercise of jurisdiction conferred on it by this Act shall be deemed to be a judgment or order the execution of which has not been stayed notwithstanding that it may not be enforceable at law by execution.”.

(2) The amendments of section 40 of the Principal Act made by sub-section (1) of this section do not apply in relation to judgments and orders made by the Court before the commencement of this section.

**Bankruptcy notices**

**24. (1)** Section 41 of the Principal Act is amended—

- (a) by omitting “or” (last occurring) from paragraph (a) of sub-section (3);
- (b) by adding at the end of sub-section (3) the following word and paragraph:

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“; or (c) in respect of a judgment or order for the payment of money made by the Court in the exercise of the jurisdiction conferred on it by this Act if—

- (i) a period of more than 6 years has elapsed since the judgment was given or the order was made; or
- (ii) the operation of the judgment or order is suspended under section 37.”; and

(c) by inserting after sub-section (6) the following sub-sections:

“(6A) Where, before the expiration of the time fixed by the Court or the Registrar for compliance with the requirements of a bankruptcy notice—

- (a) proceedings to set aside the judgment or order in respect of which the bankruptcy notice was issued have been instituted by the debtor; or
- (b) an application to set aside the bankruptcy notice has been filed with the Registrar,

the Court may, subject to sub-section (6C), extend the time for compliance with the bankruptcy notice.

“(6B) Where, before the expiration of the time fixed by the Registrar for compliance with the requirements of a bankruptcy notice—

- (a) proceedings to set aside the judgment or order in respect of which the bankruptcy notice was issued have been instituted by the debtor; or
- (b) an application to set aside the bankruptcy notice has been filed with the Registrar,

the Registrar may, subject to sub-section (6C), extend the time for compliance with the bankruptcy notice.

“(6C) Where—

- (a) a debtor applies to the Court or the Registrar for an extension of the time for complying with a bankruptcy notice on the ground that proceedings to set aside the judgment or order in respect of which the bankruptcy notice was issued have been instituted by the debtor; and
- (b) the Court or the Registrar, as the case may be, is of the opinion that the proceedings to set aside the judgment or order—
  - (i) have not been instituted *bona fide*; or
  - (ii) are not being prosecuted with due diligence,

the Court or the Registrar, as the case may be, shall not extend the time for compliance with the bankruptcy notice.”.

(2) Sub-sections 41 (6A), (6B) and (6C) of the Principal Act as amended by sub-section (1) of this section apply in relation to bankruptcy notices issued before or after the commencement of this section.

**Jurisdiction to make sequestration orders**

25. Section 43 of the Principal Act is amended by omitting paragraph (c) of sub-section (2) and substituting the following paragraph:

“(c) his bankruptcy is annulled under section 74 or 154.”

**Conditions on which creditor may petition**

26. (1) Section 44 of the Principal Act is amended by omitting from paragraph (a) of sub-section (1) “\$500” (wherever occurring) and substituting “\$1,000”.

(2) The amendment of section 44 of the Principal Act made by sub-section (1) does not apply in relation to a creditor’s petition presented before the commencement of this section.

**Repeal of section 48**

27. (1) Section 48 of the Principal Act is repealed.

(2) Notwithstanding the repeal of section 48 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a petition presented before the commencement of this section as if that section of the Principal Act had not been repealed.

**Court may direct the Official Trustee to take control of property before sequestration**

28. (1) Section 50 of the Principal Act is amended—

(a) by omitting “an Official Receiver” and substituting “the Official Trustee”; and

(b) by adding at the end thereof the following sub-sections:

“(2) Without limiting the generality of sub-section (1), the Court may, at any time after giving a direction under sub-section (1), summon—

(a) the debtor or the spouse of the debtor; or

(b) any person who is known or suspected to have in his possession any of the property of the debtor, or is supposed to be indebted to the debtor or to be able to give information concerning the debtor or his trade dealings, property or affairs,

to attend, on a date and at a time and place fixed in the summons, before the Court or the Registrar or, if the Court thinks fit, before a magistrate, to give evidence concerning, and produce any books in his custody or power relating to, the debtor or his trade dealings, property or affairs, and, where the Court issues such a summons, the provisions of section 81 apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, for the purpose of such an examination of the person so summoned under this section as if the debtor were a bankrupt and the examination were an examination under section 81.

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“(3) In this section, ‘modification’ includes the addition or omission of a provision or the substitution of a provision for another provision.”.

(2) The amendment of section 50 of the Principal Act made by paragraph (1) (a) of this section does not affect any direction or order in force under that section of the Principal Act immediately before the commencement of this section.

**Proceedings and order on creditor’s petition**

29. (1) Section 52 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-sections:

“(4) A creditor’s petition lapses at the expiration of—

- (a) subject to paragraph (b), the period of 12 months commencing on the date of presentation of the petition; or
- (b) if the Court makes an order under sub-section (5) in relation to the petition—the period fixed by the order,

unless, before the expiration of whichever of those periods is applicable, a sequestration order is made on the petition or the petition is dismissed or withdrawn.

“(5) The Court may, at any time before the expiration of the period of 12 months commencing on the date of presentation of a creditor’s petition, if it considers it just and equitable to do so, upon such terms and conditions as it thinks fit, order that the period at the expiration of which the petition will lapse be such period, being a period exceeding 12 months and not exceeding 24 months, commencing on the date of presentation of the petition as is specified in the order.”.

(2) Sub-sections 52 (4) and (5) of the Principal Act as amended by sub-section (1) of this section apply in relation to petitions presented during the period of 12 months immediately preceding the commencement of this section or presented after the commencement of this section.

**Consolidation of proceedings**

30. Section 53 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(2) Where the Court makes an order under sub-section (1), section 110 applies in the administration under this Act of all of the estates to which the order relates.

“(3) Where the Court makes an order under sub-section (1) in relation to the estates of 2 or more bankrupts, the Court may, in the order—

- (a) declare a specified date to be, for the purpose of the application of the provisions of Division 3 of Part VI in the administration of the joint estate, the date on which all the petitions relevant to the administration of those estates shall be deemed to have been presented;

- (b) declare a specified date to be, for that purpose, the date of the bankruptcy in respect of each of those estates; and
  - (c) declare a specified time to be, for that purpose, the time that is the commencement of the bankruptcy in respect of all those estates,
- and, if the Court does so, those estates shall be administered accordingly.”.

**Bankrupt’s statement of affairs**

**31. (1) Section 54 of the Principal Act is amended—**

- (a) by inserting in sub-section (1) “, within 14 days from the day on which he is notified of the bankruptcy” after “shall”;
- (b) by inserting in paragraph (a) in sub-section (1) “for the District in which the sequestration order was made” after “the Registrar”;
- (c) by omitting sub-section (2) and substituting the following sub-section:

“(2) Where a sequestration order is made against 2 or more joint debtors (whether partners or not), each of those persons shall (in addition to complying with sub-section (1) in relation to his affairs), within 14 days from the day on which he is notified of the bankruptcy, and either on his own account or jointly with another or others of those debtors—

- (a) make out and file in the office of the Registrar for the District in which the sequestration order was made a statement of the joint affairs of those persons in accordance with the prescribed form and verified by affidavit; and
  - (b) furnish a copy of the statement to the Official Receiver for the District in which the sequestration order was made.”;
- (d) by omitting from sub-section (3) “of his affairs in accordance with this section” and substituting “of affairs as required by sub-section (1) or (2)”;
  - (e) by omitting sub-section (4) and substituting the following sub-section:

“(4) A person who states in writing that he is a creditor of a bankrupt against whom a sequestration order has been made, or a creditor of 2 or more bankrupts against whom the one sequestration order has been made, may without fee, and any other person may on payment of the prescribed fee, inspect, personally or by an agent, the statement of affairs filed by the bankrupt or the statements of affairs filed by the bankrupts, as the case may be, and may make copies of, or take extracts from, the statement or statements.”.

(2) Notwithstanding the amendments of section 54 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a bankrupt who became a bankrupt before the commencement of this section as if those amendments had not been made.



**Debtor's petition**

**32. (1)** Section 55 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “verified by affidavit” and substituting “, verified by affidavit, and a copy of that statement”;
- (b) by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) Where it appears to the Registrar that a petition presented to him under this section is in accordance with the prescribed form and that the statement of affairs accompanying the petition is also in accordance with the prescribed form or the Court directs, under sub-section (4), the Registrar to accept the petition—

- (a) the petition shall be accepted by the Registrar, who shall endorse it accordingly; and
- (b) thereupon, by force of this sub-section, the debtor becomes a bankrupt by virtue of the presentation of the petition.

“(4) Where it appears to the Registrar that a petition presented to him under this section, or the statement of affairs accompanying such a petition, is not in accordance with the prescribed form, the Registrar shall not accept the petition unless the Court, upon reference by the Registrar, directs him to accept it.”;

- (c) by adding at the end of sub-section (5) “and forward to the Official Receiver the copy of the statement of affairs that accompanied the petition presented by the bankrupt”;
- (d) by inserting in paragraph (c) of sub-section (6) “has been declared void,” after “composition”;
- (e) by adding at the end of paragraph (c) of sub-section (8) “under section 74 or 154”; and
- (f) by adding at the end thereof the following sub-section:

“(9) A person who states in writing that he is a creditor of a bankrupt who has become a bankrupt by force of this section may without fee, and any other person may on payment of the prescribed fee, inspect, personally or by an agent, the statement of affairs that accompanied the petition presented by the bankrupt, and may make copies of, or take extracts from, the statement.”.

**(2)** Notwithstanding the amendments of section 55 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a debtor's petition presented before the commencement of this section as if those amendments had not been made.

**33. (1)** Sections 56 and 57 of the Principal Act are repealed and the following sections are substituted:

**Debtor's petition against partnership**

“56. (1) A debtor's petition against a partnership may be presented to the Registrar by all the members of the partnership or by a majority of the members of the partnership who are resident in Australia at the time of the presentation of the petition.

“(2) A petition under this section shall be accompanied by—

- (a) a statement of affairs of each member of the partnership by whom the petition is presented, verified by affidavit;
- (b) a statement of the partnership affairs, verified by affidavit; and
- (c) a copy of each of those statements.

“(3) A petition under this section, and a statement of affairs referred to in sub-section (2), shall each be in accordance with the prescribed form.

“(4) Subject to sub-section (6), where—

- (a) it appears to the Registrar that a petition presented to him under this section is in accordance with the prescribed form and that each of the statements of affairs accompanying the petition is also in accordance with the prescribed form; or
- (b) the Court directs, under sub-section (5), the Registrar to accept the petition,

the petition shall be accepted by the Registrar, who shall endorse it accordingly, and thereupon, by force of this section—

- (c) except in a case to which paragraph (d) applies—each of the members of the partnership becomes a bankrupt by virtue of the presentation of the petition; or
- (d) in a case where the petition is accepted by the Registrar in pursuance of an order of the Court under paragraph (7) (b)—the petitioning partner, or each of the petitioning partners, who gave his consent for the purposes of that paragraph becomes a bankrupt by virtue of the presentation of the petition.

“(5) Where it appears to the Registrar that a petition presented to him under this section, or any statement of affairs accompanying such a petition, is not in accordance with the prescribed form, the Registrar shall not accept the petition unless the Court, upon reference by the Registrar, directs him to accept it.

“(6) Where a petition is presented under this section against a partnership by some, but not all, of the members of the partnership, the Registrar—

- (a) shall not accept the petition, but shall refer it to the Court; and
- (b) shall cause notice in accordance with the rules to be given to each of the partners who did not join in presenting the petition.

“(7) Upon a reference of a petition under sub-section (6), the Court—

- (a) may direct the Registrar to accept the petition;

- (b) may, with the consent of any one or more of the petitioning partners, direct the Registrar—
  - (i) to amend the petition by deleting from the petition the name of the partner, or of each partner, as the case requires, who did not give his consent for the purpose of this paragraph; and
  - (ii) to accept, under sub-section (4), the petition as so amended; or
- (c) may direct the Registrar not to accept the petition.

“(8) The Court shall not make an order under sub-section (5) or (7) of this section in relation to a petition in relation to which sub-section 253D (1) applies unless the relevant authority referred to in that last-mentioned sub-section has had an opportunity of being heard.

“(9) Where members of a partnership become bankrupts by force of this section, the Registrar shall forthwith give notice of the bankruptcies to the Official Receiver and furnish to the Official Receiver the copy of each statement of affairs that accompanied the petition presented by members of the partnership.

“(10) A member of a partnership who has executed a deed of assignment or deed of arrangement under Part X or whose creditors have accepted a composition under that Part is not, except with the leave of the Court, entitled to join in presenting a petition against the partnership under this section unless—

- (a) the deed of assignment has been declared void or the final dividend has been paid under it;
- (b) the deed of arrangement has been declared void or has been terminated; or
- (c) the composition has been declared void, has been set aside or terminated or the final payment has been made under it,

as the case requires.

“(11) A member of a partnership in relation to whom a stay under a proclaimed law applies is not, except with the leave of the Court, entitled to join in presenting a petition against the partnership.

“(12) Where a petition is presented against a partnership in contravention of sub-section (10) or (11), the presentation of the petition does not have any effect.

“(13) Where a debtor’s petition against a partnership is accepted by the Registrar in pursuance of an order of the Court under paragraph (7) (a), each partner resident in Australia, not being a partner who joined in presenting the petition, shall, within 14 days from the day on which he is notified of the bankruptcy—

- (a) make out and file in the office of that Registrar a statement of his affairs and furnish a copy of that statement of affairs to the Official Receiver; and

- (b) either on his own account or jointly with another or others of the non-petitioning partners—
  - (i) make out and file in the office of that Registrar a statement of the partnership affairs; and
  - (ii) furnish a copy of that statement of affairs to the Official Receiver.

“(14) A statement of affairs referred to in sub-section (13) shall be in accordance with the prescribed form and verified by affidavit.

“(15) If a member of a partnership required by sub-section (13) to make out and file a statement of his affairs and a statement of the partnership affairs fails to file those statements, or either of those statements, as required by this section, he is guilty of contempt of court.

“(16) A person who becomes a bankrupt by force of this section continues to be a bankrupt until—

- (a) he is discharged by force of section 149;
- (b) he is discharged by order of the Court; or
- (c) his bankruptcy is annulled under section 74 or 154.

“(17) A person who states in writing that he is a creditor of a bankrupt who has become a bankrupt by virtue of the presentation of a debtor’s petition against the members of a partnership, or a creditor of a partnership some or all of the members of which have become bankrupt by force of this section, may without fee, and any other person may on payment of the prescribed fee, inspect, personally or by an agent, any statement of affairs that accompanied, or has been filed in relation to, the petition presented by members of the partnership, and may make copies of, or take extracts from, any such statement of affairs.

#### **Debtor’s petition by joint debtors who are not partners**

“57. (1) Where joint debtors are not in partnership with one another, the debtors, or any 2 or more of the debtors, may present to the Registrar a petition jointly against themselves.

“(2) A petition under this section shall be accompanied by—

- (a) a statement of affairs of each of the petitioning debtors, verified by affidavit;
- (b) a statement of their joint affairs, verified by affidavit; and
- (c) a copy of each of those statements.

“(3) A petition under this section, and a statement of affairs referred to in sub-section (2), shall each be in accordance with the prescribed form.

“(4) Where it appears to the Registrar that a petition presented to him under this section is in accordance with the prescribed form, and that each of the statements of affairs accompanying the petition is also in accordance with

the prescribed form, or the Court directs, under sub-section (5), the Registrar to accept the petition—

- (a) the petition shall be accepted by the Registrar, who shall endorse it accordingly; and
- (b) thereupon, by force of this section, each of the petitioning debtors becomes a bankrupt by virtue of the presentation of the petition.

“(5) Where it appears to the Registrar that a petition presented to him under this section, or any statement of affairs accompanying such a petition, is not in accordance with the prescribed form, the Registrar shall not accept the petition unless the Court, upon reference by the Registrar, directs him to accept it.

“(6) Where joint debtors become bankrupts by force of this section, the Registrar shall forthwith give notice of the bankruptcies to the Official Receiver and furnish to the Official Receiver the copy of each statement of affairs that accompanied the petition presented by the debtors.

“(7) A debtor who has executed a deed of assignment or a deed of arrangement under Part X or whose creditors have accepted a composition under that Part is not, except with the leave of the Court, entitled to join in presenting a petition under this section unless—

- (a) the deed of assignment has been declared void or the final dividend has been paid under it;
- (b) the deed of arrangement has been declared void or has been terminated; or
- (c) the composition has been declared void, has been set aside or terminated or the final payment has been made under it,

as the case requires.

“(8) A debtor in relation to whom a stay under a proclaimed law applies is not, except with the leave of the Court, entitled to join in presenting a petition under this section.

“(9) Where a petition is presented in contravention of sub-section (7) or (8), the presentation of the petition does not have any effect.

“(10) A person who becomes a bankrupt by force of this section continues to be a bankrupt until—

- (a) he is discharged by force of section 149;
- (b) he is discharged by order of the Court; or
- (c) his bankruptcy is annulled under section 74 or 154.

“(11) A person who states in writing that he is a creditor of a bankrupt who has become a bankrupt by virtue of the presentation of a debtor’s petition against joint debtors, or a creditor of joint debtors some or all of whom have become bankrupts by force of this section, may without fee, and any other person may on payment of the prescribed fee, inspect, personally or by an agent, any statement of affairs that accompanied the petition presented by

the joint debtors, and may make copies of, or take extracts from, any such statement of affairs.

**Time at which person becomes bankrupt on debtor's petition**

“57A. Where, after the commencement of this section, a person becomes a bankrupt by virtue of the presentation of a debtor's petition, the person shall, for the purposes of this Act, be deemed to become a bankrupt at the first instant of the day on which the petition is accepted by the Registrar.”

(2) Notwithstanding the repeal of section 56 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a debtor's petition against a partnership presented before the commencement of this section as if that section of the Principal Act had not been repealed.

**Vesting of property upon bankruptcy**

34. (1) Section 58 of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (1) “The Official Receiver in Bankruptcy” and substituting “the Official Trustee”;

(b) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:

“(b) after-acquired property of the bankrupt vests, as soon as it is acquired by, or devolves on, the bankrupt, in the Official Trustee or, if a registered trustee is the trustee of the estate of the bankrupt, in that registered trustee.”;

(c) by omitting from sub-section (2) “The Official Receiver in Bankruptcy or the trustee” (first occurring) and substituting “the trustee of the estate of a bankrupt”;

(d) by omitting from sub-section (2) “The Official Receiver in Bankruptcy or the trustee, as the case may be,” and substituting “the trustee”;

(e) by inserting after sub-section (5) the following sub-section:

“(5A) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a bankrupt, or against any property of a bankrupt that is not vested in the trustee of the bankrupt, in respect of any liability of the bankrupt under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this sub-section)”;

and

(f) by inserting in sub-section (6) “on or” after “the bankrupt” (first occurring).

(2) Sub-section 58 (5A) of the Principal Act as amended by sub-section (1) of this section does not apply in relation to a bankrupt, or the property of a bankrupt, who became a bankrupt before the commencement of this section.

**35. (1)** Section 59 of the Principal Act is repealed and the following section substituted:

**Second or subsequent bankruptcy**

“59. (1) Where a person who is a bankrupt again becomes a bankrupt—

(a) the property of the bankrupt—

- (i) that was acquired by, or devolved on, the bankrupt on or after the date of the earlier bankruptcy; and
- (ii) that had not been distributed amongst the creditors in the earlier bankruptcy before the date on which the person became a bankrupt on the later occasion,

shall (subject to any disposition of that property made by the trustee in the earlier bankruptcy without knowledge of the presentation of the petition on, or by virtue of the presentation of which, the person became bankrupt on the later occasion and subject also to section 126) vest forthwith in the trustee in the later bankruptcy;

(b) property—

- (i) that is acquired by, or devolves on, the bankrupt on or after the date of the later bankruptcy; and
- (ii) that is divisible amongst the creditors in the later bankruptcy, vests in the trustee in the later bankruptcy as soon as it is acquired by, or devolves on, the bankrupt;

(c) the trustee in the earlier bankruptcy—

- (i) shall be deemed to be a creditor in the later bankruptcy in respect of any unsatisfied balance of his expenses in the earlier bankruptcy, the liabilities incurred by him in administering the estate in the earlier bankruptcy and the debts proved in the earlier bankruptcy (whether or not those debts are entitled to priority, or are postponed, in the earlier bankruptcy);
- (ii) shall rank equally with the ordinary unsecured creditors in the later bankruptcy; and
- (iii) may, where he has lodged a proof of debt in the later bankruptcy, amend that proof of debt, without the consent of the trustee in the later bankruptcy, for the purpose of adding—
  - (A) his expenses in the earlier bankruptcy that have accrued after the proof of debt was lodged;
  - (B) liabilities incurred by him in administering the estate in the earlier bankruptcy after the proof of debt was lodged; or
  - (C) debts proved in the earlier bankruptcy after the proof of debt was lodged,

or, with the consent of the trustee in the later bankruptcy, for any other purpose;

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- (d) a charge or charging order that, by virtue of sub-section 118 (9), is void as against the trustee in the earlier bankruptcy continues to be void as against that trustee;
- (e) a transaction that, by virtue of section 120, 121 or 122, is void as against the trustee in the earlier bankruptcy continues to be void as against that trustee; and
- (f) sub-section 131 (2) ceases to apply in relation to the trustee in the earlier bankruptcy and any order in force under that sub-section immediately before the date of the later bankruptcy has, by force of this paragraph, effect on and after that date as if the income of the bankrupt payable under the order were payable to the trustee in the later bankruptcy for the benefit of the bankrupt's creditors in the later bankruptcy.

“(2) Where the trustee of the estate of a bankrupt receives notice of the presentation of a creditor's petition against the bankrupt, the trustee shall hold the after-acquired property of the bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the petition has been dealt with by the Court or has lapsed.

“(3) Where the trustee of the estate of a bankrupt receives notice that a debtor's petition against the bankrupt has been referred to the Court, the trustee shall hold the after-acquired property of the bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the Court has dealt with the petition.

“(4) Where the trustee of the estate of a bankrupt is holding after-acquired property of the bankrupt, or the proceeds of any such property, in pursuance of sub-section (2) or (3) and the bankrupt again becomes a bankrupt, the trustee shall—

- (a) in a case where the trustee is also the trustee in the later bankruptcy—hold all such property, and the proceeds of such property, as the trustee in the later bankruptcy; or
- (b) in any other case—deliver all such property, and pay the proceeds of such property, to the trustee in the later bankruptcy.

“(5) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, and enables the trustee of the estate of a bankrupt to be registered as the owner of any such property that is part of the property of the bankrupt, that property, notwithstanding that it vests in equity in the trustee by virtue of sub-section (1), does not vest in the trustee at law until the requirements of that law have been complied with.

“(6) In sub-sections (2), (3) and (4), ‘after-acquired property’, in relation to a bankrupt, means such of the property that was acquired by, or devolved on, the bankrupt on or after the date of the bankruptcy, being property divisible amongst the creditors of the bankrupt, as has not been distributed amongst the creditors in the bankruptcy.”.



(2) Notwithstanding the repeal of section 59 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, subject to sub-section (3) of this section, in relation to the estate of a bankrupt who, before the commencement of this section, had again become a bankrupt as if that section of the Principal Act had not been repealed.

(3) Section 59 of the Principal Act has effect, after the commencement of this section, in relation to the estate of a bankrupt referred to in sub-section (2) of this section as if—

- (a) “The Official Receiver in Bankruptcy or the trustee” (wherever occurring) were omitted from paragraph (a) of sub-section (1) and “the Official Trustee or a registered trustee” were substituted;
- (b) “The Official Receiver in Bankruptcy or the trustee” were omitted from paragraph (b) of sub-section (1) and “the trustee of the estate of the bankrupt” were substituted; and
- (c) “The Official Receiver in Bankruptcy or the trustee” were omitted from sub-section (2) and “the trustee of the estate of the bankrupt” were substituted.

### **Stay of legal proceedings**

**36. (1)** Section 60 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) The Court may, at any time after the presentation of a petition, upon such terms and conditions as it thinks fit—

- (a) discharge an order made, whether before or after the commencement of this sub-section, against the person or property of the debtor under any law relating to the imprisonment of fraudulent debtors and, in a case where the debtor is imprisoned or otherwise held in custody under such a law, discharge the debtor out of custody; or
- (b) stay any legal process, whether civil or criminal and whether instituted before or after the commencement of this sub-section, against the person or property of the debtor—
  - (i) in respect of the non-payment of a provable debt or of a pecuniary penalty payable in consequence of the non-payment of a provable debt; or
  - (ii) in consequence of his refusal or failure to comply with an order of a court, whether made in civil or criminal proceedings, for the payment of a provable debt,

and, in a case where the debtor is imprisoned or otherwise held in custody in consequence of the non-payment of a provable debt or of a pecuniary penalty referred to in sub-paragraph (i) or in consequence of his refusal or failure to comply with an order referred to in sub-paragraph (ii), discharge the debtor out of custody.”

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(2) Sub-section 60 (1) of the Principal Act as amended by sub-section (1) of this section applies in relation to a debtor against whom a petition was presented before, or is presented after, the commencement of this section.

(3) The amendment of section 60 of the Principal Act made by sub-section (1) of this section does not affect an order of the Court made under section 60 of the Principal Act before the commencement of this section.

37. Section 64 of the Principal Act is repealed and the following section substituted:

**First meeting of creditors**

“64. (1) The Official Receiver shall cause a meeting of the creditors of a bankrupt to be held, for the purposes of considering and deciding upon any matters relating to the bankruptcy, within the prescribed period if—

- (a) a creditor requests him to do so; or
- (b) he is of the opinion that it is desirable that he should do so.

“(2) For the purposes of sub-section (1), the ‘prescribed period’, in relation to a bankrupt, means—

- (a) subject to paragraph (b), the period of 28 days from the date of the bankruptcy; or
- (b) if the Registrar, on the application of the Official Receiver, extends the period within which the first meeting of creditors may be held—the extended period fixed by the Registrar.”.

38. (1) Section 69 of the Principal Act is repealed and the following section substituted:

**Public examination of bankrupt**

“69. (1) Subject to this section, a bankrupt shall be examined on oath as to his conduct, trade dealings, property and affairs.

“(2) The examination of a bankrupt under this section shall be commenced as soon as it conveniently can be after the filing of the bankrupt’s statement of affairs or, where the bankrupt became a bankrupt on a creditor’s petition and the Registrar thinks fit, before the filing of the statement of affairs.

“(3) The Registrar shall, on the application of the Official Receiver, fix a date, time and place for the commencement of the examination of a bankrupt under this section and shall summon the bankrupt to attend on the date, and at the time and place, so fixed.

“(4) Subject to sub-section (5), the examination of a bankrupt under this section shall be held in public before the Registrar or, if the Registrar so directs by instrument in writing, before a magistrate.

“(5) The Registrar or a magistrate may—

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- (a) at any time adjourn the examination of the bankrupt either to a fixed date or generally;
- (b) at any time adjourn the examination of the bankrupt for further hearing before the Court; or
- (c) conclude the examination of the bankrupt.

“(6) Where the examination is adjourned by the Registrar or a magistrate for further hearing before the Court, the Registrar or the magistrate, as the case may be, may submit to the Court such report with respect to the examination as he thinks fit.

“(7) Where the examination is adjourned for further hearing before the Court, the Court may—

- (a) continue the examination;
- (b) at any time direct that the examination be continued before the Registrar or a magistrate; or
- (c) make such other order as it thinks proper in the circumstances.

“(8) A bankrupt is entitled to be represented, on his examination under this section, by counsel or a solicitor, who may re-examine him after his examination.

“(9) The trustee or a creditor of the bankrupt may take part in the examination and, for that purpose, may be represented by counsel or a solicitor or by an agent authorized in writing for the purpose.

“(10) Without limiting the generality of sub-section (9), where the Official Trustee is the trustee, the Official Trustee may, for the purpose of taking part in the examination, be represented by the Official Receiver.

“(11) The Court, the Registrar or the magistrate may put to the bankrupt, or allow to be put to the bankrupt, such questions as the Court, the Registrar or the magistrate, as the case may be, thinks proper.

“(12) The bankrupt shall answer all questions that the Court, the Registrar or the magistrate puts or allows to be put to him and, unless the Court, the Registrar or the magistrate, as the case may be, otherwise directs, is not excused from answering any such question by reason only of the fact that the answer to it may tend to incriminate him.

“(13) The Registrar may, on the recommendation of the Official Receiver, direct that the examination of a bankrupt under this section shall not be held.

“(14) In deciding whether to give a direction under sub-section (13), the Registrar shall take into account the report of the Official Receiver filed in pursuance of paragraph 19 (1) (c), any resolution of the creditors on the matter and any views of the trustee on the matter.

“(15) Where the Registrar is satisfied that the bankrupt suffers from a mental or physical disability that makes him unfit or unable to attend for examination in accordance with this section, the Registrar may—

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- (a) direct that his examination be dispensed with; or
- (b) direct that he be examined in such manner, and on such date and at such time and place, as the Registrar thinks fit.

“(16) The Court may direct that the examination of a bankrupt under this section shall not be held or that the commencement of the examination shall be postponed.

“(17) In deciding whether to give a direction under sub-section (16), the Court shall take into account the report of the Official Receiver filed in pursuance of paragraph 19 (1) (c), any resolution of the creditors on the matter and any views of the trustee on the matter.

“(18) The Court, the Registrar or the magistrate, as the case may be, may cause such notes of the examination of the bankrupt under this section to be taken down in writing as the Court, the Registrar or the magistrate, as the case may be, thinks proper, and the bankrupt shall sign the notes.

“(19) The power conferred on the Court, the Registrar or the magistrate, as the case may be, by sub-section (18) is in addition to the powers of the Court, the Registrar or the magistrate, as the case may be, under section 255.

“(20) Notes taken down and signed by the bankrupt in pursuance of sub-section (18), and the transcript of the evidence given at the examination of the bankrupt under this section (being a transcript certified, or certified, signed and sealed, in pursuance of section 255)—

- (a) may be used in evidence in any proceedings under this Act against the bankrupt; and
- (b) shall be open to inspection by the bankrupt, the trustee or a person who states in writing that he is a creditor of the bankrupt without fee and by any other person on payment of the prescribed fee.”.

(2) Subject to sub-section (3), section 69 of the Principal Act as amended by sub-section (1) of this section applies in relation to a person who became a bankrupt before, or becomes a bankrupt after, the commencement of this section.

(3) Notwithstanding the repeal of section 69 of the Principal Act effected by sub-section (1) of this section, where the Registrar has, before the commencement of this section, fixed a time and place for the examination of a bankrupt under that section of the Principal Act, the provisions of section 69 of the Principal Act continue to apply, after the commencement of this section, subject to sub-section (4) of this section, in relation to any examination of the bankrupt in consequence of that time and place having been so fixed as if that section of the Principal Act had not been repealed, and section 69 of the Principal Act as amended by sub-section (1) of this section does not apply in relation to any such examination of the bankrupt.

(4) Section 69 of the Principal Act has effect, after the commencement of section 148 of this Act, in relation to a bankrupt referred to in sub-section (3)

of this section as if, “being a transcript certified, or sealed or signed, in pursuance of sub-section (4) of section 255 of this Act” were omitted from sub-section (14) of section 69 of the Principal Act and “(being a transcript certified, or certified, signed and sealed, in pursuance of section 255)” were substituted.

### **Approval by the Court**

**39.** Section 74 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(6) Where a bankruptcy is annulled under this section, all sales and dispositions of property and payments duly made, and all acts done, by the trustee or any person acting under the authority of the trustee or the Court before the annulment shall be deemed to have been validly made or done but, subject to sub-section (7), the property of the bankrupt still vested in the trustee vests in such person as the Court appoints or, in default of such an appointment, reverts to the bankrupt for all his estate or interest in it, on such terms and subject to such conditions (if any) as the Court orders.

“(7) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, any such property vested in the trustee at the time of the annulment of the bankruptcy, notwithstanding that it vests in equity in such person as the Court appoints or in the bankrupt, as the case may be, does not vest in that person or the bankrupt at law until the requirements of that law have been complied with.”.

### **Arrest of debtor or bankrupt**

**40. (1)** Section 78 of the Principal Act is amended—

- (a) by adding at the end of paragraph (d) of sub-section (1) “or”; and
- (b) by omitting paragraph (e) of sub-section (1).

(2) The amendments of section 78 of the Principal Act made by sub-section (1) of this section do not affect the operation, after the commencement of this section, of a warrant in force under section 78 of the Principal Act immediately before the commencement of this section.

**41. (1)** Section 81 of the Principal Act is repealed and the following section substituted:

### **Discovery of bankrupt’s property**

“81. (1) The Court or the Registrar may, on the application of a creditor who has proved his debt and on such terms as to costs as the Court or the Registrar thinks fit to impose, or on the application of the trustee, at any time summon—

- (a) the bankrupt or the spouse of the bankrupt; or
- (b) a person who is known or suspected to have in his possession any of the property of the bankrupt, or is supposed to be indebted to the

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bankrupt or to be able to give information concerning the bankrupt or his trade dealings, property or affairs,  
to attend, on a date and at a time and place fixed in the summons, before the Court or the Registrar or, if the Court or the Registrar thinks fit, before a magistrate, to give evidence concerning, and produce any books (whether or not in existence at the time the bankrupt became a bankrupt) in his custody or power relating to, the bankrupt or his trade dealings, property or affairs.

“(2) An examination under this section shall be held in public.

“(3) The Court, the Registrar or a magistrate may at any time adjourn the examination of a person under this section either to a fixed date or generally, or conclude the examination.

“(4) The Registrar or a magistrate may at any time adjourn the examination of a person under this section for further hearing before the Court.

“(5) Where the examination is adjourned by the Registrar or a magistrate for further hearing before the Court, the Registrar or the magistrate, as the case may be, may submit to the Court such report with respect to the examination as he thinks fit.

“(6) Where the examination is adjourned for further hearing before the Court, the Court may—

- (a) continue the examination;
- (b) at any time direct that the examination be continued before the Registrar or a magistrate; or
- (c) make such other order as it thinks proper in the circumstances.

“(7) A person summoned to attend before the Court, the Registrar or a magistrate for examination under this section is entitled to be represented, on his examination, by counsel or a solicitor, who may re-examine him after his examination.

“(8) The trustee or a creditor of the bankrupt may take part in the examination and, for that purpose, may be represented by counsel or a solicitor or by an agent authorized in writing for the purpose.

“(9) Without limiting the generality of sub-section (8), where the Official Trustee is the trustee, the Official Trustee may, for the purpose of taking part in the examination, be represented by the Official Receiver.

“(10) The Court, the Registrar or the magistrate may put to a person being examined under this section, or allow to be put to a person being examined under this section, such questions concerning the bankrupt or his trade dealings, property or affairs, as the Court, the Registrar or the magistrate, as the case may be, thinks proper.

“(11) A person being examined under this section shall answer all questions that the Court, the Registrar or the magistrate puts or allows to be put to him.

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“(12) Where a person admits on examination under this section that he is indebted to the bankrupt, then, the Court, the Registrar or the magistrate, as the case may be, may, on the application of the trustee or a creditor who has proved his debt, order the person to pay to the trustee, at or by such time and in such manner as the Court, the Registrar or the magistrate, as the case may be, thinks fit, the whole or a part of the amount in which the person admits he is indebted to the bankrupt.

“(13) Where the bankrupt or another person admits on examination under this section that he has in his possession or power any of the property of the bankrupt, then, the Court, the Registrar or the magistrate, as the case may be, may, on the application of the trustee or a creditor who has proved his debt, order the bankrupt or the other person, as the case may be, to deliver that property to the trustee at or by such time, in such manner and on such terms as the Court, the Registrar or the magistrate, as the case may be, thinks fit.

“(14) The Court, the Registrar or the magistrate, as the case may be, may direct that the costs of a person examined under this section shall be paid out of the estate of the bankrupt.

“(15) The Court, the Registrar or the magistrate, as the case may be, may cause such notes of the examination of a person under this section to be taken down in writing as the Court, the Registrar or the magistrate, as the case may be, thinks proper, and the person examined shall sign the notes.

“(16) The power conferred on the Court, the Registrar or the magistrate, as the case may be, by sub-section (15) is in addition to the powers of the Court, the Registrar or the magistrate, as the case may be, under section 255.

“(17) Notes taken down and signed by a person in pursuance of sub-section (15), and the transcript of the evidence given at the examination of a person under this section (being a transcript certified, or certified, signed and sealed, in pursuance of section 255)—

- (a) may be used in evidence in any proceedings under this Act against the person; and
- (b) shall be open to inspection by the person, the bankrupt, the trustee or a person who states in writing that he is a creditor of the bankrupt without fee and by any other person on payment of the prescribed fee.”

(2) Subject to sub-section (3), section 81 of the Principal Act as amended by sub-section (1) of this section applies in relation to a person who became a bankrupt before, or becomes a bankrupt after, the commencement of this section.

(3) Notwithstanding the repeal of section 81 of the Principal Act effected by sub-section (1) of this section, where application had, before the commencement of this section, been made to the Court or the Registrar under that section of the Principal Act for the issue of a summons, the provisions of section 81 of the Principal Act continue to apply, after the commencement of this

section, subject to sub-section (4) of this section, in relation to that application, and in relation to the examination of a person in pursuance of a summons issued, whether before or after the commencement of this section, upon that application, as if that section of the Principal Act had not been repealed, and section 81 of the Principal Act as amended by sub-section (1) of this section does not apply in relation to that application or that examination.

(4) Section 81 of the Principal Act has effect, after the commencement of section 148 of this Act, in relation to an examination referred to in sub-section (3) of this section as if “, being a transcript certified, or sealed or signed in pursuance of sub-section (4) of section 255 of this Act” were omitted from sub-section (9) of section 81 of the Principal Act and “(being a transcript certified, or certified, signed and sealed, in pursuance of section 255)” were substituted.

### **Debts provable in bankruptcy**

**42. (1)** Section 82 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) Without limiting the generality of sub-section (1), debts and liabilities referred to in that sub-section shall be taken to include a debt or liability by way of the whole or a part of—

- (a) a periodical sum that became payable by the bankrupt before, but not more than one year before, the date of the bankruptcy under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this sub-section); and
- (b) a lump sum (whether payable in one amount or by instalments) that became payable by the bankrupt before the date of the bankruptcy under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this sub-section).”

(2) Sub-section 82 (1A) of the Principal Act as amended by sub-section (1) of this section does not apply in relation to a bankrupt, or the estate of a bankrupt, who became a bankrupt before the commencement of this section.

### **Manner of proving debts**

**43. (1)** Section 84 of the Principal Act is amended—

- (a) by omitting paragraph (a) of sub-section (2) and substituting the following paragraph:

“(a) shall set out particulars of the debt;” and

- (b) by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) Where the trustee is of the opinion that it is desirable that all the matters, or some of the matters, contained in a proof of debt lodged with him by a creditor should be verified by statutory declaration, the trustee may serve on the creditor a notice, in accordance



with the prescribed form, informing the creditor that he is of that opinion and that, unless the creditor lodges with the trustee a statutory declaration verifying the matters contained in the proof of the debt or such of those matters as the trustee specifies in the notice, the trustee will administer the estate as if the proof of debt had not been lodged.

“(4) A statutory declaration verifying matters in a proof of debt lodged by a creditor may be made by the creditor or by a prescribed person on behalf of the creditor.

“(5) Where the trustee serves a notice on a creditor under sub-section (3) in respect of a proof of debt, the proof of debt shall, for the purposes of this Act (other than section 263 or 263B), be deemed not to have been lodged with the trustee unless and until the creditor has lodged with the trustee a statutory declaration verifying the matters in the proof of debt or such of those matters as are specified in the notice, as the case requires.

“(6) A proof of debt under this section, or a statutory declaration referred to in sub-section (3), sent to the trustee by post as certified mail (postage being prepaid) shall be deemed to have been lodged with the trustee and shall be deemed to have been so lodged at the time at which it would have been delivered in the ordinary course of post unless it is shown that the trustee did not receive it at that time.”

(2) The amendments of section 84 of the Principal Act made by sub-section (1) of this section do not apply in relation to a proof of debt lodged with a trustee, before the commencement of this section, in accordance with section 84 of the Principal Act.

### **Proof by employees**

44. (1) Section 85 of the Principal Act is amended by inserting after sub-section (2) the following sub-sections:

“(2A) Where the trustee is of the opinion that it is desirable that all the matters, or some of the matters, contained in a proof of debt lodged with him by a person in pursuance of this section should be verified by statutory declaration, the trustee may serve on the person a notice, in accordance with the prescribed form, informing the person that he is of that opinion and that, unless the person lodges with the trustee a statutory declaration verifying the matters contained in the proof of debt or such of those matters as the trustee specifies in the notice, the trustee will administer the estate as if the proof of the debt had not been lodged.

“(2B) A statutory declaration verifying matters in a proof of debt lodged by a person in pursuance of this section may be made by the person or by a prescribed person on behalf of that person.

“(2C) Where the trustee serves a notice on a person under sub-section (2A) in respect of a proof of debt, the proof of debt shall, for the purposes of this Act (other than section 263 or 263B), be deemed not to have been lodged

with the trustee unless and until the person has lodged with the trustee a statutory declaration verifying the matters in the proof of debt or such of those matters as are specified in the notice, as the case requires.

“(2D) A proof of debt under this section, or a statutory declaration referred to in sub-section (2A), sent to the trustee by post as certified mail (postage being prepaid) shall be deemed to have been lodged with the trustee and shall be deemed to have been so lodged at the time at which it would have been delivered in the ordinary course of post unless it is shown that the trustee did not receive it at that time.”.

(2) The amendments of section 85 of the Principal Act made by sub-section (1) of this section do not apply in relation to a proof of debt lodged with a trustee, before the commencement of this section, in pursuance of section 85 of the Principal Act.

**Application to the Court where creditor or bankrupt considers proof wrongly admitted**

45. (1) Section 99 of the Principal Act is amended by omitting from sub-section (1) “the trustee, a creditor or the bankrupt considers that” and substituting “a creditor or the bankrupt considers that, by virtue of a decision of the trustee under sub-section 102 (1), (3) or (4),”.

(2) Subject to sub-section (3), section 99 of the Principal Act as amended by sub-section (1) of this section applies in relation to a proof of debt admitted by a trustee—

- (a) by virtue of a decision of the trustee made under sub-section 102 (1) of the *Bankruptcy Act 1966* either before or after the commencement of this section; or
- (b) by virtue of a decision of the trustee made under sub-section 102 (3) or (4) of the Principal Act as amended by this Act after the commencement of this section.

(3) Notwithstanding the amendment of section 99 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to an application made to the Court under that section of the Principal Act before the commencement of this section as if that amendment had not been made, and section 99 of the Principal Act as amended by sub-section (1) of this section does not apply in relation to such an application.

**Inspection of proofs by creditors, &c.**

46. Section 101 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) The trustee shall, upon request in writing by a creditor who has lodged a proof of debt, supply the creditor with a statement in writing containing the names of the creditors who have lodged proofs of debt, the amount claimed by each such creditor and the amount admitted by the trustee in respect of each such creditor.”.

**Admission or rejection of proofs**

**47. (1)** Section 102 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(3) Where the trustee considers that a proof of debt has been wrongly admitted, he may—

- (a) revoke the decision to admit the proof of debt and reject it in whole; or
- (b) amend the decision to admit the proof of debt by increasing or reducing the amount of the admitted debt.

“(4) Where the trustee considers that a proof of debt has been wrongly rejected in whole, he may—

- (a) revoke the decision to reject the proof of debt; and
- (b) admit the proof of debt in whole or admit the proof of debt in part and reject it in part.

“(5) Where the trustee revokes a decision to admit a proof of debt and rejects it in whole or amends such a decision by reducing the amount of the admitted debt—

- (a) he shall inform the creditor by whom it was lodged, in writing, of his grounds for the revocation or amendment; and
- (b) the creditor shall forthwith repay to the trustee any amount received by way of dividend in respect of the proof of debt or any amount received by way of dividend in excess of the amount that the creditor would have been entitled to receive if his debt had been originally admitted for the reduced amount, as the case requires.

“(6) Where the trustee revokes a decision to reject a proof of debt in whole, or amends a decision to admit a proof of debt in part by increasing the amount of the admitted debt, the creditor by whom it was lodged is entitled to be paid, out of available money for the time being in the hands of the trustee, the dividends or additional amounts of dividend, as the case may be, that the creditor would have been entitled to receive if the debt had been originally admitted in whole or for the increased amount, as the case may be, before the available money is applied in the payment of a further dividend, but the creditor is not entitled to disturb the distribution of any dividends declared before the trustee revoked or so amended the decision.”.

**(2)** Section 102 of the Principal Act is amended by omitting from sub-section (1) “from the date specified in the notice of intention to declare a dividend as the latest date on” and substituting “after the expiration of the period specified in the notice of intention to declare a dividend as the period within”.

**(3)** Sub-sections 102 (3), (4), (5) and (6) of the Principal Act as amended by sub-section (1) of this section apply in relation to a proof of debt that was lodged with the trustee before, or is lodged with the trustee after, the commencement of this sub-section.

**Appeal against decision of trustee in respect of proof**

**48.** Section 104 of the Principal Act is amended by inserting in sub-section (1) “under sub-section 102 (1), (3) or (4)” after “trustee”.

**Costs of appeal**

**49.** Section 105 of the Principal Act is amended —

(a) by omitting sub-section (1) and substituting the following sub-section :

“(1) The Official Trustee is not personally liable for costs in relation to an application to review a decision made by the Official Trustee under sub-section 102 (1), (3) or (4) in respect of a proof of debt.”; and

(b) by omitting from sub-section (2) “trustee not being an Official Receiver” and substituting “registered trustee”.

**Trustee may administer oaths, &c.**

**50.** Section 106 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) This section does not apply in relation to the Official Trustee.”.

**51. (1)** Section 109 of the Principal Act is repealed and the following section substituted:

**Priority payments**

“109. (1) Subject to this Act and to sections 221P and 221YU of the *Income Tax Assessment Act 1936*, the trustee shall, before applying the proceeds of the property of the bankrupt in making any other payments, apply those proceeds in the following order:

(a) first, in the order prescribed by the rules, in payment of the taxed costs of the petitioning creditor and the costs, charges and expenses of the administration of the bankruptcy, including the remuneration and expenses of the trustee;

(b) second, in the case of a bankrupt who had, before the date of the bankruptcy, signed an authority under section 188, in payment of—

(i) if the authority was given to a registered trustee—liabilities incurred in good faith before the date of the bankruptcy by a controlling trustee in the exercise of the powers conferred on him by Part X and any remuneration due to that controlling trustee; or

(ii) if the authority was given to a solicitor—any taxed costs due to the solicitor in respect of services rendered by him in relation to the authority;

(c) third, in payment of liabilities, commitments, expenses or remuneration referred to in section 114;

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- (d) fourth, in the case of the estate of a deceased debtor whose estate is being administered under Part XI, in payment of proper funeral and testamentary expenses;
- (e) fifth, in payment of amounts (including amounts payable by way of allowance or reimbursement under a contract of employment or under an award or agreement regulating conditions of employment, but not including amounts in respect of long service leave, annual leave, recreation leave or sick leave), not exceeding in the case of any one employee \$1,500 or such greater amount as is prescribed for the purposes of this paragraph, due to or in respect of any employee of the bankrupt, whether remunerated by salary, wages, commission or otherwise, in respect of services rendered to or for the bankrupt before the date of the bankruptcy;
- (f) sixth, in payment of amounts in respect of compensation, being compensation the liability for which accrued before the date of the bankruptcy, under any law of the Commonwealth or of a State or Territory of the Commonwealth providing for compensation for personal injury arising out of, or in the course of, employment;
- (g) seventh, in payment of all amounts due to or in respect of any employee of the bankrupt, whether remunerated by salary, wages, commission or otherwise, in respect of long service leave, annual leave, recreation leave or sick leave in respect of a period before the date of the bankruptcy;
- (h) eighth, in payment of any sum payable under section 113;
- (j) ninth, in payment of—
  - (i) such preferences, priorities or advantages in favour of any creditor or group of creditors as regards any other creditor or group of creditors; and
  - (ii) such costs, charges and expenses incurred in the interests of creditors before the date of the bankruptcy,

as a general meeting of creditors, by special resolution, resolves.

“(2) Subject to sub-section (3), where a payment has been made by the bankrupt of an amount referred to in paragraph (1) (e) or (g) and the payment was made out of moneys advanced by a person for the purpose of enabling the payment, or such a payment, to be made, the person by whom the moneys were advanced has the same right of priority in respect of the moneys so advanced as the person who received the payment would have had if the payment had not been made.

“(3) The right of priority conferred by sub-section (2) in respect of moneys advanced for the purpose referred to in that sub-section does not extend to so much of the money so advanced as exceeds the amount by which the amount in respect of which the person who received the payment would have been entitled to priority has been diminished by reason of the payment.

“(4) The right of priority conferred by sub-section (2) in respect of moneys advanced for the purpose referred to in that sub-section applies, notwithstanding section 111, in respect of moneys advanced by the spouse of the bankrupt for that purpose.

“(5) Paragraph (1) (f) does not apply to the extent to which the bankrupt is indemnified under a contract of insurance against the liability referred to in that paragraph.

“(6) Where, under a law of the Commonwealth or of a State or Territory of the Commonwealth that provides for compensation for personal injury arising out of, or in the course of, employment, a bankrupt is liable to make a payment to a body or fund by way of reimbursing the body or fund in respect of compensation paid or payable by the body or out of the fund under that law, paragraph (1) (f) does not apply to the amount so payable by the bankrupt.

“(7) A special resolution shall not be deemed to have been duly passed for the purposes of paragraph (1) (j) unless the notice convening the meeting at which it was passed contained a copy of the proposed resolution.

“(8) A payment shall not be made under paragraph (1) (j) until 28 days after—

(a) a certificate that the notice convening the meeting was duly forwarded to the bankrupt and to each person shown as a creditor in the statement of affairs; and

(b) a copy of the special resolution,

have been filed in the office of the Registrar.

“(9) The bankrupt or a creditor may, before the expiration of the period referred to in sub-section (8), apply to the Court to reverse or vary the decision of the creditors and the Court may, upon the application, make such order as it thinks proper.

“(10) Where property has been recovered, realised or preserved by means of an indemnity for costs of litigation given by any creditor or creditors, the Court may, upon the application of the trustee or a creditor, make such order as it thinks just and equitable with respect to the distribution of the proceeds of that property with a view to giving the indemnifying creditor or creditors an advantage over other creditors in consideration of the risk run by him or them in giving the indemnity.

“(11) Except as provided in paragraph (1) (a), the debts in each of the classes specified in sub-section (1) rank equally between themselves and shall be paid in full unless the proceeds of the property of the bankrupt are insufficient to meet them, in which case they shall be paid proportionately.

“(12) In sub-section (11), ‘debts’ includes liabilities, remuneration, commitments and expenses specified in sub-section (1).”.

(2) Notwithstanding the repeal of section 109 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal

Act continue to apply, after the commencement of this section, in relation to the administration of the estate of a bankrupt who became a bankrupt before the commencement of this section as if that section of the Principal Act had not been repealed.

**(3) Where—**

- (a) a debtor becomes a bankrupt on a creditor's petition after the commencement of this section; and
- (b) the petitioning creditor had lodged an amount with the Registrar under section 48 of the Principal Act at the time of presenting the petition,

the trustee shall, before applying the proceeds of the property of the bankrupt in making payments referred to in sub-section 109 (1) of the Principal Act as amended by sub-section (1) of this section, apply those proceeds in payment of an amount equal to so much of the amount lodged by the creditor under section 48 of the Principal Act as has been used for meeting the expenses referred to in that section of the Principal Act.

#### **Postponement of spouse's claims**

**52.** Section 111 of the Principal Act is amended by omitting "for valuable consideration in money or money's worth".

#### **Interest on debts**

**53. (1)** Section 112 of the Principal Act is amended—

- (a) by omitting from sub-sections (1) and (2) "eight per centum per annum" and substituting "12% per annum or such other rate as is prescribed for the purposes of this section"; and
- (b) by omitting from sub-section (2) "for valuable consideration in money or money's worth".

**(2)** Notwithstanding the amendments of section 112 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to the administration of the estate of a bankrupt who became a bankrupt before the commencement of this section as if those amendments had not been made.

#### **Property divisible amongst creditors**

**54. (1)** Section 116 of the Principal Act is amended—

- (a) by inserting in paragraph (c) of sub-section (2) " , or such greater amount as is prescribed for the purposes of this paragraph," before "in value";
- (b) by omitting paragraphs (d), (e) and (f) of sub-section (2) and substituting the following paragraphs:
  - "(d) policies of life assurance or endowment assurance (other than policies for pure endowment) in respect of the life of the bankrupt or the spouse of the bankrupt that have been in

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force for not less than 2 years before the commencement of the bankruptcy and the proceeds of such policies received on or after the date of the bankruptcy or not earlier than one year before that date;

- “(e) policies for pure endowment that have been in force for not less than 5 years before the commencement of the bankruptcy and the proceeds of such policies received on or after the date of the bankruptcy or not earlier than one year before that date;
  - “(f) policies for annuities that have been in force for not less than 5 years before the date of the bankruptcy to the extent to which they provide for payment of an annuity not exceeding in the aggregate \$1,200 or such greater amount as is prescribed for the purposes of this paragraph;
  - “(fa) payments made on or after the date of the bankruptcy under policies for annuities to the extent to which those payments do not exceed, in the aggregate, \$1,200 per annum or such greater amount per annum as prescribed for the purposes of this paragraph;”;
- (c) by omitting from paragraph (g) of sub-section (2) “and” (last occurring);
- (d) by adding at the end of sub-section (2) the following paragraphs:
- “(k) amounts paid to the bankrupt under a scheme established and operated by a State in accordance with the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Reconstruction) Act* 1971, or in accordance with that agreement as subsequently amended, being amounts paid by way of loan as assistance for the purpose of rehabilitation;
  - “(m) amounts paid to the bankrupt under a scheme established and operated by a State or the Northern Territory in accordance with the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Adjustment) Act* 1976, or that agreement as subsequently amended (including that agreement as amended by the agreement between the Commonwealth, the States and the Northern Territory the execution of which, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act* 1979, or that last-mentioned agreement as subsequently amended), being amounts paid by way of grant or loan as assistance for the purpose of rehabilitation or household support;
  - “(n) property to which, by virtue of sub-section (3), this paragraph applies; and



- “(o) amounts paid to the bankrupt under sub-section (4).”; and  
(e) by adding at the end thereof the following sub-sections:

“(3) Where the whole, or substantially the whole, of the moneys paid for the purchase, or used in the acquisition, of property were moneys of all or any of the following kinds, namely:

- (i) proceeds referred to in paragraph (2) (d) or (e);
- (ii) damages or compensation referred to in paragraph (2) (g); or
- (iii) amounts referred to in paragraph (2) (k) or (m),

that property is, by virtue of this sub-section, property to which paragraph (2) (n) applies.

“(4) Where—

- (a) property (not being property to which paragraph (2) (n) applies) is realized by the trustee; and
- (b) the moneys paid for the purchase, or used in the acquisition, of the property were in part moneys of all or any of the following kinds, namely:

- (i) proceeds referred to in paragraph (2) (d) or (e);
- (ii) damages or compensation referred to in paragraph (2) (g); or
- (iii) amounts referred to in paragraph (2) (k) or (m),

and in part moneys of another kind or other kinds,

the trustee shall pay to the bankrupt an amount equal to the amount that bears to the proceeds of the realization of the property the same proportion as the amount of those first-mentioned moneys bears to the total amount paid for the purchase, or used in the acquisition, of the property.”.

(2) Notwithstanding the amendments of section 116 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to the administration of the estate of a bankrupt who became a bankrupt before the commencement of this section as if those amendments had not been made.

55. (1) Sections 118 and 119 of the Principal Act are repealed and the following sections are substituted:

**Execution by creditor against property of debtor who becomes a bankrupt, &c.**

“118. (1) Subject to sub-section (2), where—

- (a) a creditor has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a debtor—
  - (i) received moneys as a result of execution having been issued by him, or on his behalf, against property of the debtor, being moneys that are the proceeds of the sale of property of the debtor that has been sold in pursuance of the process or that

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were seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of the process; or

(ii) received moneys as a result of the attachment by him, or on his behalf, of a debt due to the debtor; and

(b) the debtor subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition,

the creditor shall pay to the trustee of the estate of the bankrupt the amount by which the amount of those moneys exceeds the taxed costs of the execution or attachment, as the case may be.

“(2) Sub-section (1) does not apply in relation to a creditor who has received moneys as a result of execution having been issued by him, or on his behalf, against property of a debtor, or as a result of the attachment by him, or on his behalf, of a debt due to the debtor, 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 section).

“(3) Where a creditor has, in pursuance of sub-section (1), paid the proceeds of the sale of property or other moneys to the trustee of the estate of a bankrupt, the creditor may prove in the bankruptcy for his debt as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.

“(4) Where—

(a) a creditor has, in pursuance of sub-section (1), paid to the trustee of the estate of a bankrupt the proceeds of the sale of property or other moneys that were received as a result of execution having been issued by him, or on his behalf, against property of the bankrupt or of the attachment by him, or on his behalf, of a debt due to the bankrupt; and

(b) that property or debt would not have been property divisible amongst the creditors of the bankrupt if the bankrupt had become a bankrupt immediately before the execution was issued or the debt was attached, as the case may be,

the trustee shall pay those proceeds or other moneys to the bankrupt or to a person authorized by the bankrupt in writing for the purpose.

“(5) Subject to this section, where notice in writing of the presentation of a creditor’s petition against a debtor is given to a creditor—

(a) the creditor shall not take any action or further action, as the case may be, to attach a debt due to the debtor until the petition has been dealt with by the Court or has lapsed; and

(b) if a debt due to the debtor has been attached by the creditor—

(i) the creditor shall forthwith give notice of the presentation of the petition, being a notice in accordance with the prescribed form, to the person liable to pay that debt; and

- (ii) the attachment of the debt is suspended until the petition has been dealt with by the Court or has lapsed.

“(6) Subject to this section, where notice in writing of the reference to the Court of a debtor’s petition against a debtor is given to a creditor—

- (a) the creditor shall not take any action or further action, as the case may be, to attach a debt due to the debtor until the Court has dealt with the petition; and
- (b) if a debt due to the debtor has been attached by the creditor—
  - (i) the creditor shall forthwith give notice of the presentation of the petition, being a notice in accordance with the prescribed form, to the person liable to pay that debt; and
  - (ii) the attachment of the debt is suspended until the Court has dealt with the petition.

“(7) Nothing in this section shall be taken to prevent a person liable to pay a debt to a debtor from paying the debt or a part of the debt to the debtor during the suspension, in accordance with sub-section (5) or (6), of an attachment of that debt.

“(8) A creditor who contravenes, or fails to comply with, sub-section (5) or (6) is guilty of contempt of court.

“(9) Subject to sub-section (10), where

- (a) a creditor has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a debtor obtained a charge or charging order against property of the debtor; and
- (b) the debtor subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition,

the charge or charging order, as the case may be, is void as against the trustee in the bankruptcy.

“(10) Sub-sections (5), (6) and (9) do not apply in relation to the attachment of a debt due to a debtor, or to a charge or charging order against property of a debtor, 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 section).

“(11) Notwithstanding anything contained in this Act, a person who purchases property in good faith—

- (a) under a sale by a sheriff in consequence of the issue of execution against property of a debtor who, after the sale, becomes a bankrupt; or
- (b) under a sale in consequence of the enforcement by a creditor of a charge or a charging order against property of a debtor who, after the sale, becomes a bankrupt,

acquires a good title to it as against the trustee of the estate of the bankrupt.

“(12) In this section—

‘charge’ means a charge created by a law of the Commonwealth or of a State or Territory of the Commonwealth upon registration of a judgment in any registry;

‘charging order’ means a charging order made by a court in respect of a judgment.

**Duties of sheriff after receiving notice of presentation of petition, &c.**

“119. (1) Subject to this section, where notice in writing of the presentation of a creditor’s petition against a debtor is given to a sheriff, the sheriff—

(a) shall refrain—

- (i) from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and
- (ii) from taking any action on behalf of a creditor to attach a debt due to the debtor; and

(b) shall not—

- (i) pay to the creditor by whom, or on whose behalf, the process of execution was issued, or to any person on his behalf, the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of any such process; or
- (ii) pay to the creditor, or to any person on his behalf, any moneys received as a result of the attachment of the debt due to the debtor,

until the petition has been dealt with by the Court or has lapsed.

“(2) Subject to this section, where notice in writing of the reference to the Court of a debtor’s petition against a debtor is given to a sheriff, the sheriff—

(a) shall refrain—

- (i) from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and
- (ii) from taking any action on behalf of a creditor to attach a debt due to the debtor; and

(b) shall not—

- (i) pay to the creditor by whom, or on whose behalf, the process of execution was issued, or to any person on his behalf, the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of any such process; or
- (ii) pay to the creditor, or to any person on his behalf, any moneys received as a result of the attachment of the debt due to the debtor,

until the Court has dealt with the petition.

“(3) Where notice of the presentation of a creditor’s petition against a debtor has been given under sub-section (1) to a sheriff or notice of the reference to the Court of a debtor’s petition against a debtor has been given under sub-section (2) to a sheriff, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a 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 section) may give to the sheriff a notice in accordance with the prescribed form, being a notice in the form of a statutory declaration, specifying such particulars of the maintenance agreement or maintenance order as are required by the form, and, upon the giving of the notice, sub-section (1) or (2), as the case may be, ceases to apply in relation to the process of execution or attachment, as the case may be.

“(4) Subject to this section, where notice in writing of the presentation of a creditor’s petition against a debtor is given to the registrar or other appropriate officer of a court—

- (a) to which the proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or
- (b) to which moneys have been paid in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor,

any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on his behalf until the petition has been dealt with by the Court or has lapsed.

“(5) Subject to this section, where notice in writing of the reference to the Court of a debtor’s petition against a debtor is given to the registrar or other appropriate officer of a Court—

- (a) to which the proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or
- (b) to which moneys have been paid in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor,

any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on his behalf until the Court has dealt with the petition.

“(6) Where notice of the presentation of a creditor’s petition against a debtor has been given under sub-section (4) to the registrar or other appropriate officer of any court or notice of the reference to the Court of a debtor’s petition against a debtor has been given under sub-section (5) to the registrar or other appropriate officer of any court, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against

property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a 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 section) may give to the registrar or other officer a notice in accordance with the prescribed form, being a notice in the form of a statutory declaration, specifying such particulars of the maintenance agreement or maintenance order as are required by the form, and, upon the giving of the notice, sub-section (4) or (5), as the case may be, ceases to apply in relation to the process of execution or attachment, as the case may be.

“(7) Where a sheriff, in pursuance of sub-section (1) or (2), refrains from taking action to sell property of a debtor (being real property), the debtor becomes a bankrupt and the property vests in the trustee in the bankruptcy, the costs of the execution are a first charge on that property.

“(8) A failure by a sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a bankrupt in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

**Duties of sheriff after receiving notice of bankruptcy, &c.**

“119A. (1) Where a debtor has become a bankrupt (whether on a creditor’s petition or otherwise and whether before or after the commencement of this section), the trustee may give to the sheriff or to the registrar or other appropriate officer of a court notice in writing of that fact and, upon the giving of the notice—

- (a) the sheriff shall deliver or pay to the trustee—
  - (i) any property of the bankrupt in his possession under a process of execution issued by or on behalf of a creditor;
  - (ii) any proceeds of the sale of property of the bankrupt or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the bankrupt became a bankrupt, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the bankrupt, whether before or after the bankrupt became a bankrupt, in pursuance of any such process; and
  - (iii) any moneys in his possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the bankrupt; or
- (b) the registrar or other officer of the court shall pay to the trustee—
  - (i) any proceeds of the sale of property of the bankrupt or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the bankrupt became a bankrupt, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the bankrupt; and
  - (ii) any moneys in court that have been paid into court, whether before or after the bankrupt became a bankrupt, in pursuance

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of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the bankrupt, as the case requires.

“(2) Where property is, or the proceeds of the sale of property or other moneys are, required by sub-section (1) to be delivered or paid to the trustee, the costs of the execution or attachment, as the case may be, are a first charge on that property or those proceeds of sale or other moneys, as the case may be.

“(3) For the purpose of giving effect to the charge referred to in sub-section (2), the sheriff, registrar or other officer of a court may retain on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other moneys referred to in that sub-section as he thinks necessary for the purpose.

“(4) Where a sheriff, registrar or other officer of a court has, in pursuance of sub-section (1), delivered property or paid moneys to the trustee, the creditor who issued the process of execution or instituted the attachment proceedings, or on whose behalf the process was issued or the proceedings instituted, as the case may be, may prove in the bankruptcy for his debt as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.

“(5) Where—

- (a) a sheriff, registrar or other officer of a court has, in pursuance of sub-section (1), delivered to the trustee property that was seized, or paid to the trustee the proceeds of the sale of property or other moneys that were received, as a result of the issue of execution against property of a bankrupt or the attachment of a debt due to a bankrupt; and
- (b) that property or debt would not have been property divisible amongst the creditors of the bankrupt if the bankrupt had become a bankrupt immediately before the execution was issued or the debt attached, as the case may be,

the trustee shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the bankrupt or to a person authorized by a bankrupt in writing for the purpose.

“(6) Where—

- (a) property has been delivered by a sheriff, or the proceeds of the sale of property or other moneys have been paid by a sheriff, registrar or other officer of a court, to the trustee of the estate of a bankrupt in pursuance of sub-section (1); and
- (b) the property was in the possession of the sheriff, or the proceeds of the sale of the property or the other moneys were in the possession of the sheriff or paid into court, as the case may be, under or in pursuance of a process of execution issued, or proceedings to attach a debt instituted, by or on behalf of a creditor in respect of a liability of the bankrupt under a maintenance agreement or maintenance order

(whether entered into or made, as the case may be, before or after the commencement of this section),  
the trustee shall deliver that property, or pay those proceeds or other moneys, as the case requires, to that creditor.

“(7) A failure by a sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a bankrupt in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.”.

(2) Sub-sections 118 (1), (2), (3), (4), (9), (10) and (11) of the Principal Act as amended by sub-section (1) of this section apply in relation to a debtor who becomes a bankrupt after the commencement of this section on, or by virtue of the presentation of, a petition presented either before or after the commencement of this section.

(3) Notwithstanding the repeal of section 118 of the Principal Act effected by sub-section (1) of this section, the provisions of sub-sections 118 (3), (4), (5) and (6) of the Principal Act continue to apply, after the commencement of this section, but subject to sub-section (4) of this section, to a creditor to whom notice of the presentation of a creditor’s petition against a debtor was given under sub-section 118 (3) of the Principal Act before the commencement of this section as if section 118 of the Principal Act had not been repealed.

(4) The provisions of sub-section 118 (3) of the Principal Act have effect, after the commencement of this section, in accordance with sub-section (3) of this section, in relation to a creditor referred to in sub-section (3) of this section as if the following sub-section were inserted after sub-section (4) of section 118 of the Principal Act:

“(4A) Sub-section (3) does not apply, after the commencement of this sub-section, in relation to the attachment of a debt due to a person, or to a charge or charging order against property of a person, in respect of any liability of the person under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this sub-section).”.

(5) Where notice of the presentation of a creditor’s petition has been given to a sheriff or to the registrar or other appropriate officer of a court under section 119 of the Principal Act before the commencement of this section and the petition has not been dealt with by the Court, and has not lapsed, before the commencement of this section, the notice has effect after the commencement of this section, for the purposes of the Principal Act as amended by this Act, as if the notice had been a notice given to the sheriff or to the registrar or other officer of the court, as the case requires, under section 119 of the Principal Act as amended by sub-section (1) of this section.

(6) Notwithstanding the repeal of section 119 of the Principal Act effected by sub-section (1) of this section, where the trustee of the estate of a bankrupt has, before the commencement of this section, served notice of the fact of the bankruptcy on the sheriff or the registrar or other appropriate officer of a court



under sub-section 119 (3) of the Principal Act, the provisions of sub-sections 119 (3), (4) and (5) of the Principal Act continue to apply, after the commencement of this section, in relation to the bankrupt as if section 119 of the Principal Act had not been repealed.

#### **Avoidance of voluntary and marriage settlements**

**56. (1)** Section 120 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “within two years after the date of the settlement” and substituting “and the settlement came into operation after, or within 2 years before, the commencement of the bankruptcy”;
- (b) by omitting from sub-section (2) “within five years after the date of the settlement” and substituting “and the settlement came into operation after, or within 5 years before, the commencement of the bankruptcy”;
- (c) by omitting from sub-section (3) “before the covenant or contract has been executed” and substituting “and the covenant or contract was executed after the commencement of the bankruptcy”;
- (d) by omitting from sub-section (4) “for valuable consideration in money or money’s worth”; and
- (e) by inserting in sub-section (4) “, claims in respect of excess interest under section 112” before “and claims for interest”.

(2) Notwithstanding the amendments of section 120 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a settlor who became a bankrupt before the commencement of this section as if those amendments had not been made.

#### **Avoidance of preferences**

**57. (1)** Section 122 of the Principal Act is amended—

- (a) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:

“(b) on or after the day on which the petition on which, or by virtue of presentation of which, the debtor becomes a bankrupt is presented and before the day on which the debtor becomes a bankrupt.”;

- (b) by inserting after sub-section (1) the following sub-section:

“(1A) Sub-section (1) applies in relation to a conveyance or transfer of property, a charge on property or a payment made, or an obligation incurred, by the debtor in favour of a creditor—

- (a) whether or not the liability of the debtor to the creditor is his separate liability or is a liability with another person or other persons jointly; and
- (b) whether or not—

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- (i) the property conveyed, transferred or charged is his own property or is the property of the debtor and of another person or other persons;
  - (ii) the payment is made out of his own moneys or out of moneys of the debtor and another person or other persons; or
  - (iii) the obligation is incurred by the debtor on his own account only or on account of himself and another person or other persons,  
as the case requires.”;
- (c) by omitting from paragraph (a) of sub-section (2) “or”;
  - (d) by omitting from paragraph (b) of sub-section (2) “bankrupt” and substituting “debtor”;
  - (e) by adding at the end of sub-section (2) the following word and paragraph:  
“; or (c) a conveyance, transfer, charge, payment or obligation of the debtor executed, made or incurred under or in pursuance of a maintenance agreement or maintenance order.”; and
  - (f) by inserting after sub-section (4) the following sub-section:  
“(4A) A reference in this section (other than sub-section (5) ) to a creditor of the debtor shall be read as including a reference to a person who would be a creditor of the debtor in relation to a contract, agreement, transaction or other dealing if the contract, agreement, transaction or other dealing were not, in whole or in part, void or unenforceable, or had not been voided in whole or in part, by or under a law of the Commonwealth or of a State or Territory of the Commonwealth.”.

(2) Notwithstanding the amendments of section 122 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a bankrupt, and the estate of a bankrupt, who became a bankrupt before the commencement of this section as if those amendments had not been made.

**Protection of certain transactions against relation back, &c.**

**58. (1)** Section 123 of the Principal Act is amended—

- (a) by omitting from paragraph (e) of sub-section (1) “on or before the date” and substituting “before the day”;
- (b) by inserting in paragraph (b) of sub-section (5) “or from interest” after “a dividend”; and
- (c) by omitting sub-section (6) and substituting the following sub-section:  
“(6) Nothing in this Act invalidates, in any case where a debtor becomes a bankrupt, a conveyance, transfer, charge, disposition,

assignment, payment or obligation executed, made or incurred by the debtor, before the day on which the debtor became a bankrupt, under or in pursuance of a maintenance agreement or maintenance order.”.

(2) Notwithstanding the amendments of section 123 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a bankrupt, and the estate of a bankrupt, who became a bankrupt before the commencement of this section as if those amendments had not been made.

**Protection of certain payments to bankrupt, &c.**

59. (1) Section 124 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1) “on or before” and substituting “before the day on which”; and
- (b) by omitting from paragraph (b) of sub-section (1) “after” and substituting “on or after the day on which”.

(2) Notwithstanding the amendment of section 124 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a bankrupt, and the estate of a bankrupt, who became a bankrupt before the commencement of this section as if those amendments had not been made.

**Dealings with undischarged bankrupt in respect of after-acquired property**

60. (1) Section 126 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “after” and substituting “on or after the day on which”; and
- (b) by omitting from sub-section (1) “or in The Official Receiver in Bankruptcy”.

(2) Notwithstanding the amendments of section 126 of the Principal Act made by sub-section (1) of this section, the provisions of section 126 of the Principal Act apply, after the commencement of this section, in relation to a bankrupt, and the estate of a bankrupt, who became a bankrupt before the commencement of this section as if those amendments had not been made.

**Limitation of time for making claims by trustee, &c.**

61 (1) Section 127 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(2) An action under sub-section 118 (9) with respect to a charge or charging order shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.

“(3) An action under section 120 with respect to a settlement, covenant, contract, payment or transfer shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.

“(4) An action under section 121 with respect to a disposition of property may be commenced by the trustee of the estate of a bankrupt at any time.

“(5) An action under section 122 with respect to a conveyance, transfer, charge, payment or obligation shall not be commenced by the trustee of the estate of a bankrupt after the expiration of 6 years from the date on which the bankrupt became a bankrupt.”.

(2) Sub-sections 127 (2), (3), (4) and (5) of the Principal Act as amended by sub-section (1) of this section do not apply in relation to a bankrupt, or the estate of a bankrupt, who became a bankrupt before the commencement of this section.

#### **Trustee to take possession of property of bankrupt**

**62.** Section 129 of the Principal Act is amended—

(a) by inserting after sub-section (4) the following sub-sections:

“(4A) Where—

(a) moneys are payable to a person under a law of the Commonwealth or of a State or Territory of the Commonwealth;

(b) that person is a bankrupt or the moneys are payable to the person as the legal personal representative of a person who was at the time of his death a bankrupt; and

(c) the moneys constitute property divisible amongst the creditors of the bankrupt or the deceased bankrupt, as the case may be,

those moneys shall, upon demand by the trustee, be paid to the trustee notwithstanding any provision to the contrary in that law.

“(4B) A demand under sub-section (4A) shall be in accordance with the prescribed form.

“(4C) A payment made in pursuance of a demand under sub-section (4A) is, to the extent of the amount paid, a valid discharge to the person making the payment as against the bankrupt or the estate of the deceased bankrupt, as the case may be.”; and

(b) by inserting in sub-section (5) “or (4A)” before “so to pay”.

#### **Income of bankrupt**

**63. (1)** Section 131 of the Principal Act is amended—

(a) by omitting from sub-section (2) “by the bankrupt”; and

(b) by adding at the end thereof the following sub-sections:

“(5) Without limiting the power of the Court to vary an order made under sub-section (2), the Court may, upon such terms and conditions as it thinks fit, vary such an order so as to relieve a person

from liability to pay to the trustee amounts that have become payable under the order.

“(6) An order under sub-section (2) ceases to have effect upon the discharge of the bankrupt in relation to whom the order was made unless at that time the bankrupt is undischarged from a later bankruptcy.

“(7) Where the Court orders, under sub-section (2), a person other than the bankrupt to pay income of the bankrupt to the trustee for the benefit of the bankrupt’s creditors, a payment made by that person in pursuance of the order is, to the extent of the amount paid, a valid discharge to him as against the bankrupt.”.

(2) Where—

- (a) an order made by the Court under sub-section 131 (2) of the Principal Act in relation to a bankrupt was in force immediately before the commencement of this section; and
- (b) the bankrupt was discharged from bankruptcy before the commencement of this section,

the order ceases, by force of this sub-section, to have effect upon the commencement of this section.

#### **Vesting and transfer of property**

64. Section 132 of the Principal Act is amended by omitting sub-section (4).

#### **Disclaimer of onerous property**

65. Section 133 of the Principal Act is amended—

- (a) by omitting paragraphs (b) and (c) of sub-section (1) and substituting the following word and paragraph:

“; or (b) property (including land) that is unsaleable or is not readily saleable,”;

- (b) by inserting after sub-section (1) the following sub-section:

“(1A) Subject to this section, the trustee may at any time, by writing signed by him, disclaim any contract that forms part of the property of the bankrupt whether or not the trustee has endeavoured to assign the property or exercised any rights in relation to it.”;

- (c) by omitting from sub-section (2) “The disclaimer” and substituting “A disclaimer under sub-section (1) or (1A)”;

- (d) by omitting sub-section (4) and substituting the following sub-sections:

“(4) A trustee is not entitled to disclaim a lease without the leave of the Court unless—

- (a) the trustee has given to the lessor and, if the bankrupt has sub-let the whole or any part of the leased property or has mortgaged the lease, to each sub-lessee or mortgagee, 28 days’ notice of his intention to disclaim the lease; and

(b) no person to whom the trustee has given such a notice has, within 28 days after it was given to the person, by notice given to the trustee, required the trustee to apply to the Court for leave to disclaim the lease.

“(4A) A notice under paragraph (4) (a) or (b) shall be in accordance with the prescribed form.

“(4B) A notice under paragraph (4) (a) or (b) sent by post as certified mail (postage being prepaid) shall be deemed to have been given to the person to whom the notice is addressed and shall be deemed to have been given to that person at the time at which it would have been delivered in the ordinary course of post unless it is shown that the person did not receive it at that time.”;

(e) by inserting after sub-section (5) the following sub-sections:

“(5A) A trustee is not entitled to disclaim a contract (other than an unprofitable contract) without the leave of the Court.

“(5B) The Court may, in relation to an application for leave to disclaim a contract under this section—

(a) impose such terms as a condition of granting the leave; and

(b) make such orders with respect to matters arising out of the contract,

as the Court considers just and equitable.”; and

(f) by inserting after sub-section (6) the following sub-sections:

“(6A) An application under sub-section (6) shall be in accordance with the prescribed form.

“(6B) An application under sub-section (6) sent to the trustee by post as certified mail (postage being prepaid) shall be deemed to have been made to the trustee and shall be deemed to have been received by the trustee at the time at which it would have been delivered in the ordinary course of post unless it is shown that the trustee did not receive it at that time.”.

### **Powers exercisable at discretion of trustee**

**66.** Section 134 of the Principal Act is amended—

(a) by omitting from sub-section (1) “Ten thousand dollars” (wherever occurring) and substituting “\$20,000 or such greater amount as is prescribed for the purposes of this section”;

(b) by inserting after paragraph (d) of sub-section (1) the following paragraph:

“(da) mortgage or charge any of the property of the bankrupt having a value not exceeding \$20,000, or such greater amount as is prescribed for the purposes of this section, for the purpose of raising money for the payment of the debts provable in the bankruptcy;”;

(c) by omitting from paragraph (j) of sub-section (1) “and”;

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- (d) by adding at the end of sub-section (1) the following word and paragraph:
- “; and (m) until the first meeting of creditors or the expiration of the period of 2 months commencing on the date of the bankruptcy, whichever first occurs, employ the bankrupt himself—
- (i) to superintend the management of his property or of part of his property;
  - (ii) to carry on his trade or business for the benefit of his creditors; or
  - (iii) to aid in any other respect in administering his property,
- and make such allowance out of the estate to the bankrupt in consideration of his services as the trustee considers reasonable.”;
- (e) by inserting after sub-section (1) the following sub-section:
- “(1A) An allowance made to the bankrupt in pursuance of paragraph (1) (m) may be reduced by the Court upon the application of an interested person.”; and
- (f) by omitting from sub-section (2) “Ten thousand dollars” and substituting “\$20,000 or such greater amount as is prescribed for the purposes of this section.”.

**Powers exercisable by trustee with permission**

**67.** Section 135 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Ten thousand dollars” (wherever occurring) and substituting “\$20,000 or such greater amount as is prescribed for the purposes of section 134”;
- (b) by inserting in paragraph (d) of sub-section (1) “having a value exceeding \$20,000, or such greater amount as is prescribed for the purposes of section 134,” after “bankrupt”; and
- (c) by inserting in paragraph (k) of sub-section (1) “after the first meeting of creditors or the expiration of the period of 2 months commencing on the date of the bankruptcy, whichever first occurs,” before “employ the bankrupt himself”.

**Protection of trustee from personal liability in certain cases**

**68.** Section 139 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “sustained by a person claiming the goods”; and
- (b) by omitting from sub-section (1) “to establish a claim to the goods” and substituting “in respect of the seizure or disposal”.

**Declaration and distribution of dividends**

**69. (1)** Section 140 of the Principal Act is amended—

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- (a) by omitting from sub-section (1) “sub-section (7)” and substituting “this section”; and
- (b) by omitting sub-sections (3), (4), (5), (6) and (7) and substituting the following sub-sections:

“(3) The trustee shall, before declaring the first dividend—

- (a) cause notice of his intention to do so to be published in the prescribed manner; and
- (b) send notice of his intention to do so to each person who, to his knowledge, claims to be, or might claim to be, a creditor but has not lodged a proof of debt.

“(4) The trustee shall, in a notice published or sent in pursuance of sub-section (3), specify a reasonable period within which creditors may lodge their proofs of debts.

“(5) The trustee shall, before declaring a dividend (other than the first dividend or the final dividend) send notice of his intention to do so to each person who, to his knowledge, claims to be, or might claim to be, a creditor but has not lodged a proof of debt and has not been sent a notice under this section in relation to the declaration of a previous dividend.

“(6) The trustee shall, in a notice sent in pursuance of sub-section (5), specify a reasonable period within which creditors may lodge their proofs of debts.

“(7) Where the trustee has sent a notice in pursuance of sub-section (3) or (5) of this section in relation to the declaration of a dividend, the trustee shall not declare the dividend until after the expiration of 21 days after the expiration of the period specified in the notice.

“(8) Subject to sub-sections (9) and (10), where the trustee declares a dividend, he shall send to each creditor who has proved his debt a cheque for the amount due to him and a statement in accordance with the prescribed form in relation to the realization and distribution of the estate.

“(9) The trustee shall not pay to a creditor a dividend that is less than 50 cents.

“(10) Where a creditor has furnished to the trustee an authority in writing to pay a dividend due to the creditor to another person, the dividend payable to the creditor may be paid, and the statement to be sent to the creditor in pursuance of sub-section (8) may be sent, to that person.”.

(2) Notwithstanding the amendments of section 140 of the Principal Act made by sub-section (1) of this section, where before the commencement of this section a trustee has caused notice of his intention to declare a dividend to be published in the manner required by section 140 of the Principal Act, the



provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to the declaration and distribution of the dividend as if those amendments had not been made.

**70. (1)** Section 145 of the Principal Act is repealed and the following section substituted:

**Final dividend**

“145. (1) Subject to this section, when the trustee of the estate of a bankrupt has realized all the property of the bankrupt, or so much of it as can, in his opinion, be realized without needlessly protracting the trusteeship, he shall declare and distribute a final dividend.

“(2) The trustee shall distribute as the final dividend all moneys realized and not previously distributed and shall distribute the final dividend without regard to any debt that had not been proved at the time when he declared the final dividend.

“(3) The trustee shall, before declaring the final dividend, give notice, in the prescribed manner, to each person who to his knowledge, claims to be, or might claim to be, a creditor but has not proved his debt that, if the person does not prove his debt within the period specified in the notice, the trustee will proceed to declare a final dividend without regard to his claim.

“(4) The trustee shall, in a notice sent to a person in pursuance of sub-section (3), allow a reasonable period within which the person may prove his debt.

“(5) The Court may, on the application of a person claiming to be a creditor, extend the period within which the person may prove his debt.

“(6) Where the trustee has sent a notice in pursuance of sub-section (3) in relation to the declaration of the final dividend, the trustee shall not declare the dividend until after the expiration of 21 days after the expiration of the period specified in the notice or, if the Court, under sub-section (5), extends the period within which a person may prove his debt, until after the expiration of 21 days after the expiration of that extended period.”.

(2) Notwithstanding the repeal of section 145 of the Principal Act effected by sub-section (1) of this section, where before the commencement of this section a trustee has given notice to a person in relation to a final dividend in the manner required by section 145 of the Principal Act, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to the declaration and distribution of the dividend as if that section of the Principal Act had not been repealed.

**71. (1)** Section 147 of the Principal Act is repealed and the following section substituted:

**No action for dividend**

“147. (1) An action for a dividend does not lie against the trustee of the estate of a bankrupt but, if the trustee neglects or refuses to pay a dividend to

a creditor, the Court, on the application of the creditor, may, if it thinks fit, order the trustee to pay the dividend and may also order that the trustee pay interest on the dividend for the time that it is withheld and the costs of the application.

“(2) Where the Court orders the trustee of the estate of a bankrupt to pay interest on a dividend or to pay the costs of an application under sub-section (1), the trustee is personally liable for, and is not entitled to be reimbursed by the estate in respect of, the payment of that interest or those costs.”.

(2) Notwithstanding the repeal of section 147 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to the hearing and determination of an application made to the Court under that section of the Principal Act before the commencement of this section as if that section of the Principal Act had not been repealed.

**72. (1)** Section 149 of the Principal Act is repealed and the following section substituted:

**Discharge of bankrupt by operation of law**

“149. (1) Subject to this section, a person who becomes a bankrupt after the commencement of this section is, by force of this section, unless sooner discharged in accordance with section 150, discharged from bankruptcy upon the expiration of 3 years from the date of the bankruptcy.

“(2) Subject to this section, a person who was an undischarged bankrupt immediately before the commencement of this section is, by force of this section, discharged from bankruptcy—

- (a) in a case where the bankrupt became a bankrupt more than 3 years before the commencement of this section—upon the commencement of this section; or
- (b) in any other case, unless sooner discharged in accordance with section 150—upon the expiration of 3 years from the date of the bankruptcy.

“(3) A bankrupt is not discharged from bankruptcy by virtue of this section if—

- (a) at the time when he would have been so discharged but for this sub-section, he is still undischarged from an earlier bankruptcy;
- (b) he has, since the date of the bankruptcy, again become a bankrupt;
- (c) the Registrar, the Official Receiver or the trustee has entered, or a creditor has, with the leave of the Court, entered, an objection, in accordance with the prescribed form and in the prescribed manner, to the discharge of the bankrupt by force of this section and the objection has not been withdrawn or lapsed before the time when the bankrupt would have been so discharged but for this sub-section; or
- (d) an order of the Court under sub-section (12) is in force in relation to the bankrupt.

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“(4) An objection shall not be entered under paragraph (3) (c) otherwise than on one or more of the following grounds:

- (a) that the bankrupt is able, or is likely within 5 years from the date of the bankruptcy to be able, to make a significant contribution to his estate;
- (b) that the discharge of the bankrupt by force of this section would prejudice the administration of his estate;
- (c) that the bankrupt has failed to co-operate in the administration of his estate;
- (d) that the conduct of the bankrupt, either in respect of the period before or the period after the date of the bankruptcy, has been unsatisfactory.

“(5) Subject to sub-section (6), an objection entered under paragraph (3) (c) may be withdrawn in the prescribed manner.

“(6) An objection entered by a creditor under paragraph (3) (c) may be withdrawn only with the leave of the Court.

“(7) Subject to sub-section (11), an objection entered under paragraph (3) (c) lapses at the expiration of—

- (a) subject to paragraph (b), the period of 5 years from the date of the bankruptcy; or
- (b) if the Court makes an order under sub-section (8) or (9) in relation to the bankrupt—the period fixed by the order.

“(8) The Court may, at any time before the expiration of 5 years from the date of the bankruptcy, on the application of the Registrar, the Official Receiver, the trustee or a creditor, order that the period at the expiration of which an objection entered under paragraph (3) (c) will lapse be such period, being a period exceeding 5 years, commencing on the date of the bankruptcy as is specified in the order.

“(9) The Court may, at any time before the expiration of 5 years from the date of the bankruptcy, on the application of the bankrupt, order that the period at the expiration of which an objection entered under paragraph (3) (c) will lapse be such period, being a period exceeding 3 years but not exceeding 5 years, commencing on the date of the bankruptcy as is specified in the order.

“(10) In deciding whether to make an order under sub-section (8) or (9), the Court shall take into account such matters (if any) as are prescribed for the purposes of this sub-section.

“(11) An objection to the discharge of a bankrupt, unless sooner withdrawn, lapses upon the discharge of the bankrupt under section 150.

“(12) The Court may, at any time before the discharge of a bankrupt, on the application of the Registrar, the Official Receiver, the trustee or a creditor,

direct that the bankrupt shall not be discharged from bankruptcy by virtue of this section.

“(13) In deciding whether to make an order under sub-section (12), the Court shall take into account such matters (if any) as are prescribed for the purposes of this sub-section.

“(14) Where—

- (a) an objection entered under paragraph (3) (c) is withdrawn after the time when the bankrupt would have been discharged but for sub-section (3) or lapses otherwise than by virtue of sub-section (11);
- (b) there is no other objection entered under paragraph (3) (c) that has not been withdrawn or has not lapsed; and
- (c) the bankrupt’s discharge is not prevented by paragraph (3) (a), (b) or (d),

the bankrupt is, by force of this section, discharged from bankruptcy upon the withdrawal or lapsing of the objection.”

(2) Where—

- (a) the Registrar, the trustee or a creditor has, before the commencement of this section, entered an objection under paragraph 149 (3) (b) of the Principal Act to the discharge of a bankrupt by force of section 149 of the Principal Act;
- (b) the objection has not been withdrawn before the commencement of this section; and
- (c) the bankrupt has not been discharged under section 150 of the Principal Act before the commencement of this section,

section 149 of the Principal Act as amended by sub-section (1) of this section applies in relation to the objection as if—

- (d) the objection had been entered by the Registrar, the trustee or the creditor, as the case may be, under paragraph 149 (3) (c) of the Principal Act as so amended;
- (e) sub-section 149 (4) of the Principal Act as so amended were omitted; and
- (f) the references in sub-sections 149 (7), (8) and (9) of the Principal Act as so amended to the date of the bankruptcy were read as references to the date of commencement of this section.

### **Discharge by the Court**

**73. (1)** Section 150 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) A person who becomes, or has before the commencement of this sub-section become, a bankrupt may apply to the Court for an order of discharge at any time after—

- (a) his public examination has been concluded;

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- (b) the Court or the Registrar has directed that a public examination shall not be held in his case or the Registrar has dispensed with a public examination in his case; or
  - (c) the expiration of the period of 12 months commencing on the date of the bankruptcy.”.
- (2) Section 150 of the Principal Act is amended—
- (a) by omitting from paragraph (a) of sub-section (3) “not an Official Receiver” (wherever occurring) and substituting “a registered trustee”;
  - (b) by omitting from paragraph (b) of sub-section (3) “an Official Receiver” and substituting “the Official Trustee”;
  - (c) by omitting from paragraph (b) of sub-section (3) “the trustee” and substituting “the Official Trustee”;
  - (d) by omitting sub-section (4) and substituting the following sub-section:
    - “(4) The Court may, in addition—
      - (a) hear, and put such questions as it thinks fit to—
        - (i) an Official Receiver;
        - (ii) a creditor whose debt has been proved;
        - (iii) the bankrupt; or
        - (iv) the trustee (being a registered trustee); and
      - (b) receive such other evidence as it thinks fit.”; and
  - (e) by omitting sub-sections (7) and (8) and substituting the following sub-sections:
    - “(7) The Court shall not, under sub-section (5), suspend the operation of an order of discharge subject to conditions that require, or have the effect of requiring, the bankrupt to make payments from his income at any time after the expiration of the period of 5 years commencing on the date of the bankruptcy.
    - “(8) Notwithstanding that the operation of an order of discharge is, by virtue of an order of the Court in force immediately before the commencement of this sub-section (including such an order as varied after the commencement of this sub-section), suspended subject to conditions that require, or have the effect of requiring, a bankrupt to make payments from his income, the bankrupt is not required to make payments in pursuance of the conditions at any time after—
      - (a) the expiration of the period of 5 years commencing on the date of the bankruptcy; or
      - (b) in a case where the period referred to in paragraph (a) expired before the commencement of this sub-section—the commencement of this sub-section.
    - “(9) Where none of the matters specified in sub-section (6) is established, the Court may—
      - (a) refuse to make an order of discharge;
      - (b) make an order of discharge; or

(c) make an order of discharge but suspend the operation of the order as the Court thinks proper, either unconditionally or subject to conditions.

“(10) The Court shall not, under sub-section (9), suspend the operation of an order of discharge beyond the period of 3 years commencing on the date of the bankruptcy.

“(11) The Court may, at any time while the operation of an order of discharge (including such an order made before the commencement of this sub-section) is suspended, rescind or vary the order.

“(12) A report referred to in sub-section (3) is, for the purposes of this section, *prima facie* evidence of the statements contained in it.”.

### **Effect of fraudulent settlements on discharge**

74. Section 151 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(2) The Court shall not, under sub-section (1), suspend the operation of an order of discharge subject to conditions that require, or have the effect of requiring, the bankrupt to make payments from his income at any time after the expiration of the period of 5 years commencing on the date of the bankruptcy.

“(3) Notwithstanding that the operation of an order of discharge is, by virtue of an order of the Court in force immediately before the commencement of this sub-section (including such an order as varied after the commencement of this sub-section), suspended subject to conditions that require, or have the effect of requiring, a bankrupt to make payments from his income, the bankrupt is not required to make payments in pursuance of the conditions at any time after—

- (a) the expiration of the period of 5 years commencing on the date of the bankruptcy; or
- (b) in a case where the period referred to in paragraph (a) expired before the commencement of this sub-section—the commencement of this sub-section.

“(4) The Court may, at any time while the operation of an order of discharge (including such an order made before the commencement of this sub-section) is suspended, rescind or vary the order.”.

### **Effect of order of discharge**

75. (1) Section 153 of the Principal Act is amended—

- (a) by omitting paragraph (c) of sub-section (2) and substituting the following paragraph:

“(c) subject to any order of the Court made under sub-section (2A), release the bankrupt from any liability under a maintenance agreement or maintenance order.”;

- (b) by inserting after sub-section (2) the following sub-section:

“(2A) The Court may order that the discharge of a bankrupt from bankruptcy shall operate to release the bankrupt, to such extent and

subject to such conditions as the Court thinks fit, from liability to pay arrears due under a maintenance agreement or maintenance order.”; and

- (c) by omitting sub-section (6).

(2) Notwithstanding the amendments of section 153 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a person who was discharged from bankruptcy before the commencement of this section as if those amendments had not been made.

### **Power to annul bankruptcy**

76. Section 154 of the Principal Act is amended—

- (a) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:

“(b) that the unsecured debts of the bankrupt, being debts that have been proved in the bankruptcy, have been paid in full or the bankrupt has obtained a legal acquittance of them,”;

- (b) by omitting from sub-section (2) “or under section 74”; and
- (c) by omitting from sub-sections (2) and (3) “or in The Official Receiver of Bankruptcy”.

### **Registration of persons as trustees**

77. Section 155 of the Principal Act is amended by omitting from sub-section (6) “an Official Receiver” and substituting “the Official Trustee”.

### **Appointment of trustees**

78. Section 157 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “who is the trustee of the estate at the time of the appointment”;
- (b) by omitting from sub-section (4) “this section” and substituting “sub-section (1)”;
- (c) by omitting from sub-section (6) “lodge with the Court” and substituting “file with the Registrar for the appropriate District”;
- (d) by omitting from sub-section (7) “lodged” and substituting “filed”; and
- (e) by adding at the end thereof the following sub-sections:

“(8) Where the Court appoints a person as trustee under sub-section (7), the Registrar shall issue to the person a certificate of appointment.

“(9) The appointment of a trustee under sub-section (7) takes effect from and including the date on which the Court makes the appointment or such later date as the Court directs.”.

**Appointment of more than one trustee, &c.**

79. Section 158 of the Principal Act is amended by omitting “persons” (wherever occurring) and substituting “registered trustees”.

**Vacancy in office of trustee**

80. Section 159 of the Principal Act is amended by omitting from sub-section (3) “an Official Receiver” and substituting “the Official Trustee”.

**Official Trustee to be trustee when there is no other trustee**

81. Section 160 of the Principal Act is amended by omitting “the Official Receiver for the District in which the sequestration order was made or the debtor’s petition was presented, as the case may be,” and substituting “the Official Trustee”.

**Remuneration of trustee**

82. (1) Section 162 of the Principal Act is amended—

(a) by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:

“(2) Where the remuneration of the trustee is to be, in whole or in part, a commission upon moneys received by the trustee, the trustee is entitled to commission upon all moneys received by the trustee (other than moneys received in the carrying on of a business of the bankrupt by him or under his supervision) at a rate not exceeding the rate prescribed for the purposes of this sub-section.

“(3) Where the trustee carries on a business of the bankrupt, or a business is carried on by the bankrupt under the supervision of the trustee, the trustee may be paid additional remuneration in the form either of a periodical payment based on, or a commission at the rate prescribed for the purposes of this sub-section on, the amount by which the estate is increased by reason of the carrying on of that business by him or under his supervision.”.

“(4) Where the remuneration of the trustee is not fixed by the creditors or the committee of inspection, the Registrar may fix the remuneration.”;

(b) by inserting in sub-section (5) “or of his own motion” after “on the application of a creditor or the trustee”; and

(c) by omitting from sub-section (7) “a trustee who is an Official Receiver” and substituting “the Official Trustee”.

(2) Notwithstanding the amendments of section 162 of the Principal Act made by sub-section (1) of this section, the provisions of sub-sections 162 (2) and (3) of the Principal Act continue to apply, after the commencement of this section, in relation to the trustee of the estate of a bankrupt who became a bankrupt before the commencement of this section.



(3) Sub-sections 162 (4) and (5) of the Principal Act as amended by sub-section (1) of this section apply in relation to the trustee of the estate of a bankrupt who became a bankrupt before, or becomes a bankrupt after, the commencement of this section.

83. Section 163 of the Principal Act is repealed and the following section substituted:

**Remuneration of the Official Trustee**

“163. (1) Where the Official Trustee is the trustee of the estate of a bankrupt, the Official Trustee shall be remunerated as prescribed.

“(2) An amount equal to each amount of remuneration received by the Official Trustee shall be paid into the Consolidated Revenue Fund.”.

**Two or more trustees acting in succession**

84. Section 164 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “trustees, none of whom is an Official Receiver,” and substituting “registered trustees”;
- (b) by omitting from sub-section (1) “in such manner”;
- (c) by omitting from sub-section (2) “an Official Receiver” and substituting “the Official Trustee”; and
- (d) by omitting from sub-section (2) “in such manner as the Registrar directs” and substituting “by the Registrar”.

**Taxation of costs**

85. (1) Section 167 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “the taxing officer in the District in which the trustee resides” and substituting “a taxing officer”;
- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) Sub-section (1) does not require a bill of costs or a bill of charges to be taxed if—

  - (a) the bill is for an amount less than \$300 or such greater amount as is prescribed for the purposes of this paragraph;
  - (b) the bill is for services in respect of which a maximum charge is prescribed by the rules and is for an amount that does not exceed the charge so prescribed;
  - (c) the bill has been taxed by an officer of any court; or
  - (d) the creditors have, by special resolution, authorized payment of the bill.”;
- (c) by omitting sub-section (6) and substituting the following sub-section:

“(6) Where the trustee proposes to distribute a final dividend, the trustee shall, not later than 28 days before the date on which the trustee proposes to do so, request each person whose bill of costs or bill of charges is required (whether by this section or by an order of the Court) to be taxed to deliver his bill to a taxing officer.”; and

(d) by omitting sub-section (9) and substituting the following sub-section:

“(9) In this section, ‘taxing officer’ means a Registrar or Deputy Registrar or a person authorized in writing by a Registrar, with the approval of the Court or the Inspector-General, to exercise the powers and perform the functions of a taxing officer.”.

(2) The amendment of section 167 of the Principal Act made by paragraph (1) (b) of this section does not apply in relation to a bill of cost or bill of charges rendered before the commencement of this section.

(3) The amendment of section 167 of the Principal Act made by paragraph (1) (c) of this section does not apply in relation to a final dividend distributed before the expiration of the period of 2 months commencing on the date of commencement of this section and, for the purposes of the application of sub-section 167 (6) of the Principal Act as amended by sub-section (1) of this section in relation to a dividend distributed after the expiration of that period, a request made before the expiration of that period by the trustee of the estate of a bankrupt for the purposes of sub-section 167 (6) of the Principal Act has effect, after the expiration of that period, as if it had been made by the trustee for the purposes of sub-section 167 (6) of the Principal Act as amended by sub-section (1) of this section.

#### **Trustee to pay moneys into bank account**

86. Section 169 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) This section does not apply in relation to the Official Trustee.”.

#### **Trustee to give Official Receiver and bankrupt information, &c.**

87. Section 170 of the Principal Act is amended—

(a) by inserting in sub-section (1) “(not being the Official Trustee)” after “a bankrupt”; and

(b) by omitting from sub-section (1) “and documents”.

#### **Investment of surplus funds**

88. Section 172 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(3) Sub-sections (1) and (2) do not apply in relation to the estate of a bankrupt during any period during which the Official Trustee is the trustee of the estate.

“(4) Where moneys standing to the credit of the estate of a bankrupt, or investments held on behalf of the estate of a bankrupt, vest in the Official Trustee in consequence of a change in the trustee of the estate, amounts received by the Official Trustee by way of interest on those moneys in respect of any period prior to the payment of those moneys into the Common Fund, or by way of interest on those investments prior to, or upon, the realization of those investments, form part of the estate.”.

**Trustee's books when trading**

**89.** Section 174 of the Principal Act is amended—

- (a) by omitting “books,”; and
- (b) by adding at the end thereof “and shall permit a creditor of the bankrupt to inspect, at all reasonable times, either personally or by an agent, those accounts and records”.

**Trustee's accounts and audit**

**90.** Section 175 of the Principal Act is amended—

- (a) by omitting from sub-section (5) “, documents, writings”; and
- (b) by omitting from sub-section (7) “a trustee who is an Official Receiver” and substituting “the Official Trustee”.

**91. (1)** Section 176 of the Principal Act is repealed and the following section substituted:

**Court may order trustee to make good loss sustained by negligence, &c.**

“176. (1) Where the Registrar is of the opinion, whether as a result of an account furnished to him in pursuance of section 175 or of an audit under that section or for any other reason, that the trustee may have been guilty of malfeasance, misfeasance, negligence, wilful default or breach of trust in relation to the estate or affairs of the bankrupt, the Registrar may apply to the Court for an order under sub-section (2).

“(2) The Court may order that the trustee make good any loss that the estate has sustained by reason of the malfeasance, misfeasance, negligence or wilful default of, or a breach of trust by, the trustee or may make such other order as the Court considers just and equitable in the circumstances.”.

(2) Notwithstanding the repeal of section 176 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to acts done, or omitted to be done, in relation to the estate or affairs of a bankrupt before the commencement of this section as if that section of the Principal Act had not been repealed.

**Control of trustees by the Court**

**92.** Section 179 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(4) Without limiting the generality of sub-section (3), where the Official Trustee is, or has been, the trustee of the estate of a bankrupt, application may be made to the Court under that sub-section to examine the Official Receiver.”.

**Registration of trustee**

**93.** Section 180 of the Principal Act is amended by inserting “registered” before “trustee” (first occurring).

**Removal of trustee**

**94.** Section 181 of the Principal Act is amended by inserting “registered” before “trustee” (first occurring).

**Bankruptcy of trustee, &c.**

**95.** Section 182 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(4) Where a person registered as a trustee dies, the person administering the estate of the deceased person shall forthwith notify, in writing, the Registrar for the District in which the trustee was ordinarily resident of that fact.

Penalty: \$100.”.

**Release of registered trustee by the Court**

**96. (1)** Section 183 of the Principal Act is amended by omitting sub-sections (6), (7) and (8) and substituting the following sub-sections:

“(6) Where a trustee has died, the person administering the estate of the trustee may apply to the Court for an order releasing the trustee’s estate from any claims arising out of the trustee’s administration of an estate of which he was trustee and, upon such an application, the Court may make such order as it thinks proper in the circumstances.

“(7) This section does not apply in relation to the Official Trustee.”.

**(2)** Notwithstanding the amendment of section 183 of the Principal Act made by sub-section (1) of this section—

(a) the provisions of sub-section 183 (7) of the Principal Act continue to apply, after the commencement of this section, in relation to acts done, defaults made and liabilities incurred before the commencement of this section; and

(b) the provisions of section 183 of the Principal Act continue to apply, after the commencement of this section, in relation to an application made before the commencement of this section under sub-section 183 (8) of the Principal Act,

as if that amendment had not been made.

**Release of registered trustee by operation of law after 7 years**

**97.** Section 184 of the Principal Act is amended—

(a) by inserting in sub-section (1) “(being a registered trustee)” after “a bankrupt”; and

(b) by omitting sub-section (2).

**98.** After section 184 of the Principal Act the following section is inserted in Division 5 of Part VIII:

**Release of the Official Trustee**

“184A. (1) Where the Official Trustee becomes the trustee of the estate of a bankrupt upon the release of a registered trustee under section 183 or 184,

the Official Trustee does not become personally liable, by reason of its so becoming the trustee, in respect of an act done, default made or liability incurred by a prior trustee.

“(2) The Official Trustee may apply to the Court for an order of release in respect of the administration of the estate of a bankrupt by the Official Trustee or the Official Receiver prior to a date (in sub-section (5) referred to as the ‘relevant date’) specified in the application.

“(3) Where, on an application made by the Official Trustee under sub-section (2), the Court is satisfied—

- (a) that all the property of the bankrupt, or so much of it as can reasonably be realized, has been realized;
- (b) that a final dividend has been distributed in respect of the estate of the bankrupt; or
- (c) that the order should otherwise be made,

the Court may make the order sought.

“(4) Where an application is made by the Official Trustee under sub-section (2), the Registrar shall cause a report on the accounts and records of the Official Trustee in respect of its administration, or the accounts and records of the Official Receiver in respect of his administration, as the case requires, of the estate of the bankrupt to be prepared and the Court shall, on the hearing of the application, take into consideration the report and any objection by the Registrar, a creditor or other interested person to the order sought.

“(5) An order of release under sub-section (2) discharges the Official Trustee, the Official Receiver or the Official Trustee and the Official Receiver, as the case requires, from all liability in respect of any act done or default made by the Official Trustee or the Official Receiver, as the case requires, in the administration of the estate of the bankrupt prior to the relevant date.

“(6) An order of release under sub-section (2) may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment of a material fact.

“(7) The references in sub-sections (2) and (4) to the administration of the estate of a bankrupt by the Official Trustee shall be read as including any administration of the estate by the Official Receiver.”

### **Repeal of Part IX**

**99. (1)** Part IX of the Principal Act is repealed.

**(2)** Notwithstanding the repeal of Part IX of the Principal Act effected by sub-section (1) of this section, the provisions of that Part of the Principal Act continue to apply, after the commencement of this section, in relation to the estate of a bankrupt that the Court has, before the commencement of this section, ordered to be administered under that Part of the Principal Act as if that Part of the Principal Act had not been repealed.

## **Interpretation**

**100.** Section 187 of the Principal Act is amended—

- (a) by omitting from the definition of “divisible property” in sub-section (1) “acquired by the debtor” and substituting “that was acquired by, or devolved on, the debtor on or”;
- (b) by omitting from paragraph (a) of the definition of “the controlling trustee” in sub-section (1) “or”;
- (c) by adding at the end of the definition of “the controlling trustee” in sub-section (1) the following word and paragraph:

“; or (c) if the Official Trustee is acting as the controlling trustee by virtue of sub-section 192 (3), the Official Trustee;”;

and
- (d) by inserting after sub-section (1) the following sub-section:

“(1A) Without limiting the definition of ‘debtor’ in sub-section (1), a reference in this Part to a debtor shall, unless the contrary intention appears, be read as including a reference to a person who is for the time being unable to pay his debts as they become due out of his own moneys, whether or not the person may ultimately be able so to pay his debts.”.

**101.** After section 187 of the Principal Act the following section is inserted in Division 1 of Part X:

### **Application of Part to joint debtors**

“187A. (1) The provisions of this Part apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, in relation to joint debtors, whether partners or not.

“(2) In sub-section (1), ‘modification’ includes the addition or omission of a provision or the substitution of a provision for another provision.”.

### **Debtor may authorize trustee or solicitor to call meeting of creditors, &c.**

**102.** Section 188 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “appropriate form in the Third Schedule” and substituting “prescribed form”; and
- (b) by adding at the end thereof the following sub-section:

“(4) Where a trustee consents to exercise the powers conferred on him by an authority under this section or a solicitor consents to call a meeting of creditors in pursuance of an authority under this section, the trustee or solicitor, as the case may be, shall, within 7 days after he so consents, file a copy of the consent, and a copy of the authority, in the office of the Registrar.”.

### **Trustee’s and solicitor’s duties and powers**

**103.** Section 190 of the Principal Act is amended—

- (a) by omitting from sub-sections (1) and (2) “on him”;
- (b) by inserting after sub-section (3) the following sub-section:

“(3A) For the purpose of exercising the powers conferred by sub-section (2), a trustee may, with the consent in writing of the debtor, obtain such advice or assistance as the trustee considers desirable.”; and

(c) by omitting sub-section (5) and substituting the following sub-section:

“(5) In this section, ‘debtor’s property’, in relation to a debtor who has given a registered trustee an authority under section 188, means the property of the debtor that would be divisible amongst his creditors under Part VI if a sequestration order had been made against him on the day on which he signed the authority, and includes property that has been acquired by, or has devolved on, the debtor on or after that day, but, if a deed of assignment or deed of arrangement is executed by him in pursuance of a resolution of a meeting of creditors called in pursuance of the authority or a composition is accepted by such a meeting of creditors, does not include property that is acquired by, or devolves on, him on or after the day on which he executes the deed or the composition is accepted, as the case may be.”.

**104. (1)** Sections 192 and 193 of the Principal Act are repealed and the following sections are substituted:

**Death of trustee to whom authority is given, &c.**

“192. (1) Where a registered trustee who has consented to exercise the powers conferred by an authority under section 188—

- (a) dies;
- (b) ceases to be a registered trustee;
- (c) becomes incapable of exercising his powers under this Part; or
- (d) desires to be relieved of his duties under this Part,

the debtor may sign a new authority under section 188 in favour of another registered trustee and, upon that other trustee consenting to exercise the powers conferred by that authority, that other trustee becomes the controlling trustee in place of the first-mentioned trustee.

“(2) Where, in pursuance of this Part, a meeting of creditors or the Court nominates a registered trustee other than the trustee who is acting under an authority under section 188 to be the trustee of a deed of assignment or deed of arrangement to be executed by the debtor, the trustee so nominated shall, upon signing, in the prescribed manner, a consent to act as trustee, become the controlling trustee in place of the trustee authorized by the debtor.

“(3) Where a registered trustee who has consented to exercise the powers conferred by an authority under section 188—

- (i) dies;
- (ii) ceases to be a registered trustee; or
- (iii) becomes incapable of exercising his powers under this Part,

the Official Trustee shall act as the controlling trustee until a registered trustee becomes the controlling trustee under this section.

“(4) Where a registered trustee becomes the controlling trustee under this section, or the Official Trustee acts as the controlling trustee, the registered trustee or the Official Trustee, as the case may be, has the same powers as the trustee originally authorized by the debtor under section 188.

“(5) All acts and things duly done by a registered trustee in pursuance of an authority signed by a debtor under section 188 shall, if another trustee becomes the controlling trustee or the Official Trustee acts as the controlling trustee, be deemed, for the purposes of this Division, to have been done by that other trustee or the Official Trustee, as the case may be.

“(6) All acts and things duly done, or deemed to have been done, by the Official Trustee while acting as the controlling trustee shall, if a registered trustee becomes the controlling trustee, be deemed, for the purposes of this Division, to have been done by that registered trustee.

#### **Remuneration of controlling trustee**

“193. (1) The provisions of sections 162 to 167 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, in relation to the controlling trustee as if the debtor who gave the authority under section 188 were a bankrupt and the controlling trustee were the trustee in his bankruptcy.

“(2) In sub-section (1), ‘modification’ includes the addition or omission of a provision or the substitution of a provision for another provision.”.

(2) Section 193 of the Principal Act as amended by sub-section (1) of this section applies in relation to services rendered by a controlling trustee after the commencement of this section.

#### **Calling of meeting**

**105. (1)** Section 194 of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (1) “seven” and substituting “14”;
- (b) by omitting from sub-sections (2) and (3) “registered” and substituting “controlling”;
- (c) by adding at the end of sub-section (3) “and in such other manner (if any) as is prescribed”; and
- (d) by omitting from sub-section (4) “registered” and substituting “controlling”.

(2) Notwithstanding the amendments of section 194 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to an authority signed by a debtor under section 188 of the Principal Act before the commencement of this section as if those amendments had not been made.



**Debtor to attend meeting**

**106.** Section 195 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) Where the Official Trustee is acting as the controlling trustee, sub-section (3) applies as if the reference in that sub-section to the controlling trustee were a reference to an Official Receiver or a person authorized in writing by an Official Receiver to act on behalf of the Official Trustee at the meeting.”.

**Quorum**

**107.** Section 202 of the Principal Act is amended by omitting from sub-section (5) “registered” and substituting “controlling”.

**Minutes of meeting**

**108.** Section 203 of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-section:

“(2A) Where—

- (a) the Official Trustee is acting as the controlling trustee; and
- (b) an Official Receiver, or a person authorized by an Official Receiver to act on behalf of the Official Trustee for the purpose, attended a meeting under this Division,

the Official Receiver or that person, as the case may be, may sign the minutes of the meeting in place of the chairman if the chairman dies without having signed the minutes or becomes incapable, whether through illness or other cause, of signing the minutes as required by sub-section (1).”; and

(b) by adding at the end thereof the following sub-section:

“(4) Where minutes of the proceedings at a meeting under this Division are prepared and signed in pursuance of this section, or a minute referred to in sub-section (3) is prepared and signed in pursuance of that sub-section, the controlling trustee, or the solicitor who called the meeting, shall, within 21 days after the day on which the meeting was held, cause a copy of the minutes or minute, as the case may be, to be filed in the office of the Registrar.”.

**109. (1)** Section 205 of the Principal Act is repealed and the following sections are substituted:

**Duties of sheriff after receiving notice of signing of authority under section 188, &c.**

“205. (1) Subject to this section, where notice in writing of the signing by a debtor of an authority under section 188, of the calling of a meeting of creditors of a debtor in pursuance of this Division or of the passing of a special resolution under section 204 requiring a debtor to execute a deed of assignment or a deed of arrangement or present a debtor’s petition or accepting a composition is given to a sheriff, the sheriff—

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- (a) shall refrain—
  - (i) from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and
  - (ii) from taking any action on behalf of a creditor to attach a debt due to the debtor; and
- (b) shall not—
  - (i) pay to the creditor by whom, or on whose behalf, the process of execution was issued, or to any person on his behalf, the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, in pursuance of any such process; or
  - (ii) pay to the creditor, or to any person on his behalf, any moneys received as a result of the attachment of the debt due to the debtor.

“(2) Where a notice is given under sub-section (1) to a sheriff, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a 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 section) may give to the sheriff a notice in accordance with the prescribed form, being a notice in the form of a statutory declaration, specifying such particulars of the maintenance agreement or maintenance order as are required by the form, and, upon the giving of the notice, sub-section (1) ceases to apply in relation to the process of execution or attachment, as the case may be.

“(3) Subject to this section, where notice in writing of the signing by a debtor of an authority under section 188, of the calling of a meeting of creditors of a debtor in pursuance of this Division or of the passing of a special resolution under section 204 requiring a debtor to execute a deed of assignment or a deed of arrangement or present a debtor’s petition or accepting a composition is given to the registrar or other appropriate officer of a court—

- (a) to which the proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or
- (b) to which moneys have been paid in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor, any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on his behalf.

“(4) Where a notice is given under sub-section (3) to the registrar or other appropriate officer of any court, a creditor who has issued a process of execution, or on whose behalf a process of execution has been issued, against

property of the debtor, or who has taken action, or on whose behalf action has been taken, to attach a debt due to the debtor, in respect of a 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 section) may give to the registrar or other officer a notice in accordance with the prescribed form, being a notice in the form of a statutory declaration, specifying such particulars of the maintenance agreement or maintenance order as are required by the form, and, upon the giving of the notice, sub-section (3) ceases to apply in relation to the process of execution or the attachment, as the case may be.

“(5) Sub-section (1) does not prevent the sheriff from selling property, taking action to attach a debt or paying the proceeds of the sale of property or other moneys to a creditor or a person on his behalf, and sub-section (3) does not prevent moneys in court from being paid out of court to a creditor or a person on his behalf, if—

- (a) having received notice of the signing by the debtor of an authority under section 188, the sheriff, registrar or other officer does not, within 42 days from the date on which the debtor signed the authority, receive notice of the passing of a special resolution under section 204 requiring the debtor to execute a deed of assignment or a deed of arrangement or present a debtor’s petition or accepting a composition;
- (b) having received notice that a meeting of creditors of the debtor has been called, the sheriff, registrar or other officer does not, within 7 days from the date for which the meeting was called, receive notice of the passing of a special resolution referred to in paragraph (a) or of the adjournment of the meeting;
- (c) having received notice of the adjournment of a meeting of creditors of the debtor, the sheriff, registrar or other officer does not, within 7 days from the date to which the meeting was adjourned, receive notice of the passing of a special resolution referred to in paragraph (a) or of the further adjournment of the meeting; or
- (d) having received notice of the passing of a special resolution referred to in paragraph (a) (not being a special resolution accepting a composition), the sheriff, registrar or other officer does not, within 21 days from the date on which the resolution was passed, receive notice that the deed required to be executed has been duly executed or that the debtor has presented a debtor’s petition.

“(6) Where—

- (a) the sheriff, in pursuance of sub-section (1) of this section or of sub-section 119 (1) or (2), refrains from taking action to sell property of a debtor (being real property), the debtor executes a 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; or

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(b) a sheriff, in pursuance of sub-section (1), refrains from taking action to sell property of a debtor (being real property), the debtor becomes a bankrupt and the property vests in the trustee in the bankruptcy, the costs of the execution are a first charge on that property.

“(7) A failure by the sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a debtor in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

**Duties of sheriff after receiving notice of execution of deed, &c.**

“205A. (1) Subject to this section, where a deed of assignment has been duly executed (whether before or after the commencement of this section) by a debtor under this Part, the trustee of the deed may give to the sheriff or to the registrar or other appropriate officer of a court notice in writing of that fact and, upon the giving of the notice—

(a) the sheriff shall deliver or pay to the trustee—

- (i) any property of the debtor in his possession under a process of execution issued by or on behalf of a creditor;
- (ii) any proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the debtor executed the deed, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the debtor executed the deed, in pursuance of any such process; and
- (iii) any moneys in his possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the debtor; or

(b) the registrar or other officer of the court shall pay to the trustee—

- (i) any proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the debtor executed the deed, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; and
- (ii) any moneys in court that have been paid into court, whether before or after the debtor executed the deed, in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor,

as the case requires.

“(2) Subject to this section, where—

(a) the sheriff is satisfied—

- (i) that a deed of arrangement has, after the commencement of this section, been duly executed by a debtor under this Part; and

(ii) that—

- (A) property of the debtor in his possession under a process of execution issued by or on behalf of a creditor;
- (B) proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the debtor executed the deed, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the debtor executed the deed, in pursuance of any such process; or
- (C) moneys in his possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the debtor, is not, or are not, subject to the provisions of the deed,

the sheriff shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the debtor or to a person authorized by the debtor in writing for the purpose; or

(b) the registrar or other appropriate officer of a court is satisfied—

(i) that a deed of arrangement has, after the commencement of this section, been duly executed by the debtor under this Part; and

(ii) that—

- (A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the debtor executed the deed, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or
- (B) moneys in court that have been paid into court, whether before or after the debtor executed the deed, in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor,

are not subject to the provisions of the deed,

the registrar or other officer shall pay those proceeds or other moneys, as the case requires, to the debtor or to a person authorized by the debtor in writing for the purpose.

“(3) Subject to this section, where—

(a) the sheriff is satisfied—

(i) that a deed of arrangement has, after the commencement of this section, been duly executed by the debtor under this Part; and

(ii) that—

- (A) property of the debtor in his possession under a process of execution issued by or on behalf of a creditor;

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- (B) proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the debtor executed the deed, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the debtor executed the deed, in pursuance of any such process; or
  - (C) moneys in his possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the debtor, is, or are, subject to the provisions of the deed,  
the sheriff shall deliver that property or pay those proceeds or other moneys, as the case requires, to the trustee of the deed; or
- (b) the registrar or other appropriate officer of a court is satisfied—
- (i) that a deed of arrangement has, after the commencement of this section, been duly executed by a debtor under this Part; and
  - (ii) that—
    - (A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the debtor executed the deed, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or
    - (B) moneys in court that have been paid into court, whether before or after the debtor executed the deed, in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor,  
are subject to the provisions of the deed,  
the registrar or other officer shall pay those proceeds or other moneys, as the case requires, to the trustee of the deed.
- “(4) Subject to this section, where—
- (a) the sheriff is satisfied—
- (i) that a special resolution accepting a composition has been passed under section 204 in relation to a debtor after the commencement of this section; and
  - (ii) that—
    - (A) property of the debtor in his possession under a process of execution issued by or on behalf of a creditor;
    - (B) proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the passing of the special resolution, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the passing of

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the special resolution, in pursuance of any such process;  
or

(C) moneys in his possession as a result of the attachment,  
by or on behalf of a creditor, of a debt due to the debtor,

is not, or are not, subject to the terms of the composition,

the sheriff shall deliver that property, or pay those proceeds or other  
moneys, as the case requires, to the debtor or to a person authorized by  
the debtor in writing for the purpose; or

(b) the registrar or other appropriate officer of a court is satisfied—

(i) that a special resolution accepting a composition has been  
passed under section 204 in relation to a debtor after the com-  
mencement of this section; and

(ii) that—

(A) proceeds of the sale of property of the debtor or other  
moneys in court, being proceeds of sale or other moneys  
paid into court, whether before or after the passing of  
the special resolution, by a sheriff in pursuance of a pro-  
cess of execution issued, by or on behalf of a creditor,  
against property of the debtor; or

(B) moneys in court that have been paid into court, whether  
before or after the passing of the special resolution, in  
pursuance of proceedings instituted, by or on behalf of a  
creditor, to attach a debt due to the debtor,

are not subject to the terms of the composition,

the registrar or other officer shall pay those proceeds or other moneys,  
as the case requires, to the debtor or to a person authorized by the  
debtor in writing for the purpose.

“(5) The sheriff, registrar or other officer of a court shall not, in pursuance  
of sub-section (4)—

(a) in the case of the sheriff—deliver property or pay the proceeds of the  
sale of property or other moneys; or

(b) in the case of the registrar or other officer—pay moneys in court,  
to the debtor or to a person authorized by the debtor unless—

(c) 21 days have elapsed since the day on which the special resolution  
accepting the composition was passed; and

(d) the sheriff, registrar or other officer, as the case may be, is satisfied  
that application has not been made to the Court for an order to set  
aside the composition or that the application, or each application,  
made for such an order has been withdrawn or dismissed.

“(6) Subject to this section, where—

(a) the sheriff is satisfied—

(i) that a special resolution accepting a composition has been  
passed under section 204 in relation to a debtor after the com-  
mencement of this section; and

(ii) that—

(A) property of the debtor in his possession under a process of execution issued by or on behalf of a creditor;

(B) proceeds of the sale of property of the debtor or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the passing of the special resolution, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the debtor, whether before or after the passing of the special resolution, in pursuance of any such process; or

(C) moneys in his possession as a result of the attachment, by or on behalf of a creditor, of a debt due to the debtor,

is, or are, subject to the terms of the composition,

the sheriff shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the trustee of the composition; or

(b) the registrar or other appropriate officer of a court is satisfied—

(i) that a special resolution accepting a composition has been passed under section 204 in relation to a debtor after the commencement of this section; and

(ii) that—

(A) proceeds of the sale of property of the debtor or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the passing of the special resolution, by a sheriff in pursuance of a process of execution issued, by or on behalf of a creditor, against property of the debtor; or

(B) moneys in court that have been paid into court, whether before or after the passing of the special resolution, in pursuance of proceedings instituted, by or on behalf of a creditor, to attach a debt due to the debtor,

are subject to the terms of the composition,

the registrar or other officer shall pay those proceeds or other moneys, as the case requires, to the trustee of the composition.

“(7) The sheriff, registrar or other officer of a court shall not, in pursuance of sub-section (6)—

(a) in the case of the sheriff—deliver property or pay the proceeds of the sale of property or other moneys; or

(b) in the case of the registrar or other officer—pay moneys in court, to the trustee of the composition unless—

(c) 21 days have elapsed since the day on which the special resolution accepting the composition was passed; and

(d) the sheriff, registrar or other officer, as the case may be, is satisfied that application has not been made to the Court for an order to set



aside the composition or that the application, or each application, made for such an order has been withdrawn or dismissed.

“(8) Where property is, or the proceeds of the sale of property or other moneys are, required by sub-section (1), (2), (3), (4) or (6) to be delivered or paid to the trustee of a deed or a composition or to a debtor or a person authorized by the debtor, the costs of the execution or attachment, as the case may be, are a first charge on that property or those proceeds of sale or other moneys, as the case may be.

“(9) For the purpose of giving effect to the charge referred to in sub-section (8), the sheriff, registrar or other officer of a court may retain, on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other moneys referred to in that sub-section as he thinks necessary for the purpose.

“(10) Where a sheriff, registrar or other officer of a court has, in pursuance of sub-section (1), (2), (3), (4) or (6), delivered property or paid moneys to the trustee of a deed or a composition or to the debtor or a person authorized by a debtor, the creditor who issued the process of execution or instituted the attachment proceedings, or on whose behalf the process was issued or the proceedings instituted, as the case may be, may prove under the deed or composition as an unsecured creditor as if the execution or attachment, as the case may be, had not taken place.

“(11) Where—

- (a) a sheriff, registrar or other officer of a court has, in pursuance of sub-section (1), delivered to the trustee of a deed of assignment property that was seized, or paid to the trustee of such a deed the proceeds of the sale of property or other moneys that were received, as a result of the issue of execution against property of a debtor or the attachment of a debt due to a debtor; and
- (b) that property or debt would not have been property divisible amongst the creditors of the debtor if the debtor had executed the deed immediately before the execution was issued or the debt was attached, as the case may be,

the trustee shall deliver that property, or pay those proceeds or other moneys, as the case requires, to the debtor or to a person authorized by the debtor in writing for the purpose.

“(12) Where—

- (a) property has been delivered by a sheriff, or the proceeds of the sale of property or other moneys have been paid by a sheriff, registrar or other officer of a court—
  - (i) to the trustee of a deed of assignment in pursuance of sub-section (1);
  - (ii) to a debtor or a person authorized by the debtor in pursuance of sub-section (2) or (4);

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- (iii) to the trustee of a deed of arrangement in pursuance of sub-section (3); or
  - (iv) to the trustee of a composition in pursuance of sub-section (6);
- and
- (b) the property was in the possession of the sheriff, or the proceeds of the sale of the property or the other moneys were in the possession of the sheriff or paid into court, as the case may be, under or in pursuance of a process of execution issued, or proceedings to attach a debt instituted, by or on behalf of a creditor in respect of a 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 section),

the trustee, debtor or other person, as the case may be, to whom the property has been delivered, or those proceeds or other moneys have been paid, shall deliver that property, or pay those proceeds or other moneys, as the case requires, to that creditor.

“(13) A failure by a sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a debtor in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.”.

(2) Where notice of the signing by a debtor of an authority under section 188 of the Principal Act, of the calling of a meeting of creditors of a debtor in pursuance of Division 2 of Part X of the Principal Act or of the passing of a special resolution under section 204 of the Principal Act requiring a debtor to execute a deed of assignment or a deed of arrangement or present a debtor's petition or accepting a composition has been given to a sheriff or to the registrar or other appropriate officer of a court under section 205 of the Principal Act before the commencement of this section, the notice has effect after the commencement of this section, for the purposes of the Principal Act as amended by this Act, as if the notice had been a notice given to the sheriff or to the registrar or other officer of the court, as the case requires, under section 205 of the Principal Act as amended by sub-section (1) of this section.

(3) Notwithstanding the repeal of section 205 of the Principal Act effected by sub-section (1) of this section, where the trustee of a deed of assignment executed by a debtor under Part X of the Principal Act has, before the commencement of this section, served notice of the execution of the deed on the sheriff or the registrar or other officer of a court under sub-section 205 (4) of the Principal Act, the provisions of sub-sections 205 (4), (6) and (7) continue to apply, after the commencement of this section, in relation to the debtor as if section 205 of the Principal Act had not been repealed.

(4) Notwithstanding the repeal of section 205 of the Principal Act effected by sub-section (1) of this section, where a debtor has, before the commencement of this section, executed a deed of arrangement under Part X of the Principal Act, the provisions of sub-section 205 (4), (6) and (7) continue to apply,

after the commencement of this section, in relation to the debtor as if section 205 of the Principal Act had not been repealed.

(5) Notwithstanding the repeal of section 205 of the Principal Act effected by sub-section (1) of this section, where a special resolution accepting a composition in relation to a debtor has been passed under section 204 of the Principal Act before the commencement of this section, the provisions of sub-sections 205 (5), (6) and (7) continue to apply, after the commencement of this section, in relation to the debtor as if section 205 of the Principal Act had not been repealed.

**Controlling trustee's bank accounts, &c.**

110. Section 210 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(4) Sub-section (1) does not apply in relation to the Official Trustee.”.

**Controlling trustee's accounts**

111. Section 211 of the Principal Act is amended—

(a) by omitting from sub-section (5) “, documents, writings”; and

(b) by adding at the end thereof the following sub-section:

“(6) This section does not apply in relation to the Official Trustee.”.

112. (1) Section 212 of the Principal Act is repealed and the following sections are substituted:

**Court may order controlling trustee to make good loss sustained by negligence, &c.**

“212. (1) Where the Registrar is of the opinion, whether as a result of an account furnished to him in pursuance of section 211 or of an audit under that section or for any other reason, that a trustee who is or has been a controlling trustee may have been guilty of malfeasance, misfeasance, negligence, wilful default or breach of trust in relation to the property or affairs of the debtor, the Registrar may apply to the Court for an order under sub-section (2).

“(2) The Court may order that the trustee make good any loss that has been sustained by reason of the malfeasance, misfeasance, negligence or wilful default of, or a breach of trust by, the trustee or may make such other order as the Court thinks just and equitable in the circumstances.

**Appeal to the Court against controlling trustee's decision, &c.**

“212A. If the debtor, a creditor or any other person is affected by an act, omission or decision, of the controlling trustee, being an act, omission or decision done, omitted to be done or made, as the case may be, after the commencement of this section, he may apply to the Court, and the Court may make such order in the matter as it thinks just and equitable.

**Control of controlling trustees by the Court**

“212B. (1) The Court may, on the application of the Registrar, a creditor or the debtor, inquire into the conduct of a trustee in relation to an authority under section 188 and may do either or both of the following:

- (a) remove the trustee from office;
- (b) make such order as it thinks proper.

“(2) The Registrar or a creditor may at any time require a trustee to answer an inquiry in relation to the property or affairs of a debtor who has executed an authority under section 188.

“(3) The Registrar or a creditor may apply to the Court to examine a trustee or any other person in relation to an authority under section 188.

“(4) Without limiting the generality of sub-section (3), where the Official Trustee is acting, or has acted, as the controlling trustee, application may be made to the Court under that sub-section to examine the Official Receiver for the District in which the debtor executed the authority under section 188.”

(2) Notwithstanding the repeal of section 212 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to acts done, or omitted to be done, in relation to the property or affairs of a debtor before the commencement of this section as if that section of the Principal Act had not been repealed.

**Form of deeds, &c.**

113. Section 214 of the Principal Act is amended by omitting from paragraph (b) of sub-section (2) “the form in the Fourth Schedule” and substituting “the prescribed form”.

114. Section 217 of the Principal Act is repealed and the following section substituted:

**Failure of trustee to execute deed**

“217. (1) Where a deed of assignment or deed of arrangement is not executed, as required by section 216, by the registered trustee, or a registered trustee, nominated in a resolution of a meeting of creditors under section 204 to be the trustee, or a trustee, as the case requires, of the deed, a meeting of creditors called for the purpose, in accordance with the rules, by any creditor or the debtor may, by resolution, nominate any other registered trustee in the place of that registered trustee.

“(2) If the deed is not executed by the registered trustee so nominated within 7 days from the date on which the resolution was passed or within such further period as the Registrar, on application made before the expiration of that period of 7 days, allows, the Court may, upon application by a creditor, nominate any registered trustee who is prepared to accept the office to be trustee in the place of the registered trustee who did not execute the deed as required by section 216.

“(3) A registered trustee so nominated by the Court shall execute the deed within 7 days from the date on which the trustee was so nominated or within such further period as the Court, on application made before the expiration of that period of 7 days, allows.”.

**Notice of execution of deed, acceptance of composition, &c.**

**115.** (1) Section 218 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) Where a special resolution accepting a composition is passed under section 204, the trustee of the composition shall—

- (a) forthwith—
  - (i) give notice of that fact, in accordance with the rules, to each creditor of the debtor; and
  - (ii) cause notice of that fact to be published in the *Gazette* and in such other manner (if any) as is prescribed; and
- (b) within 21 days after the passing of the special resolution—file a copy of the statement of the debtor’s affairs referred to in section 195 in the office of the Registrar.”.

(2) Notwithstanding the amendment of section 218 of the Principal Act made by sub-section (1) of this section, where a special resolution accepting a composition has been passed under section 204 of the Principal Act before the commencement of this section, the provisions of section 218 of the Principal Act continue to apply, after the commencement of this section, in relation to that composition as if that amendment had not been made.

**Filling of vacancy in office of trustee after execution of deed, &c.**

**116.** Section 220 of the Principal Act is amended—

- (a) by omitting paragraph (b) of sub-section (2) and substituting the following paragraph:

“(b) appoint the Official Trustee or a registered trustee, being a registered trustee who is willing so to act, to act as trustee until the vacant office is filled by a meeting of creditors.”;
- (b) by omitting from sub-section (3) “registered” (first occurring);
- (c) by omitting from sub-section (3) “an Official Receiver” and substituting “the Official Trustee”; and
- (d) by omitting sub-sections (5) and (6) and substituting the following sub-sections:

“(5) Where, under this section, the Official Trustee or a registered trustee is appointed to an office of trustee or to act as trustee—

  - (a) all property to which the deed or composition relates that is vested in the former trustee, alone or jointly with another trustee, shall, subject to sub-section (6), vest in the Official Trustee or that registered trustee, as the case may be, alone or jointly with any continuing trustee, as the case may be, without any conveyance, assignment or transfer, as from the date on

which the appointment takes effect or is deemed to have taken effect; and

- (b) the Official Trustee or that registered trustee, as the case may be, has the same rights, powers, duties and liabilities as if the Official Trustee or that registered trustee, as the case may be, had been an original trustee, but is not personally liable in respect of any act done, omission made or liability incurred by a prior trustee.

“(6) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, and enables a trustee so appointed to be registered as the owner of any such property to which the deed or composition relates, that property, notwithstanding that it vests in equity in the trustee by virtue of this section, does not vest in the trustee at law until the requirements of that law have been complied with.”.

#### **Power of the Court to declare deed or composition void**

**117.** Section 222 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “the Registrar,” before “the trustee”;
- (b) by omitting sub-section (2) and substituting the following sub-section:
  - “(2) Upon the hearing of an application made under sub-section (1), the Court may, subject to this section, make an order—
    - (a) declaring that the deed or composition is void, or that it is not void, on the ground specified in the application; or
    - (b) declaring that a provision of the deed is void, or is not void, on the ground specified in the application.”;
- (c) by adding at the end of sub-section (4) “or declaring any provision of the deed or composition to be void”;
- (d) by inserting in sub-section (5) “, or a provision of a deed or composition,” after “a deed or composition”; and
- (e) by adding at the end thereof the following sub-section:
  - “(10) Where in the course of proceedings before the Court (other than proceedings by way of an application under sub-section (1)), the Court becomes of the opinion that there is a doubt, on a particular ground, whether a deed of assignment or deed of arrangement was entered into in accordance with this Part or complies with the requirements of this Part, or whether a composition has been accepted by a special resolution of a meeting of creditors under section 204, and that it is desirable that the doubt be resolved, the Court may direct the Registrar to apply to the Court under sub-section (1) for an order under sub-section (2) in relation to the matter.”.

#### **Calling of meetings other than the first meeting**

**118.** Section 223 of the Principal Act is amended by omitting from sub-section (3) “such trustee” and substituting “trustee of a deed of assignment, a deed of arrangement or a composition”.

**119.** After section 223 of the Principal Act the following section is inserted:

**Application of provisions of this Part relating to first meeting to other meetings under this Part**

“223A. (1) The provisions of sections 196 to 203 (inclusive) apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, in relation to a meeting of creditors (other than the meeting referred to in section 194) called for the purposes of this Part as if the meeting were a meeting referred to in section 194.

“(2) In this section, ‘modification’ includes the addition or omission of a provision or the substitution of a provision for another provision.”

**Validity of acts where deed or composition declared void or terminated, &c.**

**120.** Section 224 of the Principal Act is amended by omitting “(a), (b) or (d) of section 235” and substituting “235 (b) or (d)”.

**121.** After section 224 of the Principal Act the following section is inserted:

**Notice that deed or composition declared void or terminated**

“224A. (1) Where a deed of arrangement or a composition is terminated by a special resolution passed after the commencement of this section at a meeting of creditors called for the purpose, the trustee of the deed or composition shall forthwith file a copy of the special resolution in the office of the Registrar.

“(2) Where a deed of arrangement is terminated after the commencement of this section 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 deed shall forthwith give notice in writing of that fact to the Registrar.

“(3) Where the Registrar becomes aware after the commencement of this section, whether by reason of his having received information under this section or otherwise—

- (a) that the Court has declared a deed of assignment, a deed of arrangement or a composition to be void;
- (b) that the Court has terminated a deed of arrangement or a composition;
- (c) that a deed of arrangement or a composition has been terminated by a special resolution passed at a meeting of creditors called for the purpose;
- (d) that a deed of arrangement has been terminated by the occurrence of any circumstance or event on the occurrence of which the deed provided that it was to terminate; or
- (e) that the Court has set aside a composition,

the Registrar shall forthwith cause notice of that fact to be published in the *Gazette* and in such other manner (if any) as is prescribed.”.

**Evidence of deed, resolution, &c.**

**122. (1)** Section 225 of the Principal Act is amended—

- (a) by omitting from sub-sections (2) and (3) “, in the absence of fraud, conclusive” and substituting “*prima facie*”; and
- (b) by inserting in sub-section (4) “*prima facie*” before “evidence”.

(2) The amendments of section 225 of the Principal Act made by sub-section (1) of this section do not apply in relation to a certificate of the passing of a resolution, whether or not a special resolution, under section 204 of the Principal Act that was signed before the commencement of this section.

**123.** Section 226 of the Principal Act is repealed and the following section substituted:

**Creditor may inspect deed, &c.**

“226. (1) A person who states in writing that he is a creditor of a debtor who has executed a deed of assignment or a deed of arrangement under this Part may, at all reasonable times, inspect without fee, personally or by an agent, the deed, the statement of affairs referred to in section 195 of the debtor and the proofs of debt of creditors and may make copies of, or take extracts from, the deed, the statement and the proofs.

“(2) A person who states in writing that he is a creditor of a debtor who has made a composition under this Part may, at all reasonable times, inspect without fee, personally or by an agent, the statement of affairs referred to in section 195 of the debtor and the proofs of debt of creditors, and may make copies of, or take extracts from, the statement and the proofs.

“(3) A person who states in writing that he is a creditor of a debtor who has executed a deed of assignment or a deed of arrangement, or made a composition, under this Part may without fee, and any other person may on payment of the prescribed fee, inspect, personally or by an agent, any document filed under this Part in the office of the Registrar in relation to the debtor, and may make copies of, or take extracts from, the document.

“(4) Any person is entitled, on payment of the prescribed fee, to obtain an office copy of any document filed under this Part in the office of the Registrar.”.

**Deed of assignment to bind all creditors**

**124. (1)** Section 228 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “Subject to sub-section (3)” and substituting “Subject to sub-sections (3) and (4)”; and
- (b) by adding at the end thereof the following sub-section:

“(4) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a debtor who has executed a deed



of assignment, or against any property of such a debtor that is not vested in the trustee of the deed, 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 sub-section).”.

(2) The amendments of the Principal Act made by sub-section (1) of this section do not apply in relation to a debtor, or the property of a debtor, who executed a deed of assignment before the commencement of this section.

#### **Application of general provisions of Act to deeds of assignment**

**125. (1)** Section 231 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “section 60” and substituting “sections 60 to 62 (inclusive), sections 70 to 72 (inclusive)”; and
- (b) by inserting in sub-section (4) “sub-sections 157 (6) and (7),” after “The provisions of”.

(2) Section 231 of the Principal Act as amended by sub-section (1) of this section applies in relation to deeds of assignment executed before or after the commencement of this section.

#### **Certificate relating to release**

**126.** Section 232 of the Principal Act is amended by inserting in sub-section (2) “*prima facie*” before “evidence”.

#### **Deed of arrangement to bind all creditors**

**127. (1)** Section 233 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “Where” and substituting “Subject to sub-sections (3) and (4), where”; and
- (b) by adding at the end thereof the following sub-section:

“(4) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a debtor who has executed a deed of arrangement, or against any property of such a debtor that is not vested in the trustee of the deed, 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 sub-section).”.

(2) The amendments of the Principal Act made by sub-section (1) of this section do not apply in relation to a debtor, or the property of a debtor, who executed a deed of arrangement before the commencement of this section.

#### **Termination of deed of arrangement**

**128.** Section 235 of the Principal Act is amended by omitting paragraph (a).

**Court may terminate deed**

**129. (1)** Section 236 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) The Court may, upon application by the trustee, a creditor or the debtor, or, if the debtor has died, the person administering the estate of the debtor, if it is satisfied—

- (a) that the debtor, or, 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 provision of the deed of arrangement;
- (b) that the deed of arrangement cannot be proceeded with without injustice or undue delay to the creditors, the debtor or, if the debtor has died, the estate of the debtor; or
- (c) that for any other reason the deed of arrangement ought to be terminated,

make an order terminating the deed.”

(2) Notwithstanding the amendment of section 236 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to an application made to the Court before the commencement of this section under that section of the Principal Act as if that amendment had not been made.

**Application of general provisions of Act to deeds of arrangement**

**130. (1)** Section 237 of the Principal Act is amended—

- (a) by inserting in sub-section (2) “sections 61 and 62, sections 70 to 72 (inclusive),” before “sections 82 to 114 (inclusive)”; and
- (b) by inserting in sub-section (4) “sub-sections 157 (6) and (7),” after “The provisions of”.

(2) Section 237 of the Principal Act as amended by sub-section (1) of this section applies in relation to deeds of arrangement executed before or after the commencement of this section.

**131.** After section 237 of the Principal Act the following section is inserted in Division 5 of Part X:

**Certificate by trustee that provisions of deed have been carried out**

“237A. (1) Where the trustee of a deed of arrangement is satisfied that the provisions of the deed have been carried out, the trustee shall, upon request in writing by the debtor, furnish to the debtor a certificate signed by him to that effect.

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

**Composition to bind all creditors**

**132. (1)** Section 238 of the Principal Act is amended—

- (a) by omitting from sub-section (2) "Subject to sub-section (3)" and substituting "Subject to sub-sections (3) and (4)"; and
- (b) by adding at the end thereof the following sub-section:

"(4) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against a debtor who has made a composition under this Part, or against any property of such a debtor that it is not vested in the trustee of the composition, 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 sub-section)."

(2) The amendments of the Principal Act made by sub-section (1) of this section do not apply in relation to a debtor, or the property of a debtor, in relation to whom a special resolution accepting a composition was passed before the commencement of this section.

#### **Court may terminate composition**

133. (1) Section 242 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

"(1) The Court may, upon application by the trustee, a creditor or the debtor, or, if the debtor has died, the person administering the estate of the debtor, if it is satisfied—

- (a) that the debtor, or, 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 composition;
- (b) that the composition cannot be proceeded with without injustice or undue delay to the creditors, the debtor or, if the debtor has died, the estate of the debtor; or
- (c) that for any other reason the composition ought to be terminated, make an order terminating the composition."

(2) Notwithstanding the amendment of section 242 of the Principal Act made by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to an application made to the Court before the commencement of this section under that section of the Principal Act as if that amendment had not been made.

#### **Application of general provisions of Act to compositions**

134. (1) Section 243 of the Principal Act is amended by inserting in sub-section (3) "sub-sections 157 (6) and (7)," after "The provisions of".

(2) Section 243 of the Principal Act as amended by sub-section (1) of this section applies in relation to a composition whether the special resolution accepting the composition was passed before, or is passed after, the commencement of this section.

**135.** After section 243 of the Principal Act the following section is inserted in Division 6 of Part X:

**Certificate by trustee that terms of composition have been carried out**

“243A. (1) Where the trustee of a composition is satisfied that the terms of the composition have been carried out, the trustee shall, upon request in writing by the debtor, furnish to the debtor a certificate signed by him to that effect.

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

**Administration of estates under this Part upon petition by creditor**

**136. (1)** Section 244 of the Principal Act is amended by omitting from sub-section (1) “\$500” (wherever occurring) and substituting “\$1,000”.

(2) The amendment of section 244 of the Principal Act made by sub-section (1) does not apply in relation to a petition presented under that section of the Principal Act before the commencement of this section.

**Filing of statement of deceased debtor’s affairs by legal personal representative, &c.**

**137. (1)** Section 246 of the Principal Act is amended—

(a) by inserting in sub-section (1) “, within 28 days from the day on which he is notified of the making of the order,” after “shall”;

(b) by inserting in paragraph (a) of sub-section (1) “for the District in which the order was made” after “the Registrar”;

(c) by omitting sub-section (2) and substituting the following sub-section:

“(2) Where an order is made under section 244 or 245 for the administration of the estate of a deceased person under this Part, it is the duty of the Official Receiver to notify, as prescribed, the making of the order.”; and

(d) by omitting from sub-section (5) “and may make a copy of it” and substituting “, and make copies of, or take extracts from, the statement”.

(2) Notwithstanding the amendments of section 246 of the Principal Act made by sub-section (1) of this section, where an order has been made by the Court under section 244 or 245 of the Principal Act before the commencement of this section for the administration of the estate of a deceased person under Part XI of the Principal Act, the provisions of section 246 of the Principal Act continue to apply, after the commencement of this section, in relation to the legal personal representative of the deceased person as if those amendments had not been made.

**138.** After section 247 of the Principal Act the following section is inserted:

**Commencement of administration under Part**

“247A. (1) Administration of the estate of a deceased person under this Part by virtue of an order made by the Court under section 244 or 247 after the commencement of this section shall be deemed to have relation back to, and to have commenced at—

- (a) if the deceased person was on the day of his death unable to pay his debts as they became due from his own moneys and had committed any act or acts of bankruptcy within the period of 6 months immediately preceding the day on which he died—the time of the commission of that act, or the first of those acts, as the case may be;
- (b) if the deceased person was on the day of his death unable to pay his debts as they became due from his own moneys, but had not committed any act of bankruptcy within the period of 6 months immediately preceding the day on which he died—the time of his death; or
- (c) if the deceased person was on the day of his death able to pay his debts as they became due from his own moneys—the time of the presentation of the petition on which the order was made.

“(2) Administration of the estate of a deceased person under this Part by virtue of an order made by the Court under section 245 on a creditor’s petition shall be deemed to have relation back, and to have commenced at, the time of the commission of the earliest act of bankruptcy committed by the deceased person within the period of 6 months immediately preceding the date on which the petition was presented.”.

**Application of general provisions of Act in relation to administration under Part**

139. (1) Section 248 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “sections 48 to 51 (inclusive)” and substituting “sections 49 to 51 (inclusive), sub-sections 52 (4) and (5),”;
- (b) by omitting from sub-section (1) “sections 117 to 122 (inclusive), sections 125 to 130 (inclusive)” and substituting “sections 117 to 130 (inclusive)”;
- (c) by omitting sub-section (2); and
- (d) by inserting after paragraph (d) of sub-section (3) the following paragraph:

“(da) a reference to the commencement of the bankruptcy shall be read as a reference to the time at which administration of the estate under this Part is, by virtue of section 247A, to be deemed to have commenced;”.

(2) Notwithstanding the amendments of section 248 of the Principal Act made by sub-section (1) of this section, where an order has been made by the Court before the commencement of this section for the administration of the estate of a deceased person under Part XI of the Principal Act, the provisions of section 248 of the Principal Act continue to apply, after the commencement

of this section, in relation to the administration of the estate of that deceased person under that Part as if those amendments had not been made.

**140.** After section 248 of the Principal Act the following section is inserted:

**Consolidation of proceedings**

“248A. (1) Where orders have been made, whether before or after the commencement of this section, for the administration under this Part of the estates of 2 or more members of a partnership or 2 or more persons jointly liable for a debt, the Court may consolidate the proceedings upon such terms as it thinks fit.

“(2) Where—

- (a) a member of a partnership has become, whether before or after the commencement of this section, a bankrupt or 2 or more members of a partnership have become, whether before or after the commencement of this section, bankrupts; and
- (b) an order has been made, whether before or after the commencement of this section, for the administration under this Part of the estate of another member of the partnership or orders have been made, whether before or after the commencement of this section, for the administration under this Part of the estates of 2 or more other members of the partnership,

the Court may consolidate the proceedings upon such terms as it thinks fit.

“(3) Where—

- (a) one of the persons jointly liable for a debt has become, whether before or after the commencement of this section, a bankrupt or 2 or more of the persons jointly liable for a debt have become, whether before or after the commencement of this section, bankrupts; and
- (b) an order has been made, whether before or after the commencement of this section, for the administration under this Part of the estate of another person jointly liable for the debt or orders have been made, whether before or after the commencement of this section, for the administration under this Part of the estates of 2 or more persons jointly liable for the debt,

the Court may consolidate the proceedings upon such terms as it thinks fit.

“(4) Where the Court makes an order under sub-section (1), (2) or (3), section 110 applies in the administration under this Act of all the estates (whether estates of bankrupts or of deceased debtors) to which that order relates.

“(5) Where the Court makes an order under sub-section (1), (2) or (3) in relation to 2 or more estates, the Court may, in the order—

- (a) declare a specified date to be, for the purpose of the application of the provisions of Division 3 of Part VI in the administration of the joint

estate, the date on which all the petitions relevant to the administration of those estates shall be deemed to have been presented;

- (b) declare a specified date to be, for that purpose, the date of the bankruptcy in respect of each of those estates being administered in bankruptcy and the date on which each order for administration under this Part was made in respect of those estates being administered under this Part; and
- (c) declare a specified time to be, for that purpose, the time that is the commencement of the bankruptcy in respect of each of those estates being administered in bankruptcy and the time at which the administration under this Part of each of those estates being administered under this Part (other than an estate in respect of which the order for its administration under this Part was made before the commencement of this section) is, by virtue of section 247A, to be deemed to have commenced,

and, if the Court does so, those estates shall be administered accordingly.”.

#### **Vesting of property on making of order**

**141. (1)** Section 249 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1) “The Official Receiver in Bankruptcy” and substituting “the Official Trustee”;
- (b) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:

“(b) after-acquired property of the estate vests, as soon as it is acquired by, or devolves on, the estate, in the Official Trustee or, if a registered trustee is trustee of the estate of the deceased person under this Act, in that registered trustee.”;

- (c) by omitting from sub-section (2) “The Official Receiver in Bankruptcy or the trustee” (first occurring) and substituting “the trustee of the estate of a deceased person under this Act”;
- (d) by omitting from sub-section (2) “The Official Receiver in Bankruptcy or the trustee, as the case may be,” and substituting “the trustee”;
- (e) by inserting after sub-section (4) the following sub-section:

“(4A) Nothing in this section shall be taken to prevent a creditor from enforcing any remedy against the estate of a deceased person in relation to which the Court has made an order for administration under this Part, or against any property of such an estate that is not part of the divisible property of the estate, in respect of any liability of the estate under a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this sub-section).”; and

- (f) by omitting sub-section (6) and substituting the following sub-sections:

“(6) For the purposes of this section, where the administration of the estate of a deceased person under this Part is, by virtue of section

247A, to be deemed to have commenced before the death of the deceased person, the divisible property of the estate comprises—

- (a) property that formed part of the estate upon the death of the deceased person other than—
  - (i) property that, if the deceased person had not died and a sequestration order had been made against him immediately before his death, would not have been divisible amongst his creditors under Part VI; or
  - (ii) the proceeds of a policy of life insurance or endowment assurance, a policy for pure endowment or a policy for an annuity, being a policy that would not have been divisible among the creditors of the deceased person under Part VI if he had not died and a sequestration order had been made against him immediately before his death;
- (b) property that was or is acquired by, or devolved or devolves on, the estate after the death of the deceased person and before an order releasing the estate from administration under this Part is made, not being property that, if the deceased person had not died and a sequestration order had been made against him immediately before his death, would not have been divisible amongst his creditors under Part VI;
- (c) the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property as might have been exercised by the legal personal representative of the deceased person for the benefit of the estate at any time before an order releasing the estate from administration under this Part is made;
- (d) property that forms part of the divisible property of the estate by virtue of section 251 and any amount for which a person is liable to account to the trustee of the estate under sub-section 251 (2);
- (e) if, immediately before the death of the deceased person, any property was owned by the deceased person and another person or other persons as joint tenants—an amount equal to the value of the improvements (if any) made to that property wholly or principally by or at the expense of the deceased person after, or not earlier than 2 years before, the commencement of administration of his estate under this Part;
- (f) property (other than property that formed part of the estate of the deceased person upon his death) that belonged to, or was vested in, the deceased person at the commencement of administration of his estate under this Part or was acquired by, or devolved on, the deceased person after the commencement of administration of his estate under this Part and before his death, not being property that, if he had not died and a



sequestration order had been made against him at the commencement of administration of his estate under this Part, would not have been divisible amongst his creditors under Part VI; and

- (g) the capacity to exercise, and take proceedings for exercising, all such powers in, over or in respect of property as might have been exercised by the deceased person for his own benefit at the commencement of administration of his estate under this Part, or at any time after commencement of administration of his estate under this Part and before his death.

“(7) For the purposes of this section, where the administration of the estate of a deceased person is under this Part, by virtue of section 247A, to be deemed to have commenced at the time of his death, the divisible property of the estate comprises—

- (a) property that formed part of the estate upon the death of the deceased person other than—
  - (i) property that, if the deceased person had not died and a sequestration order had been made against him immediately before his death, would not have been divisible amongst his creditors under Part VI; or
  - (ii) the proceeds of a policy of life insurance or endowment assurance, a policy for pure endowment or a policy for an annuity, being a policy that would not have been divisible among the creditors of the deceased person under Part VI if he had not died and a sequestration order had been made against him immediately before his death;
- (b) property that was or is acquired by, or devolved or devolves on, the estate after the death of the deceased person and before an order releasing the estate from administration under this Part is made, not being property that, if the deceased person had not died and a sequestration order had been made against him immediately before his death, would not have been divisible amongst his creditors under Part VI;
- (c) the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property as might have been exercised by the legal personal representative of the deceased person for the benefit of the estate at any time before an order releasing the estate from administration under this Part is made;
- (d) property that forms part of the divisible property of the estate by virtue of section 251 and any amount for which a person is liable to account to the trustee of the estate under sub-section 251 (2); and

- (e) if, immediately before the death of the deceased person, any property was owned by the deceased person and another person or other persons as joint tenants—an amount equal to the value of the improvements (if any) made to that property wholly or principally by or at the expense of the deceased person after, or not earlier than 2 years before, the commencement of administration of his estate under this Part.

“(8) For the purposes of this section, where the administration of the estate of a deceased person under this Part is, by virtue of section 247A, to be deemed to have commenced after the death of the deceased person, the divisible property of the estate comprises—

- (a) property that formed part of the estate at the commencement of administration of the estate under this Part other than—
  - (i) property that, if the deceased person had not died and a sequestration order had been made against him at that time, would not have been divisible amongst his creditors under Part VI; or
  - (ii) the proceeds of a policy of life insurance or endowment assurance, a policy for pure endowment or a policy for an annuity, being a policy that would not have been divisible amongst the creditors of the deceased person under Part VI if he had not died and a sequestration order had been made against him at that time;
- (b) property that was or is acquired by, or devolved or devolves on, the estate after the commencement of administration under this Part and before an order releasing the estate from administration under this Part is made, not being property that, if the deceased person had not died and a sequestration order had been made against him at the commencement of administration of his estate under this Part, would not have been divisible amongst his creditors under Part VI;
- (c) the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property as might have been exercised by the legal personal representative of the deceased person for the benefit of the estate at the commencement of administration under this Part or at any time after that time and before an order releasing the estate from administration under this Part is made; and
- (d) property that forms part of the divisible property of the estate by virtue of section 251 and any amount for which a person is liable to account to the trustee of the estate under sub-section 251 (2).

“(9) The value of any improvements made to property owned by a deceased person in respect of whose estate an order is made for administration under this Part and another person or other persons as

joint tenants shall, for the purposes of paragraph (6) (e) or (7) (e), be determined as at the date of the death of the deceased person.

“(10) In this section—

‘after-acquired property’, in relation to an estate, means property that is acquired by, or devolves on, the estate of the deceased person on or after the day on which the order for the administration of the estate under this Part is made, being property that is part of the divisible property of the estate;

‘commencement of administration’, in relation to the administration of the estate of a deceased person under this Part, means the time at which the administration of the estate under this Part is, by virtue of section 247A, to be deemed to have commenced.”.

(2) Notwithstanding the amendments of section 249 of the Principal Act made by sub-section (1) of this section, where an order has been made by the Court before the commencement of this section for the administration of the estate of a deceased person under Part XI of the Principal Act, the provisions of section 249 of the Principal Act continue to apply, after the commencement of this section, in relation to the administration of the estate of that deceased person under that Part.

**142. (1)** Section 250 of the Principal Act is repealed and the following sections are substituted:

**Charge over property owned in joint tenancy**

“249A. (1) Where—

- (a) an amount equal to the value of improvements made to property owned by a deceased person in respect of whose estate an order is made for administration under this Part and another person or other persons as joint tenants forms, for the purposes of section 249, part of the divisible property of the estate of the deceased person; and
- (b) the property is owned by that other person, or is owned (whether as joint tenants or otherwise) by all or some of those other persons and no other person, on the day on which the order for the administration of the estate under this Part is made,

there is created, by force of this sub-section, a charge on that property to secure the payment of that amount.

“(2) The charge created on property by sub-section (1)—

- (a) is subject to every charge or encumbrance to which the property was subject immediately before the time at which the order for administration under this Part was made;
- (b) subject to sub-section (3), has priority over all other charges or encumbrances whatsoever; and
- (c) subject to sub-section (3), is not affected by any change of ownership of the property.

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“(3) A charge created by sub-section (1) on any property—

- (a) ceases to have effect in respect of the property upon the sale of the property to a *bona fide* purchaser for value who, at the time of the purchase, has no notice of the charge; and
- (b) is postponed in favour of a further charge, or an encumbrance, on the property acquired *bona fide* and for value by a person who, at the time of the acquisition, had no notice of the first-mentioned charge.

“(4) Where a charge is created by sub-section (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of charges over property of that kind, the trustee of the estate may cause the charge to be registered under the provisions of that law and, if he does so, a person who purchases or otherwise acquires the property, or an interest in the property, after registration of the charge shall, for the purposes of sub-section (3), be deemed to have notice of the charge.

**Effect of order under Part in case of deceased person who was bankrupt**

“250. (1) Where an order is made for the administration of the estate of a deceased person under this Part who was, at the time of his death, a bankrupt—

(a) property—

- (i) that was acquired by, or devolved on, the deceased person on or after the date of the bankruptcy; and
- (ii) that is divisible amongst the creditors of the deceased person, but had not been distributed amongst the creditors in the bankruptcy before the date on which the order was made,

shall (subject to any disposition of that property made by the trustee in the bankruptcy without knowledge of the presentation of the petition on which the order was made and subject also to section 126 in its application to the administration of deceased estates under this Part by virtue of section 248) vest forthwith in the trustee of the estate of the deceased person;

(b) property—

- (i) that is acquired by, or devolves on, the estate of the deceased person on or after the date of the making of the order; and
- (ii) that is divisible amongst the creditors of the estate under this Part,

vests in the trustee of the estate of the deceased person under this Part as soon as it is acquired by, or devolves on, the estate;

(c) the trustee in the bankruptcy—

- (i) shall be deemed to be a creditor in the administration of the estate of the deceased person under this Part in respect of any unsatisfied balance of his expenses in the bankruptcy, the liabilities incurred by him in administering the estate in the bankruptcy and the debts proved in the bankruptcy (whether

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or not those debts are entitled to priority, or are postponed, in the bankruptcy);

(ii) shall rank equally with the ordinary unsecured creditors of the estate of the deceased person in its administration under this Part; and

(iii) may, where he has lodged a proof of debt in the administration under this Part, amend that proof of debt, without the consent of the trustee of the estate of the deceased person under this Part, for the purpose of adding—

(A) his expenses in the bankruptcy that have accrued after the proof of debt was lodged;

(B) liabilities incurred by him in administering the estate in the bankruptcy after the proof of debt was lodged;  
or

(C) debts proved in the bankruptcy after the proof of debt was lodged,

or, with the consent of the trustee of the estate of the deceased person, for any other purpose;

(d) a charge or charging order that, by virtue of sub-section 118 (9), is void as against the trustee in the bankruptcy continues to be void as against that trustee; and

(e) a transaction that, by virtue of section 120, 121 or 122, is void as against the trustee in the bankruptcy continues to be void as against that trustee.

“(2) Where—

(a) the trustee of the estate of a bankrupt who has died receives, after the death of the bankrupt, notice of the presentation of a creditor’s petition against the deceased bankrupt, being a petition that was presented before he died; or

(b) the trustee of the estate of a bankrupt who has died receives notice of the presentation of a petition for the administration of the estate of the deceased bankrupt under this Part,

the trustee shall hold the after-acquired property of the deceased bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the petition has been dealt with by the Court or has lapsed.

“(3) Where the trustee of the estate of a bankrupt who has died receives, after the death of the bankrupt, notice of the reference to the Court of a debtor’s petition against the deceased bankrupt, being a petition that was presented before he died, the trustee shall hold the after-acquired property of the deceased bankrupt that is then in the possession of the trustee, or the proceeds thereof, until the Court has dealt with the petition.

“(4) Where the trustee of the estate of a bankrupt who has died is holding after-acquired property of the deceased bankrupt, or the proceeds of any such property, in pursuance of sub-section 59 (2) or (3) or sub-section (2) or (3) of

this section and an order is made for the administration of the estate of the deceased bankrupt under this Part, the trustee shall—

- (a) in a case where the trustee is also the trustee in relation to the administration of the estate of the deceased bankrupt under this Part—hold all such property, and the proceeds of such property, as trustee in relation to the administration of the estate of the deceased bankrupt under this Part; or
- (b) in any other case—deliver all such property, and pay the proceeds of such property, to the trustee in relation to the administration of the estate of the deceased bankrupt under this Part.

“(5) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, and enables the trustee in relation to the administration of the estate of a deceased person under this Part to be registered as the owner of any such property that is part of the property of the estate, that property, notwithstanding that it vests in equity in the trustee by virtue of sub-section (1), does not vest in the trustee at law until the requirements of that law have been complied with.

“(6) In sub-sections (2), (3) and (4), ‘after-acquired property’, in relation to a deceased bankrupt, means such of the property that was acquired by, or devolved on, the bankrupt on or after the date of the bankruptcy and before he died or that was acquired by, or devolved on, the estate of the bankrupt after his death, being property divisible among the creditors of the deceased bankrupt, as has not been distributed amongst the creditors in the bankruptcy.”

(2) Notwithstanding the repeal of section 250 of the Principal Act effected by sub-section (1) of this section, where an order has been made by the Court before the commencement of this section for the administration of the estate of a deceased person, being a deceased person who was, at the time of his death, a bankrupt, under Part XI of the Principal Act, the provisions of section 250 of the Principal Act continue to apply, after the commencement of this section, subject to sub-section (3) of this section, as if that section of the Principal Act had not been repealed.

(3) Section 250 of the Principal Act has effect, after the commencement of this section, in relation to the administration of the estate of a deceased person referred to in sub-section (2) of this section as if—

- (a) “The Official Receiver in Bankruptcy or the trustee” (wherever occurring) were omitted from paragraph (a) of sub-section (1) and “the Official Trustee or a registered trustee” were substituted;
- (b) “The Official Receiver in Bankruptcy or” were omitted from paragraph (b) of sub-section (1);
- (c) “The Official Receiver in Bankruptcy or a trustee” (first occurring) were omitted from sub-section (2) and “the trustee in relation to the administration of the estate of a deceased person under this Part” were substituted; and

- (d) “The Official Receiver in Bankruptcy or a trustee” (second occurring) were omitted from sub-section (2) and “the trustee of the estate of a bankrupt” were substituted.

**143.** After section 252 of the Principal Act the following section is inserted:

**Power to annul order of administration under Part**

“252A. (1) Where the Court is satisfied—

- (a) that an order for the administration of the estate of a deceased person under this Part, whether made before or after the commencement of this section, ought not to have been made; or
- (b) that the unsecured debts of the estate of a deceased person in respect of which an order has been made, whether before or after the commencement of this section, for administration under this Part, being debts that have been proved in the administration, have been paid in full or a legal acquittance has been obtained of them,

the Court may make an order annulling the administration of the estate under this Part.

“(2) Where the administration of the estate of a deceased person under this Part is annulled under sub-section (1), all sales and dispositions of property and payments duly made, and all acts done, by the trustee of the estate under this Part or any person acting under the authority of the trustee or the Court before the annulment shall be deemed to have been validly made or done, but, subject to sub-section (3), the property still vested in the trustee in connection with his administration of the estate vests in such person as the Court appoints or, in default of such appointment, reverts to the estate of the deceased person for all its estate or interest in it, on such terms and subject to such conditions (if any) as the Court orders.

“(3) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, any such property vested in the trustee of the estate under this Part at the time of the annulment of the administration under this Part, notwithstanding that it vests in equity in such person as the Court appoints or in the estate, as the case may be, does not vest in that person or the estate at law until the requirements of that law have been complied with.

“(4) For the purposes of sub-section (1), where a debt has been proved by a creditor but the creditor cannot be found or cannot be identified, the debt may be paid to the Registrar, and if so paid, shall, for the purposes of sub-section (1), be deemed to have been paid in full to the creditor.

“(5) Where money is paid to the Registrar under sub-section (4), the Registrar shall pay that money into the Consolidated Revenue Fund and the provisions of sub-section 254 (3) and (4) apply in relation to that money as if it had been paid into the Consolidated Revenue Fund by a trustee in pursuance of sub-section 254 (2).”.

**144.** Section 253B of the Principal Act is repealed and the following section substituted:

**Law of State or Territory may be proclaimed**

“253B. Where a law of a State or Territory (including a law that came into operation before the commencement of this section)—

- (a) provides for the giving of financial assistance for the purpose of discharging debts of persons who are farmers within the meaning of the *Loan (Farmers' Debt Adjustment) Act 1935*;
- (b) gives effect to the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Reconstruction) Act 1971* or that agreement as subsequently amended; or
- (c) gives effect to the agreement between the Commonwealth and the States the execution of which, on behalf of the Commonwealth, was approved by the *States Grants (Rural Adjustment) Act 1976* or that agreement as subsequently amended (including that agreement as amended by the agreement between the Commonwealth, the States and the Northern Territory the execution of which, on behalf of the Commonwealth, was approved by the *States and Northern Territory Grants (Rural Adjustment) Act 1979* or that last-mentioned agreement as subsequently amended),

the Governor-General may, by Proclamation, specify the law as a law in relation to which this Part applies.”.

**Registrar to notify relevant authority of pending proceedings**

**145.** Section 253D of the Principal Act is amended—

- (a) by omitting paragraph (d) of sub-section (1) and substituting the following paragraph:
  - “(d) fix a date for the consideration by the Court, under sub-section 56 (7); of the debtor’s petition and notify the relevant authority of the presentation of the petition and of the date so fixed,”;
- (b) by omitting from paragraph (a) of sub-section (2) “or”; and
- (c) by omitting paragraph (b) of sub-section (2) and substituting the following paragraphs:
  - “(b) an application is filed for the leave of the Court to be granted under sub-section 56 (11) for a person in relation to whom a stay under a proclaimed law applies to join in presenting a petition against a partnership of which he is a member; or
  - “(c) an application is filed for the leave of the Court to be granted under sub-section 57 (8) for a person in relation to whom a stay under a proclaimed law applies to join in presenting a petition under section 57,”.



**Relevant authority entitled to be heard on application for leave under sub-section 55 (6A), 56 (11) and 57 (8)**

**146.** Section 253F of the Principal Act is amended—

- (a) by omitting from paragraph (a) “or”; and
- (b) by omitting paragraph (b) and substituting the following paragraphs:
  - “(b) an application is made under sub-section 56 (11) by a person in relation to whom a stay under a proclaimed law applies for leave to join in presenting a petition against a partnership; or
  - “(c) an application is made under sub-section 57 (8) by a person in relation to whom a stay under a proclaimed law applies for leave to join in presenting a petition under section 57,”.

**Payment of unclaimed moneys into Consolidated Revenue Fund**

**147. (1)** Section 254 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “The Official Receiver in Bankruptcy” and substituting “the Official Trustee”;
- (b) by inserting after sub-section (2) the following sub-section:
  - “(2A) Where—
    - (a) the Court has, after the presentation of a creditor’s petition against a debtor, directed the Official Trustee or an Official Receiver to take control of the property of the debtor;
    - (b) the petition has been withdrawn or dismissed;
    - (c) the Official Trustee or Official Receiver, as the case may be, has moneys under its control in pursuance of the direction; and
    - (d) it is not reasonably practicable to pay those moneys to the person entitled to them,the Official Trustee or Official Receiver, as the case may be, shall pay those moneys into the Consolidated Revenue Fund.”; and
- (c) by inserting in sub-section (3) “or (2A)” before “may apply”.

(2) Sub-section 254 (2A) of the Principal Act as amended by sub-section (1) of this section applies in relation to a direction given by the Court either before or after the commencement of this section.

**148. (1)** Section 255 of the Principal Act is repealed and the following section is substituted:

**Transcript of evidence, &c.**

“255. (1) In this section—

- ‘approved person’ means a person, or a person included in a class of persons, approved in writing by the Registrar for the purposes of this section;
- ‘approved shorthand writer’ means a shorthand writer, or a shorthand writer included in a class of shorthand writers, approved in writing by the Registrar for the purposes of this section;

‘approved steno-type machine operator’ means a steno-type machine operator, or a steno-type machine operator included in a class of steno-type machine operators, approved in writing by the Registrar for the purposes of this section.

“(2) Any evidence, argument, ruling or direction in proceedings under this Act before the Court, shall, unless the Court otherwise directs, be recorded in accordance with this section.

“(3) Any evidence to be given before the Registrar or a magistrate shall, unless the Registrar or magistrate otherwise directs, be recorded in accordance with this section.

“(4) Where any evidence, argument, ruling or direction is required by sub-section (2) or (3) to be recorded in accordance with this section, the evidence, argument, ruling or direction, as the case may be, shall be—

- (a) taken down by an approved shorthand writer;
- (b) taken down by an approved steno-type machine operator by means of a steno-type machine;
- (c) recorded by an approved person by means of sound recording apparatus; or
- (d) taken down or recorded in such other manner as is prescribed.

“(5) The Registrar shall give such directions as he considers necessary for ensuring that, in any case where a transcript of any evidence, argument, ruling or direction taken down or recorded in accordance with this section is required, or may be required, a transcript is prepared.

“(6) Where a transcript of any evidence, argument, ruling or direction is prepared in pursuance of directions of the Registrar under sub-section (5), the transcript shall be certified, or certified, signed and sealed, as prescribed.

“(7) Where a transcript of any evidence, argument, ruling or direction in proceedings before the Court is prepared in pursuance of directions of the Registrar under sub-section (5), the cost of preparing the transcript, including any cost of the copy of the transcript for the use of the Court, shall be costs in the proceedings.

“(8) Where a transcript of any evidence given before the Registrar or a magistrate is prepared in pursuance of directions of the Registrar under sub-section (5), the cost of preparing the transcript, including any cost of the copy of the transcript for the use of the Registrar or the magistrate, shall, subject to any order of the Court—

- (a) in the case of evidence given in relation to a bankruptcy—be deemed to be costs awarded by the Court out of the estate of the bankrupt; or
- (b) in the case of evidence given in relation to a deed of assignment or a deed of arrangement—be deemed to be costs awarded by the Court against the trustee of the deed in his capacity as trustee and to be payable by the trustee as a cost of the administration of the deed.

“(9) Where evidence given by a person before the Court, the Registrar or a magistrate is admissible in proceedings under this Act, the evidence may be proved by the production of a transcript of the evidence, being a transcript certified, or certified, signed and sealed, as prescribed.

“(10) For the purposes of sub-section (9), a document purporting to be a transcript of evidence given by a person before the Court, the Registrar or a magistrate and to be certified, or certified, signed and sealed, as prescribed shall, unless the contrary is proved, be deemed to be such a transcript and to have been duly prepared and duly certified, or certified, signed and sealed.”.

(2) Notwithstanding the repeal of section 255 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to any evidence, argument, ruling or direction taken down or recorded in pursuance of a direction under sub-section 255 (2) or (3) of the Principal Act before the commencement of this section, and to any transcript produced of any such evidence, argument, ruling or direction, as if section 255 of the Principal Act had not been repealed.

#### **Evidence of matters stated in notices published in *Gazette***

149. Section 256 of the Principal Act is amended by inserting “*prima facie*” before “evidence”.

#### **Evidence of proceedings at meetings of creditors or committee of inspection**

150. Section 257 of the Principal Act is amended by inserting “*prima facie*” before “evidence”.

#### **Evidence of bankruptcy documents**

151. Section 259 of the Principal Act is amended by omitting from sub-section (1) “section 26” and substituting “section 14A”.

152. (1) Sections 260 and 261 of the Principal Act are repealed and the following section is substituted:

#### **Evidence as to bankruptcy and appointment of trustee, &c.**

“260. (1) The Registrar may give a certificate, under his hand, certifying—

- (a) that a person named in the certificate—
  - (i) became bankrupt on a date specified in the certificate;
  - (ii) was, on a date specified in the certificate, an undischarged bankrupt; or
  - (iii) was, on a date specified in the certificate, discharged from bankruptcy;
- (b) that the bankruptcy of a person named in the certificate was annulled on a date specified in the certificate;
- (c) that a person named in the certificate was, on a date specified in the certificate, a registered trustee and was, on that date—

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- (i) the trustee of the estate of a bankrupt, or of a deceased debtor, named in the certificate;
  - (ii) the controlling trustee in relation to a debtor named in the certificate whose property was, on that date, subject to control under Division 2 of Part X;
  - (iii) the trustee of a deed of assignment or deed of arrangement executed by a debtor named in the certificate; or
  - (iv) the trustee of a composition or scheme of arrangement accepted in relation to a debtor named in the certificate; or
- (d) that the Official Trustee was, on a date specified in the certificate—
- (i) the trustee of the estate of a bankrupt, or of a deceased debtor, named in the certificate;
  - (ii) the controlling trustee in relation to a debtor named in the certificate whose property was, on that date, subject to control under Division 2 of Part X;
  - (iii) the trustee of a deed of assignment or deed of arrangement executed by a debtor named in the certificate; or
  - (iv) the trustee of a composition or scheme of arrangement accepted in relation to a debtor named in the certificate.

“(2) A certificate under sub-section (1) is, in all legal proceedings, *prima facie* evidence of the matters stated in the certificate.”.

(2) Notwithstanding the repeal of section 260 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a certificate signed by the Registrar under that section of the Principal Act before the commencement of this section as if that section of the Principal Act had not been repealed.

(3) Notwithstanding the repeal of section 261 of the Principal Act effected by sub-section (1) of this section, the provisions of that section of the Principal Act continue to apply, after the commencement of this section, in relation to a certificate signed by the Registrar under that section of the Principal Act before the commencement of this section as if that section of the Principal Act had not been repealed.

**Swearing of affidavits**

**153.** Section 262 of the Principal Act is amended—

- (a) by inserting before paragraph (a) of sub-section (2) the following paragraph:
  - “(aa) a Commissioner of the High Court authorized to administer oaths in that place for the purposes of the High Court;”;and
- (b) by omitting from paragraph (d) of sub-section (2) “any of the last three preceding paragraphs” and substituting “paragraph (aa), (a), (b) or (c)”.

**154.** After section 263A of the Principal Act the following section is inserted:

**False proof of debts**

“263B. A person shall not—

- (a) make a false or misleading statement in a proof of debt lodged with a trustee under this Act; or
- (b) lodge with a trustee under this Act a proof of debt which is false or misleading in any material particular.

Penalty: \$1,000 or imprisonment for 6 months, or both.”

**155.** After section 264 of the Principal Act the following sections are inserted:

**Failure of person to attend before the Court, &c.**

“264A. (1) A person who—

- (a) is served, whether before or after the commencement of this section, with a summons under this Act to attend for examination under section 50 or 81, or to appear as a witness before the Court, and is tendered a reasonable sum for expenses; or
- (b) is served, whether before or after the commencement of this section, with a summons under this Act to attend for examination under section 69,

shall not, after the commencement of this section, without reasonable excuse—

- (c) fail to attend as required by the summons; or
- (d) fail to appear and report himself from day to day unless excused or released from further attendance by the Court, the Registrar or the magistrate, as the case may be.

Penalty: \$1,000 or imprisonment for 6 months, or both.

“(2) Nothing in this section limits the power of the Court to punish persons for contempt of court, but a person shall not be punished under this section and for contempt of court in respect of the same act or omission.

**Arrest of person failing to attend before the Court, &c.**

“264B. (1) Subject to sub-section (2), where a person who is served, whether before or after the commencement of this section, with a summons referred to in sub-section 264A (1)—

- (a) fails to attend before the Court, the Registrar or the magistrate, as the case may be, as required by the summons; or
- (b) fails to appear and report himself from day to day as required by the Court, the Registrar or magistrate, as the case may be,

the Court, the Registrar or the magistrate, as the case may be, may, on proof by affidavit of the service of the summons, issue a warrant for the apprehension of the person.

“(2) The Court, the Registrar or the magistrate shall not issue a warrant under sub-section (1) for the apprehension of a person who has failed to attend for examination under section 50 or 81, or to appear as a witness before the Court, as required by a summons under this Act unless the Court, the Registrar or the magistrate, as the case may be, is satisfied, on proof by affidavit, that the person was tendered a reasonable sum for expenses.

“(3) A warrant issued under sub-section (1) authorizes the apprehension of the person and his being brought before the Court, the Registrar or the magistrate, as the case may be, and his detention in custody until he is released by order of the Court, the Registrar or the magistrate, as the case may be.

“(4) A warrant issued under sub-section (1) may be executed by a constable and a constable executing the warrant has the power to break and enter any place or building for the purpose of executing the warrant.

“(5) The Court, the Registrar or the magistrate, as the case may be, may order a person apprehended under this section to pay the costs of the apprehension.

“(6) The apprehension of a person under this section does not relieve him from any liability incurred by him by reason of his failure to attend before the Court, the Registrar or the magistrate, as the case may be.

**Refusal to be sworn or give evidence, &c.**

“264C. (1) A person appearing before the Court, the Registrar or a magistrate for the purpose of being examined under section 50, 69 or 81, or appearing as a witness before the Court, shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question which he is required to answer by the Court, the Registrar or the magistrate, as the case may be; or
- (c) refuse or fail to produce any books that he is required by the Court, the Registrar or the magistrate, as the case may be, or by a summons under this Act, to produce.

Penalty: \$1,000 or imprisonment for 6 months, or both.

“(2) Nothing in this section limits the power of the Court to punish persons for contempt of court, but a person shall not be punished under this section and for contempt of court in respect of the same act or omission.

**Prevarication or evasion in the course of examination under section 50, 69 or 81**

“264D. (1) Where a person who is being examined before the Court, the Registrar or a magistrate under section 50, 69 or 81 is guilty of prevarication or evasion, the person commits an offence punishable upon conviction by a fine not exceeding \$1,000 or imprisonment for 6 months, or both.

“(2) Nothing in this section limits the power of the Court to punish persons for contempt of court, but a person shall not be punished under this section and for contempt of court in respect of the same conduct.

**Offences in relation to Registrar or magistrate conducting examination under section 50, 69 or 81**

“264E. A person shall not—

- (a) insult or disturb a Registrar or magistrate before whom an examination under section 50, 69 or 81 is being held;
- (b) interrupt an examination under section 50, 69 or 81 before a Registrar or magistrate;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where an examination under section 50, 69 or 81 is being held before a Registrar or magistrate;
- (d) use insulting or threatening language towards a Registrar or magistrate before whom an examination under section 50, 69 or 81 is being held; or
- (e) by writing or speech use words calculated—
  - (i) to influence improperly a Registrar or magistrate before whom an examination under section 50, 69 or 81 is being held; or
  - (ii) to bring a Registrar or magistrate before whom an examination under section 50, 69 or 81 is being held into disrepute.

Penalty: \$1,000 or imprisonment for 6 months, or both.”.

**Bankrupt obtaining credit without disclosing his bankruptcy, &c.**

**156.** Section 269 of the Principal Act is amended—

- (a) by omitting from paragraph (a) “Two hundred dollars” and substituting “\$500”;
- (b) by omitting from paragraph (a) “or” last occurring; and
- (c) by inserting after paragraph (a) the following paragraphs:
  - “(aa) either alone or jointly with another person, obtain goods or services from a person—
    - (i) by giving a bill of exchange or cheque drawn, or a promissory note made, by him either alone or jointly with another person, being a bill, cheque or note under which the sum payable is \$500 or more; or
    - (ii) by giving 2 or more such instruments under which the sums payable amount in the aggregate to \$500 or more,

without informing that person that he is an undischarged bankrupt;

- “(ab) either alone or jointly with another person, enter into a hire-purchase agreement with a person, or enter into a contract or agreement for the leasing or hiring of any goods from a person, being a hire-purchase agreement, contract or agreement under which the amounts payable to that person amount in the aggregate to \$500 or more, without informing that person that he is an undischarged bankrupt;

- “(ac) either alone or jointly with another person, obtain goods or services from a person by promising to pay that person or another person an amount of, or amounts aggregating, \$500 or more without informing that person that he is an undischarged bankrupt;
- “(ad) either alone or jointly with another person, obtain an amount of, or amounts aggregating, \$500 or more from a person by promising to supply goods to, or render services for, that person or another person without informing that person that he is an undischarged bankrupt; or”.

**157.** Section 272 of the Principal Act is repealed and the following section substituted:

**Leaving Australia with intent to defeat creditors, &c.**

“272. A person who—

- (a) within 6 months before the presentation of the petition on or by virtue of which he became a bankrupt, left Australia, or did an act preparatory to leaving Australia, with intent to defeat or delay his creditors;
- (b) after the presentation of the petition on or by virtue of which he became a bankrupt and before he became bankrupt, left Australia, or did an act preparatory to leaving Australia, with intent to defeat or delay his creditors; or
- (c) after he has become a bankrupt and before he is discharged from the bankruptcy, without the consent in writing of the trustee of his estate, leaves Australia, or does an act preparatory to leaving Australia,

is guilty of an offence and is punishable, on conviction, by imprisonment for a period not exceeding 3 years.”.

**Repeal of section 274**

**158. (1)** Section 274 of the Principal Act is repealed.

**(2)** Notwithstanding the repeal of section 274 of the Principal Act effected by sub-section (1) of this section, summary proceedings in respect of an offence against the Principal Act committed before the commencement of this section may be instituted not later than one year after the discovery of the offence by the Official Receiver or the trustee in the bankruptcy or the trustee of the deed or composition, as the case may be, or, in a case of proceedings by a creditor, the discovery of the offence by the creditor.

**Bankrupts under repealed Act to continue to be bankrupts under this Act**

**159.** Section 278 of the Principal Act is amended by omitting sub-section (2).



**Orders, &c., under repealed Act to continue to have force and effect**

**160.** Section 279 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

“(2) An order made by a court or a Registrar or Deputy registrar in Bankruptcy under the repealed Act (whether or not continued in force by sub-section (1) of this section), or made by virtue of sub-section 285 (4) of this Act, may be rescinded, varied or suspended under this Act.

“(2A) An order made under the repealed Act that is continued in force by sub-section (1) of this section, or made by virtue of sub-section 285 (4) of this Act, may be enforced under this Act in the same manner as a corresponding order made under this Act.”.

**Repeal of sections 283 and 286**

**161.** Sections 283 and 286 of the Principal Act are repealed.

**Continuance of certain provisions of repealed Act in respect of existing bankruptcies**

**162.** Section 288 of the Principal Act is amended by omitting sub-section (3).

**Application of Part XI of Bankruptcy Act 1924-1965 to existing deeds of assignment, &c.**

**163.** Section 292 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “, subject to sub-section (4) of this section,” before “the provisions of Part XI”; and
- (b) by adding at the end thereof the following sub-section:

“(4) The provisions of section 184 of the *Bankruptcy Act* 1924-1965 have effect, after the commencement of this sub-section, in accordance with this section, in relation to a composition or scheme of arrangement accepted, or a deed of assignment executed, under Part XI of the repealed Act, as if—

- (a) the references in paragraphs (1) (a) and (c) of that section, and in sub-sections (3), (4) and (5) of that section, to the official receiver were references to the Official Trustee; and
- (b) sub-section (6) of that section were omitted and the following sub-section substituted:

‘(6) Where the Official Trustee is appointed to act as trustee in pursuance of this section, no security shall be required in respect of the appointment.’”.

**Application of Part XII of Bankruptcy Act 1924-1965 to existing deeds of arrangement**

**164.** Section 293 of the Principal Act is amended—

- (a) by inserting “, subject to sub-section (2) of this section,” before “the provisions of Part XII”; and

(b) by adding at the end thereof the following sub-section:

“(2) The provisions of section 203A of the *Bankruptcy Act* 1924–1965 have effect, after the commencement of this sub-section, in accordance with this section, in relation to a deed of arrangement executed under Part XII of the repealed Act as if—

- (a) the references in paragraphs (1) (a) and (c) of that section, and in sub-sections (3), (4) and (5) of that section, to the official receiver were references to the Official Trustee; and
- (b) sub-section (6) of that section were omitted and the following sub-section substituted:

‘(6) Where The Official Trustee is appointed to act as trustee in pursuance of this section, no security shall be required in respect of the appointment.’”.

#### **Repeal of section 294**

165. Section 294 of the Principal Act is repealed.

166. Section 305 of the Principal Act is repealed and the following section substituted:

#### **Payment of expenses by Commonwealth**

“305. (1) Where the Minister, upon the application of the Official Receiver, the trustee of the estate of a bankrupt or the trustee of the estate of a deceased person that is being administered under Part XI of this Act or Part X of the repealed Act, is satisfied—

- (a) that proceedings relating to—
  - (i) the estate of the bankrupt or the deceased person, as the case may be; or
  - (ii) the trade dealings, property or affairs of the bankrupt or the deceased person, as the case may be,should be instituted, continued or defended; or
- (b) that inquiries should be made concerning—
  - (i) the estate of the bankrupt or his conduct, trade dealings, property or affairs; or
  - (ii) the estate of the deceased person or his trade dealings, property or affairs,as the case may be,

and is also satisfied that the moneys in the estate of the bankrupt or the deceased person, as the case may be, are, or may be, insufficient to meet the cost of the proceedings or inquiries, the Minister may, by instrument in writing, direct that the cost of the proceedings or inquiries (including any costs that may be awarded against the trustee), or such part of the cost of the proceedings or inquiries (including any costs that may be awarded against the trustee) as is specified in the direction, be paid by the Commonwealth and, in that case, the cost or that part of the cost, as the case may be, shall be paid accordingly out of moneys available under an appropriation made by the Parliament.

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“(2) A direction made by the Minister under sub-section (1) may be subject to such conditions (including conditions as to the taxation of all or any costs and the reimbursement of the Commonwealth, in whole or in part, by the estate of the bankrupt or the deceased person, as the case may be) as the Minister thinks fit.

“(3) The Minister may, by instrument in writing, revoke or vary a direction made by him under sub-section (1).”.

**167.** After section 306 of the Principal Act the following sections are inserted:

**Protection of Registrars, magistrates, &c., in relation to examinations under section 50, 69 or 81**

“306A. (1) A Registrar or magistrate has, in the exercise of the powers and the performance of the functions conferred on him by section 50, 69 or 81 in relation to the examination of a person, the same protection and immunity as a Justice of the High Court.

“(2) A barrister, solicitor or other person representing a person being examined under section 50, 69 or 81, or a person entitled to take part in the examination of a person under section 50, 69 or 81, has in respect of the examination the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

“(3) Subject to this Act, a person summoned to attend for examination, or appearing for examination, under section 50, 69 or 81 has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

**Protection in respect of Official Receivers' reports**

“306B. (1) An action, suit or proceeding does not lie against an Official Receiver or any other person in respect of a statement made in good faith in a report prepared in pursuance of paragraph 19 (1) (c).

“(2) Sub-section (1) shall not be taken to limit or affect any other right, privilege, immunity or defence existing apart from that sub-section.

**Protection in respect of trustees' reports**

“306C. (1) An action, suit or proceeding does not lie against the trustee of the estate of a bankrupt or any other person in respect of a statement made in good faith in a report prepared by the trustee in pursuance of paragraph 175 (1) (b).

“(2) Sub-section (1) shall not be taken to limit or affect any other right, privilege, immunity or defence existing apart from that sub-section.”.

**Service of notices, &c.**

**168.** Section 309 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) Where a trustee carries on business at 2 or more addresses, a notice or other document in relation to which no special manner of service is prescribed may be sent by post as a prepaid letter to the trustee at any of those addresses and shall, unless the contrary is proved, be deemed to have been served at the time at which the letter would have been delivered in the ordinary course of post.”.

**Publication of notice of making of sequestration order, discharge, &c.**

**169.** Section 310 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “Where” and substituting “Subject to sub-section (3A), where”;
- (b) by inserting in sub-section (3) “, the date of the bankruptcy” after “description of the bankrupt”;
- (c) by inserting after sub-section (3) the following sub-section:

“(3A) Nothing in sub-section (3) shall be taken to have required, or to require, the Registrar to cause a notice referred to in that sub-section to be published in respect of a person who—

  - (a) was an undischarged bankrupt immediately before the commencement of this Act, whether he became a bankrupt under a law of the Commonwealth or of a State or Territory; and
  - (b) was discharged from bankruptcy before the commencement of this section by virtue of sub-section 149 (2) of the *Bankruptcy Act 1966*.”; and
- (d) by inserting in sub-section (6) “annulling the administration of the estate of a deceased person under Part XI or” after “the Court makes an order”.

**Destruction of old accounts and records**

**170.** Section 312 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) An Official Receiver or a trustee may destroy any accounts or records in his custody relating to an appointment and direction under section 62 of the repealed Act, a direction under section 50 of this Act or relating to a bankruptcy, the administration of the estate of a deceased person in bankruptcy, a deed of assignment, a deed of arrangement, a composition or an arrangement, whether the bankruptcy or administration occurred, the deed was executed or the composition or arrangement was entered into or made before or after the commencement of this Act—

  - (a) with the approval in writing of the Registrar—at any time; or
  - (b) without obtaining the approval of the Registrar—if the appointment and direction was made and given, the direction was given, the bankruptcy or administration occurred, the deed was executed or the composition or arrangement was entered into or made not less than 25 years previously.”; and
- (b) by adding at the end thereof the following sub-section:

“(3) An Official Receiver or a trustee shall not destroy any accounts or records referred to in sub-section (1) otherwise than in accordance with this section.”

**171.** Section 313 of the Principal Act is repealed and the following section is substituted:

**Audit of accounts and records of the Registrars, the Official Trustee and the Official Receivers**

“313. (1) The Auditor-General shall inspect and audit the accounts and records of the Registrars, the Official Trustee and the Official Receivers, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

“(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records of the Registrars, the Official Trustee and the Official Receivers.

“(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

“(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all books of the Registrars, the Official Trustee and the Official Receivers.

“(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any books of the Registrar, the Official Trustee or an Official Receiver.

“(6) The Auditor-General or a person authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

“(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.”

**Rules and regulations**

**172.** Section 315 of the Principal Act is amended—

(a) by inserting after paragraph (b) of sub-section (1) the following paragraphs:

“(ba) the keeping of records of proceedings under this Act, including records of bankruptcy notices issued under this Act and of documents filed in the office of the Registrar under Part X, XI or XIA;

“(bb) the keeping of indices of records kept in accordance with rules made for the purposes of paragraph (ba);

“(bc) the inspection, upon payment of the prescribed fee (if any), of such records and indices kept in accordance with rules made for the purposes of paragraph (ba) or (bb), including records and indices kept for the purposes of this Act before the commencement of this paragraph and records and indices kept for the purposes of the repealed Act, as are permitted by the rules to be inspected;” and

(b) by omitting sub-section (4) and substituting the following sub-section:

“(4) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act* 1901 apply in relation to rules made under this section as if references in those sections to regulations were references to such rules.”.

### **Repeal of Third and Fourth Schedules**

173. The Third and Fourth Schedules to the Principal Act are repealed.

### **Formal and other minor amendments**

174. The Principal Act is amended as set out in the Schedule.

### **Transitional provision**

175. Where, immediately before the commencement of this section, an Official Receiver, for the purposes of the *Bankruptcy Act* 1966 or of the provisions of the *Bankruptcy Act* 1924–1965 in their continued application by virtue of the *Bankruptcy Act* 1966, held or was acting in the office of trustee or one of the offices of trustee of the estate of a bankrupt or of a deceased debtor or of a deed of assignment, a deed of arrangement, a composition or a scheme of arrangement, the Official Trustee in Bankruptcy becomes, upon the commencement of this section, the trustee or one of the trustees of the estate, deed, composition or scheme of arrangement, as the case requires, in place of the Official Receiver, and holds or acts in that office of trustee under and in accordance with the provisions of the *Bankruptcy Act* 1966 or, subject to that Act, the provisions of the *Bankruptcy Act* 1924–1965 in their continued application by virtue of the *Bankruptcy Act* 1966, as the case requires.

### **Court may resolve difficulties**

176. (1) Where any difficulty arises in the application, in accordance with provisions of this Act, to a particular matter of the amendments of the Principal Act made by this Act, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

(2) An order so made has effect notwithstanding anything contained in the Principal Act as amended by this Act.

**SCHEDULE**

**FORMAL AND OTHER MINOR AMENDMENTS**

1. The following provisions of the Principal Act are amended by omitting "to this Act", "of this Act", "of this Part", "of this section" and "of this sub-section" (wherever occurring):

Sections 4 (1), 5 (1) (definitions of "debtor's petition", "Deputy Registrar", "official receiver", "proclaimed law", "public examination", "Registrar", "the commencement of the bankruptcy", "the date of the bankruptcy", "the first meeting of creditors" and "the Inspector-General") and (4) (a), 19 (1) (g), 24, 26 (6), 28 (2) (a) and (c), 40 (1) (e) (ii), (f) (ii), (i) and (k), (3), (4), (5), (6) and (7), 43 (2) (a), 48 (3), 51, 55 (8) (a), 56 (4A) and (6), 75 (6) and (7), 78 (3), 94, 99 (3), 100 (2), 107, 109 (1) (a), (d) and (i), (3), (4), (7) and (8), 116 (2) (h), 118 (5), 119 (4) (b), 120 (4), 123 (1) and (3), 128 (4), 135 (3) and (4), 140 (1) and (7), 149 (5) (a) and (c) and (6), 152 (3), 153 (5), 154 (2) and (5), 156, 182 (3), 187 (1) (definitions of "the controlling trustee" and "the Registrar"), 188 (1), 189 (1) (a) and (d), 190 (1) and (5), 192 (1), (3) and (4), 194 (1), 202 (4), 204 (1), 205 (1), (3) (a), (4), (5) and (6) (b), 207 (1), (3), (5) and (6), 208 (a), 209 (a), 214 (2) (b), 217 (1), 218 (1) (b), 221 (1) and (4), 222 (4) (b), (6) and (7), 224, 225 (2), (3) and (4), 227 (a), 231 (1), (2), (4) and (5), 236 (3), 237 (1), (2), (4) and (5), 238 (1), 242 (3), 243 (1), (3) and (4), 248 (1), (2), (3) and (4), 249 (6) (paragraph (d) of the definition of "the divisible property"), 250 (1) (a) and (2), 252 (1) (b) and (c), 253D, 253E (2), 253F, 255 (5) and (6), 259 (1), 268 (5), 310 (3) (a) and 313 (5).

2. The following provisions of the Principal Act are amended by omitting "official receiver" (wherever occurring) and substituting "Official Receiver":

Sections 5 (1) (definition of "official receiver"), (2) and (4), 12 (2) (a), 15 (1), (3) and (4), 16, 17 (1), 18 (4) and (5), 19, 30 (5), 35 (1), 48 (1), 50, 54 (1) (b), 55 (5), 58 (1) (b), 105, 132 (4), 150 (3) and (4), 155 (6), 157 (2), (3) and (5), 159 (2) and (3), 160, 162 (7), 163, 164, 169 (4), 170 (1), 175 (7), 183 (6) and (7), 220 (2), (3), (5) and (6), 246 (1) (b), 249 (1) (b), 261 (b) and 262 (1).

3. The Principal Act is further amended as set out in the following table:

Provision	Amendment
Sub-section 4 (1) . . .	Omit "the First Schedule", substitute "Schedule 1".
Sub-section 4 (2) . . .	Omit "the last preceding sub-section", substitute "sub-section (1) of this section".
Sub-section 5 (1) (definition of "creditor's petition")	Omit "two", substitute "2".
Sub-section 5 (1) (definition of "Deputy Registrar")	Omit "(1) of section 17", substitute "17 (1)".
Sub-section 5 (1) (paragraph (a) of the definition of "official receiver")	Omit "(4) of section 15", substitute "15 (4)".
Sub-section 5 (1) (paragraph (b) of the definition of "official receiver")	Omit "(1) of section 17", substitute "17 (1)".
Sub-section 5 (1) (definition of "Registrar")	Omit "(1) of section 17", substitute "17 (1)".
Sub-section 5 (1) (definition of "the Inspector-General")	Omit "(1) of section 17", substitute "17 (1)".
Paragraph 5 (4) (b) . . .	Omit "two", substitute "2".
Sub-section 7 (2) . . .	Omit "or" (first occurring), substitute "nor".
Sub-section 15 (2) . . .	Omit "official receivers", substitute "Official Receivers".
Sub-section 17 (1) . . .	Omit "the next succeeding sub-section", substitute "sub-section (2)".
Sub-section 17 (2) . . .	Omit "twelve", substitute "12".
Sub-section 18 (1) . . .	Omit "official receivers", substitute "Official Receivers".
Paragraph 19 (1) (c) . . .	Omit "sixty", substitute "60".
Section 20 . . . . .	Omit "official receivers", substitute "Official Receivers".

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**SCHEDULE—continued**

Provision	Amendment
Sub-section 21 (2)	Omit "two", substitute "2".
Paragraph 23 (b)	Omit "five", substitute "5".
Section 24	(a) Omit "(3) of section 21", substitute "21 (3)". (b) Omit "the Second Schedule", substitute "Schedule 2".
Paragraph 26 (2) (a)	Omit "the nineteenth day of September, One thousand nine hundred and twelve", substitute "19 September 1912".
Sub-section 26 (3)	Omit "two", substitute "2".
Sub-section 26 (5)	Omit "the last preceding sub-section", substitute "sub-section (4)".
Sub-section 27 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 27 (3)	(a) Omit "(2) of section 39", substitute "39 (2)". (b) Omit "the next succeeding section", substitute "section 28 of this Act".
Sub-section 30 (6)	Omit "the last preceding sub-section", substitute "sub-section (5)".
Sub-paragraph 40 (1) (d) (i)	Omit "twenty-one", substitute "21".
Sub-paragraph 40 (1) (e) (i)	Omit "seven", substitute "7".
Sub-paragraph 40 (1) (e) (ii)	Omit "seven", substitute "7".
Paragraph 40 (1) (f)	Omit "seven", substitute "7".
Sub-section 40 (2)	Omit "(i) of paragraph (d) of the last preceding sub-section", substitute "(1) (d) (i)".
Sub-section 40 (3)	Omit "(g) of sub-section (1)", substitute "(1) (g)".
Sub-section 40 (4)	Omit "(j) of sub-section (1)", substitute "(1) (j)".
Sub-section 40 (5)	Omit "(l) of sub-section (1)", substitute "(1) (l)".
Sub-section 40 (6)	Omit "(m) of sub-section (1)", substitute "(1) (m)".
Sub-section 40 (7)	Omit "(n) of sub-section (1)", substitute "(1) (n)".
Paragraph 41 (2) (a)	Omit "(i) or (ii) of paragraph (g) of sub-section (1) of the last preceding section", substitute "(40) (1) (g) (i) or (ii)".
Paragraph 41 (3) (a)	(a) Omit "(g) of sub-section (1) of the last preceding section", substitute "40 (1) (g)". (b) Omit "(d) of sub-section (3) of that section", substitute "40 (3) (d)".
Sub-section 41 (6)	Omit "the last preceding sub-section", substitute "sub-section (5)".
Sub-section 41 (7)	Omit "(g) of sub-section (1) of the last preceding section", substitute "40 (1) (g)".
Sub-section 41 (8)	(a) Omit "the next succeeding sub-section", substitute "sub-section (9) of this section". (b) Omit "(4) of section 8", substitute "8 (4)".
Sub-section 41 (9)	(a) Omit "the last preceding sub-section" (wherever occurring), substitute "sub-section (8)". (b) Omit "(3) of section 11", substitute "11 (3)".
Sub-section 42 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Paragraph 44 (1) (a)	(a) Omit "Five hundred dollars" (wherever occurring), substitute "\$500". (b) Omit "two" (wherever occurring), substitute "2".
Paragraph 44 (1) (c)	Omit "six", substitute "6".
Sub-section 44 (2)	(a) Omit "the next succeeding sub-section", substitute "sub-section (3)". (b) Omit "(a) of the last preceding sub-section", substitute "(1) (a)".
Sub-section 44 (6)	Omit "the last preceding sub-section", substitute "sub-section (5)".
Sub-section 46 (1)	Omit "two", substitute "2".
Sub-section 46 (2)	Omit "two", substitute "2".
Sub-section 52 (3)	Omit "twenty-one", substitute "21".
Section 53	Omit "two" (wherever occurring), substitute "2".



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**SCHEDULE—continued**

Provision	Amendment
Sub-section 54 (2)	Omit "fourteen", substitute "14".
Sub-section 55 (3)	Omit "the next succeeding sub-section", substitute "sub-section (4)".
Sub-section 55 (7)	Omit "either of the last two preceding sub-sections", substitute "sub-section (6) or (6A)".
Sub-section 56 (1)	Omit "the last preceding section", substitute "section 55".
Sub-section 56 (4A)	(a) Omit "the last preceding sub-section", substitute "sub-section (4)". (b) Omit "(1) of section 253D", substitute "253D (1)". (c) Omit "the last-mentioned sub-section", substitute "sub-section 253D (1)".
Sub-section 56 (5)	Omit "the last preceding section", substitute "section 55".
Sub-section 56 (5C)	Omit "either of the last two preceding sub-sections", substitute "sub-section (5A) or (5B)".
Sub-section 56 (6)	Omit "fourteen", substitute "14".
Sub-section 56 (7)	Omit "the last preceding sub-section", substitute "sub-section (6)".
Sub-section 59 (1)	Omit "the last preceding section" (wherever occurring), substitute "section 58".
Sub-section 59 (2)	(a) Omit "(2) of the last preceding section", substitute "58 (2)". (b) Omit "the last preceding sub-section", substitute "sub-section (1) of this section".
Sub-section 60 (3)	Omit "twenty-eight", substitute "28".
Sub-section 66 (3)	Omit "the next preceding sub-section", substitute "sub-section (4)".
Section 68	Omit "fourteen", substitute "14".
Sub-section 70 (2)	(a) Omit "five", substitute "5". (b) Omit "three", substitute "3".
Sub-section 70 (4)	(a) Omit "(a) of the last preceding sub-section", substitute "(3) (a)". (b) Omit "(b) of that sub-section", substitute "(3) (b)".
Sub-section 70 (5)	Omit "the next succeeding sub-section", substitute "sub-section (6)".
Paragraph 71 (2) (c)	Omit "five", substitute "5".
Sub-section 71 (3)	Omit "seven", substitute "7".
Paragraph 71 (4) (b)	Omit "two", substitute "2".
Sub-section 71 (5)	Omit "two", substitute "2".
Sub-section 74 (1)	Omit "the last preceding section", substitute "section 73".
Sub-section 75 (8)	(a) Omit "(1) of section 43", substitute "43 (1)". (b) Omit "(1) and (2) of section 52", substitute "52 (1) and (2)". (c) Omit "of this Act" (last occurring).
Sub-section 78 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 78 (3)	Omit "(a), (b) and (c) of sub-section (1)", substitute "(1) (a), (b) and (c)".
Section 79	Omit "six", substitute "6".
Sub-section 80 (1)	(a) Omit "One hundred dollars", substitute "\$100". (b) Omit "six", substitute "6".
Sub-section 80 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 80 (3)	(a) Omit "One hundred dollars", substitute "\$100". (b) Omit "six", substitute "6".
Sub-section 90 (5)	Omit "the last preceding sub-section", substitute "sub-section (4)".
Sub-section 91 (4)	Omit "three", substitute "3".
Paragraph 91 (4) (b)	Omit "the next succeeding sub-section", substitute "sub-section (5)".
Sub-section 91 (5)	Omit "(b) of the last preceding sub-section", substitute "(4) (b)".
Sub-section 93 (1)	Omit "the last preceding section", substitute "section 92".
Section 94	Omit "the last preceding section", substitute "section 93".

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**SCHEDULE—continued**

Provision	Amendment
Section 95 . . . . .	Omit "two", substitute "2".
Sub-section 99 (2) . . . . .	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 102 (1) . . . . .	Omit "fourteen", substitute "14".
Sub-section 103 (2) . . . . .	(a) Omit "the last preceding sub-section", substitute "sub-section (1)". (b) Omit "Fifty" (wherever occurring), substitute "50".
Sub-section 104 (3) . . . . .	Omit "twenty-one", substitute "21".
Paragraph 109 (1) (f) . . . . .	Omit "Six hundred dollars", substitute "\$600".
Paragraph 109 (1) (g) . . . . .	(a) Omit "Two thousand dollars", substitute "\$2,000". (b) Omit "Act or State Act or Ordinance of a Territory", substitute "any law of the Commonwealth or of a State or Territory".
Paragraph 109 (1) (j) . . . . .	Omit "Act or State Act or Ordinance of a Territory", substitute "law of the Commonwealth or of a State or Territory".
Sub-section 109 (2) . . . . .	Omit "(g) of the last preceding sub-section", substitute "(1) (g)".
Sub-section 109 (3) . . . . .	Omit "(k) of sub-section (1)", substitute "(1) (k)".
Sub-section 109 (4) . . . . .	(a) Omit "(k) of sub-section (1)", substitute "(1) (k)". (b) Omit "twenty-eight", substitute "28".
Sub-section 109 (5) . . . . .	Omit "the last preceding sub-section", substitute "sub-section (4)".
Sub-section 109 (7) . . . . .	Omit "(b) of sub-section (1)", substitute "paragraph (1) (b)".
Sub-section 109 (8) . . . . .	Omit "the last preceding sub-section", substitute "sub-section (7)".
Section 111 . . . . .	Omit "the next succeeding section", substitute "section 112".
Sub-section 112 (2) . . . . .	(a) Omit "The last preceding sub-section", substitute "Sub-section (1)". (b) Omit "the last preceding section", substitute "section 111".
Sub-section 115 (1) . . . . .	Omit "six", substitute "6".
Paragraph 115 (2) (a) . . . . .	Omit "six", substitute "6".
Sub-section 116 (2) . . . . .	Omit "The last preceding sub-section", substitute "Sub-section (1)".
Paragraph 116 (2) (c) . . . . .	Omit "Five hundred dollars", substitute "\$500".
Sub-section 117 (2) . . . . .	Omit "The last preceding sub-section", substitute "Sub-section (1)".
Sub-paragraph 118 (1) (a) (i) . . . . .	Omit "six", substitute "6".
Sub-section 118 (2) . . . . .	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 118 (3) . . . . .	Omit "the next succeeding sub-section", substitute "sub-section (4)".
Sub-section 118 (4) . . . . .	Omit "The last preceding sub-section", substitute "Sub-section (3)".
Paragraph 119 (4) (a) . . . . .	Omit "the last preceding sub-section", substitute "sub-section (3)".
Sub-section 119 (5) . . . . .	Omit "the last preceding sub-section", substitute "sub-section (4)".
Sub-section 120 (2) . . . . .	Omit "(a) or (b) of the last preceding sub-section", substitute "(1) (a) or (b)".
Paragraph 120 (5) (a) . . . . .	Omit "two", substitute "2".
Paragraph 120 (5) (c) . . . . .	Omit "three", substitute "3".
Sub-section 120 (6) . . . . .	Omit "the last preceding sub-section", substitute "sub-section (5)".
Sub-section 122 (1) . . . . .	Omit "a payment made or an obligation incurred", substitute "or a payment made, or an obligation incurred,".
Paragraph 122 (1) (a) . . . . .	Omit "six", substitute "6".
Sub-section 122 (3) . . . . .	Omit "the last preceding sub-section", substitute "sub-section (2)".
Paragraph 122 (4) (b) . . . . .	Omit "an Act or State Act or Ordinance of a Territory", substitute "a law of the Commonwealth or of a State or Territory".
Sub-section 122 (7) . . . . .	Omit "—1944, or of that Act as amended".
Sub-section 123 (2) . . . . .	Omit "(e), (f) and (g) of the last preceding sub-section", substitute "(1) (e), (f) and (g)".
Paragraph 123 (5) (a) . . . . .	Omit "—1940, or of that Act as amended,".

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**SCHEDULE—continued**

Provision	Amendment
Paragraph 123 (5) (b)	Omit " <i>Income Tax and Social Services Contribution Assessment Act 1936-1959, or of that Act as amended,</i> ", substitute " <i>Income Tax Assessment Act 1936,</i> ".
Sub-section 124 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 125 (1)	Omit "the next succeeding sub-section", substitute "sub-section (2)".
Sub-section 125 (2)	Omit "one", substitute "1".
Sub-section 126 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Section 127	Omit "twenty", substitute "20".
Sub-section 128 (1)	(a) Omit "any Act, State Act or Ordinance" (wherever occurring), substitute "any law of the Commonwealth or of a State or Territory of the Commonwealth". (b) Omit "an Act, State Act or Ordinance", substitute "any law of the Commonwealth or of a State or Territory of the Commonwealth".
Sub-section 128 (2)	Omit "three", substitute "3".
Sub-section 128 (3)	Omit "the last preceding sub-section", substitute "sub-section (2)".
Sub-section 128 (4)	Omit "three", substitute "3".
Sub-section 129 (4)	(a) Omit "money", substitute "moneys". (b) Omit "it", substitute "the moneys or security".
Sub-section 129 (5)	(a) Omit "money", substitute "moneys". (b) Omit "the last preceding sub-section", substitute "sub-section (4)".
Sub-section 129 (6)	Omit "money", substitute "moneys".
Sub-section 131 (3)	Omit "the last preceding sub-section", substitute "sub-section (2)".
Sub-section 132 (4)	Omit "the last two preceding sub-sections", substitute "sub-sections (2) and (3)".
Paragraph 133 (4) (a)	Omit "twenty-eight", substitute "28".
Paragraph 133 (4) (b)	Omit "twenty-eight", substitute "28".
Paragraph 133 (6) (b)	Omit "twenty-eight", substitute "28".
Sub-section 133 (10)	(a) Omit "the next succeeding sub-section", substitute "sub-section (11)". (b) Omit "the last preceding sub-section", substitute "sub-section (9)".
Sub-section 134 (2)	Omit "(a) of the last preceding sub-section", substitute "(1) (a)".
Sub-section 135 (2)	Omit "(k) of the last preceding sub-section", substitute "(1) (k)".
Sub-section 136 (1)	Omit "six" (wherever occurring), substitute "6".
Sub-section 136 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 137 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 140 (3)	Omit "Five", substitute "5".
Sub-section 140 (4)	Omit "the last preceding sub-section", substitute "sub-section (3)".
Sub-section 140 (5)	Omit "the next two succeeding sub-sections", substitute "sub-sections (6) and (7)".
Sub-section 140 (6)	Omit "Fifty", substitute "50".
Sub-section 149 (1)	(a) Omit "the next succeeding section", substitute "section 150". (b) Omit "five", substitute "5".
Sub-section 149 (2)	(a) Omit "the next succeeding section", substitute "section 150". (b) Omit "three", substitute "3". (c) Omit "five", substitute "5".
Sub-section 149 (4)	Omit "the last preceding sub-section", substitute "sub-section (3)".
Paragraph 149 (5) (a)	Omit "(b) of sub-section (3)", substitute "(3) (b)".
Paragraph 149 (5) (c)	Omit "(a) of sub-section (3)", substitute "(3) (a)".
Sub-section 149 (5)	Omit "the next succeeding section", substitute "section 150".
Sub-paragraph 150 (3) (a) (ii)	Omit "the last preceding sub-paragraph", substitute "sub-paragraph (i)".

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**SCHEDULE—continued**

Provision	Amendment
Sub-section 150 (5)	Omit "the next succeeding sub-section", substitute "sub-section (6)".
Sub-section 150 (6)	Omit "the last preceding sub-section", substitute "sub-section (5)".
Paragraph 150 (6) (a)	Omit "five", substitute "5".
Paragraph 150 (6) (b)	Omit "One hundred dollars", substitute "\$100".
Paragraph 150 (6) (f)	Omit "six", substitute "6".
Paragraph 150 (6) (g)	Omit "six", substitute "6".
Sub-section 150 (7)	Omit "the last preceding sub-section", substitute "sub-section (6)".
Sub-section 150 (8)	Omit "of this section" (last occurring).
Sub-section 152 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 154 (2)	(a) Omit "by" (second occurring). (b) Omit "the next succeeding sub-section", substitute "sub-section (3)".
Sub-section 154 (5)	(a) Omit "the last preceding sub-section", substitute "sub-section (4)". (b) Omit "(3) and (4) of section 254", substitute "254 (3) and (4)". (c) Omit "(2) of that section", substitute "254 (2)".
Sub-section 155 (6)	Omit "Twenty dollars", substitute "\$20".
Sub-section 155 (7)	Omit "the last preceding sub-section", substitute "sub-section (6)".
Section 156	Omit "the last preceding section" (wherever occurring), substitute "section 155".
Sub-section 157 (3) and (5)	Omit "ten", substitute "10".
Sub-section 157 (7)	Omit "the last preceding sub-section", substitute "sub-section (6)".
Sub-section 158 (1)	Omit "two", substitute "2".
Sub-section 159 (3)	Omit "the next succeeding section", substitute "section 160".
Sub-section 159 (4)	Omit "the last two preceding sections", substitute "sections 157 and 158".
Sub-section 161 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 164 (1)	Omit "two", substitute "2".
Sub-section 164 (2)	Omit "two", substitute "2".
Sub-section 165 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 167 (1)	Omit "the next succeeding sub-section", substitute "sub-section (2)".
Sub-section 167 (2)	Omit "The last preceding sub-section", substitute "Sub-section (1)".
Paragraph 167 (2) (a)	Omit "One hundred dollars", substitute "\$100".
Sub-section 167 (6)	Omit "twenty-eight", substitute "28".
Sub-section 167 (7)	Omit "twenty-eight", substitute "28".
Section 168	Omit "Five hundred dollars", substitute "\$500".
Sub-section 169 (2)	(a) Omit "Fifty dollars" (wherever occurring), substitute "\$50". (b) Omit "five", substitute "5".
Paragraph 169 (2) (a)	Omit "twenty per centum", substitute "20%".
Sub-section 171 (2)	Omit "(a) of the last preceding sub-section", substitute "(1) (a)".
Sub-section 175 (3)	Omit "the last preceding sub-section", substitute "sub-section (2)".
Section 181	Omit "seven", substitute "7".
Sub-section 182 (3)	(a) Omit "One hundred dollars", substitute "\$100". (b) Omit "six", substitute "6".
Paragraph 184 (1) (c)	Omit "the last preceding section", substitute "section 183".
Sub-section 184 (1)	Omit "seven", substitute "7".
Sub-section 184 (3)	Omit "the last preceding section", substitute "section 183".
Sub-section 189 (1)	Omit "the last preceding section", substitute "section 188".
Sub-section 189 (2)	Omit "twelve", substitute "12".
Sub-section 189 (3)	Omit "the last preceding sub-section", substitute "sub-section (2)".

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**SCHEDULE—continued**

Provision	Amendment
Sub-section 190 (3) . . . .	Omit "the last preceding sub-section", substitute "sub-section (2)".
Section 191 . . . . .	Omit "the last preceding section", substitute "section 190".
Sub-section 192 (2) . . . .	Omit "of this Act".
Paragraph 194 (1) (a) . . . .	(a) Omit "twenty-eight", substitute "28". (b) Omit "thirty-five", substitute "35".
Paragraph 194 (1) (b) . . . .	Omit "the next succeeding sub-section", substitute "sub-section (2)".
Sub-section 194 (3) . . . .	Omit "seven", substitute "7".
Sub-section 194 (4) . . . .	Omit "either of the last two preceding sub-sections", substitute "sub-section (2) or (3)".
Sub-section 198 (5) . . . .	Omit "the next succeeding sub-section", substitute "sub-section (6)".
Section 201 . . . . .	Omit "fourteen", substitute "14".
Sub-section 202 (1) . . . .	Omit "two", substitute "2".
Sub-section 202 (2) . . . .	Omit "thirty", substitute "30".
Sub-section 202 (3) . . . .	(a) Omit "seven", substitute "7". (b) Omit "fourteen", substitute "14".
Sub-section 202 (4) . . . .	Omit "(2) of section 194", substitute "194 (2)".
Sub-section 202 (5) . . . .	Omit "the last preceding sub-section", substitute "sub-section (4)".
Sub-section 203 (1) . . . .	Omit "fourteen", substitute "14".
Sub-section 203 (2) . . . .	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 203 (3) . . . .	(a) Omit "the last preceding section", substitute "section 202". (b) Omit "fourteen", substitute "14".
Paragraph 204 (1) (d) . . . .	Omit "seven", substitute "7".
Sub-section 204 (5) . . . .	Omit "the last preceding sub-section", substitute "sub-section (4)".
Paragraph 204 (5) (a) . . . .	Omit "two", substitute "2".
Sub-section 204 (6) . . . .	Omit "two", substitute "2".
Sub-section 204 (8) . . . .	Omit "the last preceding sub-section", substitute "sub-section (7)".
Sub-section 205 (1) . . . .	Omit "the last preceding section", substitute "section 204".
Paragraph 205 (3) (a) . . . .	Omit "forty-two", substitute "42".
Paragraph 205 (3) (b) . . . .	Omit "seven", substitute "7".
Paragraph 205 (3) (c) . . . .	Omit "seven", substitute "7".
Paragraph 205 (3) (d) . . . .	Omit "twenty-one", substitute "21".
Sub-section 205 (5) . . . .	Omit "the next succeeding sub-section", substitute "sub-section (6)".
Paragraph 205 (6) (a) . . . .	Omit "either of the last two preceding sub-sections", substitute "sub-section (4) or (5)".
Sub-section 205 (7) . . . .	Omit "the last preceding sub-section", substitute "sub-section (6)".
Paragraph 207 (1) (b) . . . .	Omit "the last preceding paragraph", substitute "paragraph (a)".
Sub-section 207 (2) . . . .	Omit "(a) of the last preceding sub-section", substitute "(1) (a)".
Sub-section 207 (3) . . . .	Omit "the next succeeding sub-section", substitute "sub-section (4)".
Sub-section 207 (4) . . . .	Omit "the last preceding sub-section", substitute "sub-section (3)".
Sub-section 207 (5) . . . .	Omit "the last preceding sub-section", substitute "sub-section (4)".
Paragraph 208 (a) . . . .	(a) Omit "four", substitute "4". (b) Omit "(1) of section 204", substitute "204 (1)".
Sub-section 211 (3) . . . .	Omit "the last preceding sub-section", substitute "sub-section (2)".
Sub-section 212 (1) . . . .	Omit "the next succeeding sub-section", substitute "sub-section (2)".
Sub-section 213 (3) . . . .	Omit "of this Act" (last occurring).
Sub-section 216 (1) . . . .	Omit "twenty-one", substitute "21".
Sub-section 217 (1) . . . .	Omit "the last preceding section", substitute "section 216".

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**SCHEDULE—continued**

Provision	Amendment
Sub-section 217 (2) . . .	Omit "seven" (wherever occurring), substitute "7".
Paragraph 218 (1) (b) . . .	Omit "twenty-one", substitute "21".
Sub-section 219 (2) . . .	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 220 (3) . . .	Omit "(b) of the last preceding sub-section", substitute "(2) (b)".
Paragraph 220 (5) (a) . . .	Omit "the next succeeding sub-section", substitute "sub-section (6)".
Paragraph 221 (1) (c) . . .	(a) Omit "four", substitute "4". (b) Omit "(1) of section 204", substitute "204 (1)".
Sub-section 221 (3) . . .	Omit "the next succeeding sub-section", substitute "sub-section (4)".
Sub-section 221 (4) . . .	(a) Omit "(1) of section 43", substitute "43 (1)". (b) Omit "(1) and (2) of section 52", substitute "52 (1) and (2)".
Sub-section 222 (1) . . .	(a) Omit "of this Act". (b) Omit "the next succeeding sub-section", substitute "sub-section (2)".
Sub-section 222 (5) . . .	Omit "the last preceding sub-section", substitute "sub-section (4)".
Sub-section 222 (9) . . .	(a) Omit "(1) of section 43", substitute "43 (1)". (b) Omit "(1) and (2) of section 52", substitute "52 (1) and (2)". (c) Omit "of this Act" (last occurring).
Sub-section 223 (2) . . .	Omit "five", substitute "5".
Sub-section 223 (3) . . .	(a) Omit "of this Act". (b) Omit "the last preceding sub-section", substitute "sub-section (2)". (c) Omit "five", substitute "5".
Sub-section 228 (2) . . .	Omit "the next succeeding sub-section", substitute "sub-section (3)".
Sub-section 229 (2) . . .	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 230 (2) . . .	Omit "The last preceding sub-section", substitute "Sub-section (1)".
Sub-section 231 (2) . . .	Omit "(4) of section 58", substitute "58 (4)".
Sub-section 231 (3) . . .	Omit "the last preceding sub-section", substitute "sub-section (2)".
Sub-section 231 (4) . . .	(a) Omit "(2) of section 170", substitute "170 (2)". (b) Omit "(b) of sub-section (1)", substitute "(1) (b)".
Sub-section 232 (1) . . .	Insert "in writing" after "request".
Paragraph 235 (c) . . .	Omit "the next succeeding section", substitute "section 236".
Sub-section 236 (2) . . .	Omit "(a) or (c) of the last preceding sub-section", substitute "(1) (a) or (c)".
Sub-section 236 (5) . . .	(a) Omit "(1) of section 43", substitute "43 (1)". (b) Omit "(1) and (2) of section 52", substitute "52 (1) and (2)". (c) Omit "of this Act" (last occurring).
Sub-section 237 (2) . . .	Omit "(4) of section 58", substitute "58 (4)".
Sub-section 237 (3) . . .	Omit "the last preceding sub-section", substitute "sub-section (2)".
Sub-section 237 (4) . . .	(a) Omit "(2) of section 170", substitute "170 (2)". (b) Omit "(b) of sub-section (i)", substitute "(1) (b)".
Sub-section 238 (2) . . .	Omit "the next succeeding sub-section", substitute "sub-section (3)".
Sub-section 239 (1) . . .	Omit "twenty-one", substitute "21".
Sub-section 239 (4) . . .	(a) Omit "(1) of section 43", substitute "43 (1)". (b) Omit "(1) and (2) of section 52", substitute "52 (1) and (2)". (c) Omit "of this Act" (last occurring).
Sub-section 240 (2) . . .	Omit "The last preceding sub-section", substitute "Sub-section (1)".
Sub-section 242 (2) . . .	Omit "(a) or (c) of the last preceding sub-section", substitute "(1) (a) or (c)".
Sub-section 242 (5) . . .	(a) Omit "(1) of section 43", substitute "43 (1)". (b) Omit "(1) and (2) of section 52", substitute "52 (1) and (2)". (c) Omit "of this act" (last occurring).
Sub-section 243 (2) . . .	Omit "the last preceding sub-section", substitute "sub-section (1)".

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**SCHEDULE—continued**

Provision	Amendment
Sub-section 243 (3)	(a) Omit “(2) of section 170”, substitute “170 (2)”. (b) Omit “(b) of sub-section (1)”, substitute “(1) (b)”.
Sub-section 244 (1)	(a) Omit “Five hundred dollars” (wherever occurring), substitute “\$500”. (b) Omit “two” (wherever occurring), substitute “2”.
Sub-section 244 (2)	(a) Omit “the next succeeding sub-section”, substitute “sub-section (3)”. (b) Omit “the last preceding sub-section”, substitute “sub-section (1)”.
Sub-section 244 (8)	Omit “the last preceding sub-section”, substitute “sub-section (7)”.
Sub-section 244 (9)	Omit “the next succeeding sub-section”, substitute “sub-section (10)”.
Sub-section 245 (1)	Omit “the next succeeding sub-section”, substitute “sub-section (2)”.
Sub-section 245 (2)	Omit “the last preceding sub-section”, substitute “sub-section (1)”.
Sub-section 246 (1)	Omit “either of the last two preceding sections”, substitute “section 244 or 245”.
Sub-section 246 (2)	Omit “twenty-eight”, substitute “28”.
Sub-section 248 (1)	Omit “(2) of section 47”, substitute “47 (2)”.
Paragraph 248 (3) (c)	Omit “(6) of the next succeeding section”, substitute “249 (6)”.
Sub-section 248 (4)	Omit “the last preceding sub-section”, substitute “sub-section (3)”.
Sub-section 250 (1)	Omit “the last preceding section”, substitute “section 249”.
Sub-section 250 (2)	(a) Omit “(b) of the last preceding sub-section”, substitute “(1) (b)”. (b) Omit “(2) of section 58”, substitute “58 (2)”.
Sub-section 251 (1)	Omit “twelve”, substitute “12”.
Paragraph 252 (1) (b)	Omit “(1) of section 245”, substitute “245 (1)”.
Sub-section 252 (2)	Omit “the last preceding sub-section”, substitute “sub-section (1)”.
Sub-section 253D (1)	(a) Omit “the last preceding section”, substitute “section 253C”. (b) Omit “as the case may be”, substitute “as the case requires”.
Paragraph 253D (1) (d)	Omit “(4) of section 56”, substitute “56 (4)”.
Paragraph 253D (2) (a)	Omit “(6A) of section 55”, substitute “55 (6A)”.
Paragraph 253D (2) (b)	Omit “(5B) of section 56”, substitute “56 (5B)”.
Sub-section 253D (3)	Omit “the last preceding section”, substitute “section 253C”.
Paragraph 253F (a)	Omit “(6A) of section 55”, substitute “55 (6A)”.
Paragraph 253F (b)	Omit “(5B) of section 56”, substitute “56 (5B)”.
Paragraph 254 (2) (a)	Omit “six”, substitute “6”.
Sub-section 254 (3)	Omit “the last preceding sub-section”, substitute “sub-section (2)”.
Sub-section 254 (4)	Omit “the last preceding sub-section”, substitute “sub-section (3)”.
Sub-section 255 (4)	Omit “either of the last two preceding sub-sections”, substitute “sub-section (2) or (3)”.
Paragraph 259 (1) (d)	Omit “any of the preceding paragraphs”, substitute “paragraph (a), (b) or (c)”.
Sub-section 259 (2)	Omit “(a), (b) or (c) of the last preceding sub-section”, substitute “(1) (a), (b) or (c)”.
Sub-section 263 (1)	Omit “three”, substitute “3”.
Sub-section 263 (2)	Omit “one”, substitute “1”.
Paragraph 263A (a)	(a) Omit “Two hundred dollars”, substitute “\$200”. (b) Omit “six”, substitute “6”.
Paragraph 263A (b)	Omit “four”, substitute “4”.
Section 264	Omit “three”, substitute “3”.
Paragraph 265 (1) (b)	Omit “two”, substitute “2”.
Paragraph 265 (1) (h)	Omit “two”, substitute “2”.
Sub-section 265 (1)	Omit “one”, substitute “1”.

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**SCHEDULE—continued**

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Sub-section 265 (2) . . .	Omit "(b) of the last preceding sub-section", substitute "(1) (b)".
Sub-section 265 (3) . . .	Omit "three", substitute "3".
Paragraph 265 (4) (a) . . .	Omit "Twenty dollars", substitute "\$20".
Sub-section 265 (4) . . .	Omit "one", substitute "1".
Sub-section 265 (5) . . .	Omit "three", substitute "3".
Sub-section 265 (6) . . .	Omit "The last two preceding sub-sections", substitute "Sub-sections (4) and (5)".
Sub-section 265 (7) . . .	(a) Omit "twelve", substitute "12". (b) Omit "(a) to (f) of sub-section (4)", substitute "(4) (a) to (f)". (c) Omit "of this section" (wherever occurring). (d) Omit "(a) or (b) of sub-section (5)", substitute "(5) (a) or (b)".
Sub-section 265 (8) . . .	(a) Omit "two", substitute "2". (b) Omit "Five hundred dollars", substitute "\$500". (c) Omit "one", substitute "1".
Sub-section 265 (9) . . .	Omit "(c) or (e) of sub-section (1)", substitute "(1) (c) or (e)".
Sub-section 266 (1) . . .	Omit "three", substitute "3".
Sub-section 266 (2) . . .	Omit "The last preceding sub-section", substitute "Sub-section (1)".
Sub-section 266 (3) . . .	(a) Omit "twelve", substitute "12". (b) Omit "three", substitute "3".
Section 267 . . . . .	Omit "one", substitute "1".
Sub-section 268 (1) . . .	Omit "one", substitute "1".
Sub-section 268 (2) . . .	Omit "one", substitute "1".
Sub-section 268 (3) . . .	Omit "three", substitute "3".
Sub-section 268 (4) . . .	Omit "The last two preceding sub-sections", substitute "Sub-sections (2) and (3)".
Sub-section 268 (5) . . .	(a) Omit "two", substitute "2". (b) Omit "one", substitute "1".
Sub-section 268 (6) . . .	Omit "the last preceding sub-section", substitute "sub-section (5)".
Sub-section 268 (7) . . .	(a) Omit "of this Act" (first, third and last occurring). (b) Omit "twelve", substitute "12". (c) Omit "(a) or (b) of sub-section (5) of section 265", substitute "265 (5) (a) or (b)". (d) Omit "three", substitute "3". (e) Omit "one", substitute "1".
Paragraph 268 (7) (a) . . .	(a) Omit "(a) to (f) of sub-section (4) of section 265", substitute "265 (4) (a) to (f)". (b) Omit "(a) or (b) of sub-section (5) of that section", substitute "265 (5) (a) or (b)".
Sub-section 268 (8) . . .	(a) Omit "(b) or (c) of sub-section (2)", substitute "(2) (b) or (c)". (b) Omit "(a) or (b) of sub-section (5) of section 265 of this Act", substitute "265 (5) (a) or (b)". (c) Omit "(b) of the last preceding sub-section", substitute "(7) (b) of this section".
Sub-section 269 . . . . .	Omit "three", substitute "3".
Paragraph 270 (1) (a) . . .	Omit "five", substitute "5".
Paragraph 270 (1) (c) . . .	Omit "three", substitute "3".
Paragraph 270 (1) (d) . . .	Omit "one", substitute "1".
Sub-section 270 (2) . . .	Omit "the last preceding sub-section", substitute "sub-section (1)".
Paragraph 271 (a) . . . . .	Omit "two", substitute "2".
Section 271 . . . . .	Omit "one", substitute "1".
Sub-section 273 (2) . . .	(a) Omit "the last preceding sub-section", substitute "sub-section (1)". (b) Omit "one", substitute "1".
Sub-section 273 (3) . . .	Omit "the next succeeding sub-section", substitute "sub-section (4)".



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**SCHEDULE—continued**

Provision	Amendment
Sub-section 273 (5) . . .	Omit “one”, substitute “1”.
Sub-section 276 (1) . . .	Omit “Twenty dollars”, substitute “\$20”.
Sub-section 276 (2) . . .	Omit “the last preceding sub-section”, substitute “sub-section (1)”.
Sub-section 279 (1) . . .	Omit “the last preceding section”, substitute “section 278 of this Act”.
Sub-section 279 (3) . . .	Omit “official receiver” (last occurring), substitute “Official Receiver”.
Sub-section 281 (1) . . .	Omit “of this Act” (last occurring).
Sub-section 281 (3) . . .	(a) Omit “(2) of section 126”, substitute “126 (2)”. (b) Omit “(2) of section 155”, substitute “155 (2)”.
Sub-section 282 (3) . . .	Omit “the last two preceding sub-sections”, substitute “sub-section (1) or (2)”.
Sub-section 285 (1) . . .	Omit “of this section”.
Sub-section 285 (2) . . .	Omit “the next succeeding sub-section”, substitute “sub-section (3)”.
Sub-section 285 (3) . . .	Omit “either of the last two preceding sub-sections”, substitute “sub-section (1) or (2)”.
Sub-section 287 (3) . . .	(a) Omit “The preceding provisions”, substitute “Sub-sections (1) and (2)”. (b) Omit “(e), (f), (g), (h), (i) or (j) of sub-section (1) of section 84”, substitute “84 (1) (e), (f), (g), (h), (i) or (j)”.
Sub-section 290 (2) . . .	(a) Omit “(2) of section 185”, substitute “185(2)”. (b) Omit “(1) of that section”, substitute “185 (1) of this Act”.
Sub-section 291 (3) . . .	Omit “(e), (f), (g), (h), (i) or (j) of sub-section (1) of section 84”, substitute “84 (1) (e), (f), (g), (h), (i) or (j)”.
Sub-section 292 (3) . . .	Omit “(1) of section 52”, substitute “52 (1)”.
Sub-section 295 (2) . . .	Omit “the last preceding sub-section”, substitute “sub-section (1) of this section”.
Sub-section 296 (1) . . .	Omit “(2) and (3) of section 210”, substitute “210 (2) and (3)”.
Sub-section 296 (2) . . .	Omit “(4) of section 210”, substitute “210 (4)”.
Sub-section 296 (4) . . .	Omit “(2), (3) and (4) of section 210”, substitute “210 (2), (3) and (4)”.
Sub-section 296 (5) . . .	Omit “(6) of section 210”, substitute “210 (6)”.
Section 297 . . . . .	Omit “official receiver” (last occurring), substitute “Official Receiver”.
Sub-section 298 (2) . . .	Omit “(5) and (6) of section 49”, substitute “49 (5) and (6)”.
Sub-section 312 (2) . . .	Omit “The last preceding sub-section”, substitute “Sub-section (1)”.
Sub-section 313 (5) . . .	Omit “(1) of section 15”, substitute “15 (1)”.
Sub-section 313 (6) . . .	Omit “Public Service of the Commonwealth”, substitute “Australian Public Service”.
Paragraph 315 (1)(c) . . .	Omit “(3) of section 9 of this Act”, substitute “9 (3)”.
Sub-section 315 (2) . . .	(a) Omit “the next succeeding sub-section”, substitute “sub-section (3)”. (b) Omit “the last preceding sub-section”, substitute “sub-section (1)”.
Sub-section 315 (3) . . .	Omit “The last preceding sub-section”, substitute “Sub-section (2)”.
Paragraph 315 (1) (c) . . .	Omit “of this Act” (last occurring).
Heading to the Schedules	Omit.
Heading to First Schedule	Omit “FIRST SCHEDULE”, substitute “SCHEDULE 1”.
Heading to Second Schedule	Omit “SECOND SCHEDULE”, substitute “SCHEDULE 2”.

**NOTE**

1. No. 33, 1966, as amended. For previous amendments, see No. 121, 1968; No. 40, 1969; No. 122, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 56, 1975; Nos. 91 and 161, 1976; and No. 111, 1977.