



Insolvency (Tax Priorities) Legislation Amendment Act 1993

No. 32 of 1993

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Insolvency (Tax Priorities) Legislation Amendment Act 1993

No. 32 of 1993

**An Act to amend the law about collecting and recovering
income tax, to change the Corporations Law, to amend
some other Acts, and for related purposes**

[Assented to 16 June 1993]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Insolvency (Tax Priorities) Legislation Amendment Act 1993*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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(2) If this Act receives the Royal Assent after 1 June 1993, sections 6, 7, 9, 11, 13 and 15 and Part 5 are taken to have commenced on that day.

(3) If this Act receives the Royal Assent before 1 July 1993, Part 4 commences on that day.

**PART 2—AMENDMENTS OF THE INCOME TAX ASSESSMENT
ACT 1936**

Principal Act

3. In this Part, “**Principal Act**” means the *Income Tax Assessment Act 1936*¹.

Liquidators, receivers and certain agents

4. Section 215 of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

“(6) In this section, unless the contrary intention appears:
‘**tax**’ includes:

- (a) interest under section 170AA or 207A; and
- (b) additional tax under section 207 or Part VII; and
- (c) an amount payable to the Commissioner under Division 1A, 1B, 1C, 2, 3, 3A, 3B, 4, 8 or 9.”.

Commissioner may collect tax from person owing money to taxpayer

5. Section 218 of the Principal Act is amended:

- (a) by omitting “or 3A” from paragraph (b) and subparagraph (c)(iii) of the definition of “tax” in subsection (6B) and substituting “, 3A, 3B, 4, 8 or 9”;
- (b) by omitting “or 3A” from the definition of “taxpayer” in subsection (6B) and substituting “, 3A, 3B, 4, 8 or 9”.

Employers other than group employers

6. Section 221G of the Principal Act is amended:

(a) by inserting after subsection (2C) the following subsection:

“(2D) If an employer (other than a group employer):

- (a) makes a deduction after 30 June 1993 for the purposes of this Division, or purporting to be for those purposes, from salary or wages paid to an employee; and
 - (b) refuses or fails to affix tax stamps of a face value equal to the amount of the deduction as required by this Division;
- the employer is liable to pay that amount to the Commissioner.”;

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- (b) by inserting in paragraph (4A)(b) “subsection (2D) of this section or” after “under”.

Employer not accounting for certain deductions

7. Section 221P of the Principal Act is amended by inserting before subsection (1) the following subsections:

“(1A) Subsection (1) does not apply to a deduction made by a group employer after:

- (a) if the employer is an early remitter in relation to June 1993—14 June 1993; or
- (b) otherwise—31 May 1993.

“(1B) Subsection (1) does not apply to a deduction made by an employer (other than a group employer) after 30 June 1993.”.

Recovery of amounts by Commissioner

8. Section 221R of the Principal Act is amended:

- (a) by inserting before subsection (1) the following subsection:

“(1AA) A reference in this section to an amount payable under this Division includes a reference to:

- (a) the unpaid amount of an estimate under section 222AGA that relates to a liability under this Division; or
- (b) a penalty payable under Subdivision E of Division 8 in relation to such an estimate; or
- (c) an amount that is due and payable under an agreement under section 222ALA that relates to:
 - (i) a liability under this Division; or
 - (ii) a liability to pay an estimate relating to such a liability; even if the agreement also relates to a liability that is not of a kind referred to in subparagraph (i) or (ii); or
- (d) a penalty payable under Subdivision B of Division 9 in relation to a company’s liability under this Division; or
- (e) a penalty payable under Subdivision C of Division 9 in relation to an estimate relating to a company’s liability under this Division; or
- (f) a penalty payable under Subdivision D of Division 9 in relation to a company’s liability to pay an amount of the kind referred to in paragraph (c).”;

- (b) by inserting after subsection (1A) the following subsection:

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“(1B) If the Commissioner applies or recovers an amount under subsection (1A), he or she may determine in writing how the amount is to be taken, for the purposes of Divisions 8 and 9, to have been applied towards discharging any one or more of the debts. A determination has effect accordingly.”:

(c) by adding at the end the following subsections:

“(4) In making a statement, whether orally or in writing, and whether or not under oath, for a purpose connected with proceedings to recover from a person an amount payable to the Commissioner under this Division, a person may, in so far as the statement relates to a question about whether the first-mentioned person has a defence, ignore the possibility that a statutory declaration relating to an estimate may be given to the Commissioner, or an affidavit relating to an estimate may be filed, under Subdivision B, C or D of Division 8.

“(5) An expression has in subsection (1AA) the same meaning as in Division 8.”.

Failure to pay amounts deducted to Commissioner

9. Section 221YHJ is amended by inserting in paragraph (3)(a) “before 1 June 1993” after “an amount deducted”.

Recovery of amounts by Commissioner

10. Section 221YHN of the Principal Act is amended:

(a) by inserting before subsection (1) the following subsection:

“(1A) A reference in this section to an amount payable under this Division includes a reference to:

- (a) the unpaid amount of an estimate under section 222AGA that relates to a liability under this Division; or
- (b) a penalty payable under Subdivision E of Division 8 in relation to such an estimate; or
- (c) an amount that is due and payable under an agreement under section 222ALA that relates to:
 - (i) a liability under this Division; or
 - (ii) a liability to pay an estimate relating to such a liability; even if the agreement also relates to a liability that is not of a kind referred to in subparagraph (i) or (ii); or
- (d) a penalty payable under Subdivision B of Division 9 in relation to a company’s liability under this Division; or
- (e) a penalty payable under Subdivision C of Division 9 in relation to an estimate relating to a company’s liability under this Division; or

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(f) a penalty payable under Subdivision D of Division 9 in relation to a company's liability to pay an amount of the kind referred to in paragraph (c).”:

(b) by adding at the end the following subsections:

“(5) If the Commissioner applies or recovers an amount under subsection (4), he or she may determine in writing how the amount is to be taken, for the purposes of Divisions 8 and 9, to have been applied towards discharging any one or more of the amounts referred to in paragraph (4)(a). A determination has effect accordingly.

“(6) In making a statement, whether orally or in writing, and whether or not under oath, for a purpose connected with proceedings to recover from a person an amount payable to the Commissioner under this Division, the person may, in so far as the statement relates to a question about whether the first-mentioned person has a defence, ignore the possibility that a statutory declaration relating to an estimate may be given to the Commissioner, or an affidavit relating to an estimate may be filed, under Subdivision B, C or D of Division 8.

“(7) An expression has in subsection (1A) the same meaning as in Division 8.”.

Duty of payer to pay deducted amount to Commissioner

11. Section 221YHZD is amended by omitting paragraph (3)(a) and substituting the following paragraph:

“(a) a person is liable:

- (i) to pay to the Commissioner under subsection (1) or (1A) an amount deducted before 1 June 1993; or
- (ii) to pay to the Commissioner under subsection (1B) an amount that became payable before 1 July 1993; and”.

Recovery of amounts by Commissioner

12. Section 221YHZJ of the Principal Act is amended:

(a) by inserting before subsection (1) the following subsection:

“(1A) A reference in this section to an amount payable under this Division includes a reference to:

- (a) the unpaid amount of an estimate under section 222AGA that relates to a liability under this Division; or
- (b) a penalty payable under Subdivision E of Division 8 in relation to such an estimate; or
- (c) an amount that is due and payable under an agreement under section 222ALA that relates to:

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- (i) a liability under this Division; or
 - (ii) a liability to pay an estimate relating to such a liability; even if the agreement also relates to a liability that is not of a kind referred to in subparagraph (i) or (ii); or
 - (d) a penalty payable under Subdivision B of Division 9 in relation to a company's liability under this Division; or
 - (e) a penalty payable under Subdivision C of Division 9 in relation to an estimate relating to a company's liability under this Division; or
 - (f) a penalty payable under Subdivision D of Division 9 in relation to a company's liability to pay an amount of the kind referred to in paragraph (c).”:
- (b) by adding at the end the following subsections:

“(4) If the Commissioner applies or recovers an amount under subsection (3), he or she may determine in writing how the amount is to be taken, for the purposes of Divisions 8 and 9, to have been applied towards discharging any one or more of the amounts referred to in paragraph (3)(a). A determination has effect accordingly.

“(5) In making a statement, whether orally or in writing, and whether or not under oath, for a purpose connected with proceedings to recover from a person an amount payable to the Commissioner under this Division, a person may, in so far as the statement relates to a question about whether the first-mentioned person has a defence, ignore the possibility that a statutory declaration relating to an estimate may be given to the Commissioner, or an affidavit relating to an estimate may be filed, under Subdivision B, C or D of Division 8.

“(6) An expression has in subsection (1A) the same meaning as in Division 8.”.

Extended operation of some provisions of Subdivision B

13. Section 221YHZX of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) Subsection 221YHZD(3) has effect as if a reference in it to an amount deducted before 1 June 1993 included a reference to an amount of TFN withholding tax that became payable before 1 July 1993.”.

Recovery of amounts by Commissioner

14. Section 221YR of the Principal Act is amended:

- (a) by inserting before subsection (1) the following subsection:

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“(1A) A reference in this section to an amount payable under this Division includes a reference to:

- (a) the unpaid amount of an estimate under section 222AGA that relates to a liability under this Division; or
- (b) a penalty payable under Subdivision E of Division 8 in relation to such an estimate; or
- (c) an amount that is due and payable under an agreement under section 222ALA that relates to:
 - (i) a liability under this Division; or
 - (ii) a liability to pay an estimate relating to such a liability; even if the agreement also relates to a liability that is not of a kind referred to in subparagraph (i) or (ii); or
- (d) a penalty payable under Subdivision B of Division 9 in relation to a company’s liability under this Division; or
- (e) a penalty payable under Subdivision C of Division 9 in relation to an estimate relating to a company’s liability under this Division; or
- (f) a penalty payable under Subdivision D of Division 9 in relation to a company’s liability to pay an amount of the kind referred to in paragraph (c).”:

(b) by adding at the end the following subsections:

“(4) In making a statement, whether orally or in writing, and whether or not under oath, for a purpose connected with proceedings to recover from a person an amount payable to the Commissioner under this Division, the person may, in so far as the statement relates to a question about whether the first-mentioned person has a defence, ignore the possibility that a statutory declaration relating to an estimate may be given to the Commissioner, or an affidavit relating to an estimate may be filed, under Subdivision B, C or D of Division 8.

“(5) An expression has in subsection (1A) the same meaning as in Division 8.”.

Liability of trustee to pay to Commissioner amounts deducted before 1 June 1993

15. Section 221YU is amended by inserting in paragraph (1)(a) “before 1 June 1993” after “an amount deducted”.

16. After Division 7 of Part VI of the Principal Act the following Divisions are inserted:

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“Division 8—Prompt recovery, through estimates and payment agreements, of amounts not remitted under Divisions 2, 3A, 3B and 4

“Subdivision A—Object and interpretation

Object and outline

“222AFA.(1) The purpose of this Division is to enable the Commissioner to take prompt and effective action to recover amounts not remitted as required by Divisions 2, 3A, 3B and 4.

“(2) It does so by empowering the Commissioner to make an estimate of the amounts, and to recover the amount of the estimate.

“(3) Although an estimate creates a liability distinct from the underlying liability to remit amounts, the person liable can ensure that the Commissioner does not keep more than those amounts.

“(4) This Division also empowers the Commissioner to agree to a person paying off over a period liabilities under Division 2, 3A, 3B or 4 or under this Division.

“(5) Sections 221R, 221YHN, 221YHZJ and 221YR provide for the recovery of amounts payable under this Division.

Interpretation

“222AFB.(1) In this Division, unless the contrary intention appears:

‘director’, in relation to a company:

- (a) means someone who is a director of the company for the purposes of the Corporations Law; and
- (b) in the case of an unincorporated company—includes an officeholder of the company;

‘due date’, in relation to a deduction, means the day on or before which the person making the deduction must pay to the Commissioner an amount equal to the deduction, or affix tax stamps of a face value equal to the amount of the deduction, as the case requires;

‘government body’ means the Commonwealth, a State, a Territory or an authority of the Commonwealth or a State or Territory;

‘person’ includes:

- (a) an employer as defined in subsection 221A(1); and
- (b) a person as defined in subsection 221YHA(1); and
- (c) an investment body as defined in section 202D; and
- (d) a person who is taken because of subsection 221YHZA(4) to be the investment body in relation to an investment; and
- (e) a company within the meaning of Division 4 (see, for example, subsections 102L(10), 102T(11) and 221YK(2)); and

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(f) a government body; and

(g) a partnership;

Note: Subsections (2) and (3) deal with obligations imposed on partnerships.

‘relate’, in the case of a reference to the liability to which an estimate relates, includes purport to relate;

‘remittance provision’ means any of the following provisions:

(a) in Division 2—section 221F (except subsection 221F(12)) and section 221G (except subsection 221G(4A));

(b) in Division 3A—subsection 221YHDC(2);

(c) In Division 3B—subsections 221YHZD(1) and (1A);

(d) in Division 4—subsection 221YN(1);

‘statutory demand’ has the same meaning as in the Corporations Law;

‘statutory minimum’ has the same meaning as in the Corporations Law;

‘trustee’, in relation to a person, means:

(a) a trustee (as defined in section 6) in whom the person’s property is vested, or who has control of the person’s property; and

(b) if the person is a partnership—includes someone who is a trustee of any of the partners because of paragraph (a);

Note: Subsection (4) deals with the case where there are 2 or more trustees of a person.

‘underlying liability’, in relation to an estimate, means the liability to which the estimate relates;

‘unpaid amount’ has the meaning given by section 222AFC.

“(2) If a partnership is liable under this Division to pay an amount, the partners are jointly and severally liable to pay the amount.

“(3) Any other obligation that this Division imposes on a partnership may be discharged by any of the partners.

“(4) If there are 2 or more trustees of a person, anything this Division provides for to be done by or in relation to the person’s trustee may be done by or in relation to any of them.

Unpaid amount

“222AFC.(1) The **unpaid amount** of a liability to pay amounts is:

(a) if the liability remains undischarged to the extent of a particular amount—that amount; or

(b) otherwise—a nil amount.

“(2) The **unpaid amount** of an estimate is:

(a) if the liability to pay the estimate remains undischarged to the extent of a particular amount—that amount; or

(b) otherwise—a nil amount.

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Subdivision B—Making, reducing and revoking estimates

When Commissioner may make estimate

“222AGA.(1) If the Commissioner has reason to suspect that:

- (a) a person (**‘the person liable’**) has become liable under a remittance provision to pay to the Commissioner amounts equal to deductions by the person from payments made during a period; and
- (b) the liability to pay those amounts remains undischarged after the due date of those deductions;

the Commissioner may make what he or she thinks is a reasonable estimate of the unpaid amount of that liability.

“(2) In making the estimate, the Commissioner may have regard to anything he or she thinks relevant, for example, information about amounts deducted by the person during earlier periods.

Notice to person liable

“222AGB.(1) If the Commissioner makes an estimate, he or she must send written notice of it to the person liable or to the person’s trustee.

“(2) The notice must:

- (a) identify the liability to which the estimate relates; and
- (b) specify the day as at which the estimate is made; and
- (c) set out the amount of the estimate; and
- (d) state that the amount of the estimate is due and payable; and
- (e) state that:
 - (i) if the person or the person’s trustee gives the Commissioner a statutory declaration substantiating the actual unpaid amount of the liability to which the estimate relates, the estimate will be reduced accordingly; and
 - (ii) the estimate will be revoked if the person or the person’s trustee gives the Commissioner a statutory declaration to the effect that the person made no deductions for the purposes of Division 2, 3A, 3B or 4, as the case requires, during the period concerned; and
 - (iii) the statutory declaration must comply with section 222AGF; and
- (f) state the effect of section 222AGF.

“(3) To avoid doubt, a single notice may relate to 2 or more estimates, but must comply with subsection (2) in relation to each of them.

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Reducing amount of estimate

“222AGC.(1) If:

- (a) the Commissioner makes an estimate; and
- (b) the person liable or the person’s trustee gives the Commissioner a statutory declaration that complies with section 222AGF; and
- (c) the declaration is to the effect that a specified amount is the unpaid amount of the liability to which the estimate relates; and
- (d) the specified amount is less than the unpaid amount of the estimate;

the amount of the estimate is reduced by the amount by which the unpaid amount of the estimate (immediately before the reduction) exceeds the specified amount.

Note 1: The effect of subsection (1) is to reduce the unpaid amount of the estimate to the specified amount.

Note 2: Sections 222AHD, 222AIC and 222AIG also provide for the automatic reduction of an estimate.

“(2) The Commissioner may at any time reduce the amount of an estimate, but is not obliged to consider whether or not to do so.

“(3) If the Commissioner reduces under subsection (2) the amount of an estimate, he or she must send to the person liable or to the person’s trustee a written notice that:

- (a) identifies the liability to which the estimate relates; and
- (b) sets out the reduced amount of the estimate.

The reduction takes effect when the notice is sent.

Revoking estimate

“222AGD.(1) This subsection revokes an estimate if:

- (a) the person liable or the person’s trustee gives the Commissioner a statutory declaration that complies with section 222AGF; and
- (b) the declaration is to the effect that the person made no deductions for the purposes of Division 2, 3A, 3B or 4, as the case requires, during the period concerned.

Note: Sections 222AHD, 222AIC and 222AIG also provide for the automatic revocation of an estimate.

“(2) The Commissioner may at any time revoke an estimate, but is not obliged to consider whether or not to do so.

“(3) If the Commissioner revokes an estimate under subsection (2), he or she must send to the person liable or to the person’s trustee a written notice that:

- (a) identifies the liability to which the estimate relates; and
- (b) states that the estimate has been revoked.

The revocation takes effect when the notice is sent.

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Matters for Commissioner to consider under sections 222AGC and 222AGD

“222AGE. In exercising a power under subsection 222AGC(2) or 222AGD(2), the Commissioner is to have regard to the following:

- (a) an estimate is of the unpaid amount of a liability as at a particular time;
- (b) the purpose of reducing the amount of the estimate is to bring it closer to the unpaid amount of the underlying liability as at that time, and so bring the unpaid amount of the estimate closer to the unpaid amount of the underlying liability as at the time of the reduction;
- (c) reductions in the unpaid amount of the underlying liability that happen after the time as at which the estimate was made are dealt with by section 222AHA and so should not be taken into account in exercising such a power;
- (d) the effects of Subdivision F.

Requirements for statutory declaration under section 222AGC or 222AGD

“222AGF.(1) This section sets out the requirements for a statutory declaration for the purposes of section 222AGC or 222AGD.

“(2) The declaration must be a statutory declaration made under the *Statutory Declarations Act 1959*.

“(3) It must be given to the Commissioner within 7 days, or a longer period allowed by the Commissioner, after the Commissioner sends notice of the estimate to the person liable or to the person’s trustee.

“(4) The declaration must:

- (a) specify the total of the deductions that the person made, for the purposes of Division 2, 3A, 3B or 4, as the case requires, during the period concerned; or
- (b) state to the effect that the person made no deductions for the purposes of that Division during that period;

as the case requires.

“(5) For each amount (if any):

- (a) paid or applied for the purpose of complying with that Division in relation to the deductions (if any) that the person so made; or
- (b) spent on buying tax stamps that have been affixed for the purpose of so complying;

the declaration must specify the amount and the day on which it was so paid, applied or spent.

“(6) The declaration must specify, as the unpaid amount of the liability to which the estimate relates, the difference between:

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- (a) the total (if any) specified under paragraph (4)(a); and
- (b) the total of the amounts (if any) specified under subsection (5).

“(7) The declaration must be made by:

- (a) if the person is a company that has directors, a secretary or both—a director or secretary; or
- (b) if the person is an individual—the person; or
- (c) if the person is a government body—a prescribed person; or
- (d) if the person consists of 2 or more persons including one or more individuals and is neither a company nor a government body—that individual or one of those individuals; or
- (e) in any case—the person’s trustee.

Further estimate after previous estimate revoked or discharged

“222AGG.(1) While an estimate is in force, the Commissioner cannot make under section 222AGA another estimate relating to the same liability.

“(2) An estimate is in force if the Commissioner has given notice of it to the person liable or to the person’s trustee and:

- (a) the estimate has not been revoked; and
- (b) the person’s liability to pay the estimate has not been discharged.

“Subdivision C—Recovering unpaid amount of estimate

Nature of liability created by notice

“222AHA.(1) If the Commissioner makes an estimate and sends notice of it to the person liable or to the person’s trustee, the person must pay to the Commissioner the amount of the estimate. This liability is called a **liability to pay an estimate**.

“(2) A liability to pay an estimate is separate and distinct from the liability to which the estimate relates. It is separate and distinct for all purposes. For example, the Commissioner may take proceedings to recover the unpaid amount of the estimate, proceedings to recover the unpaid amount of the liability to which the estimate relates, or both.

“(3) However, the following are **parallel liabilities**:

- (a) a liability to pay an estimate;
- (b) the liability to which the estimate relates;
- (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b).

“(4) This means that if, at a particular time:

- (a) an amount is paid or applied towards discharging one of the parallel liabilities; or

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(b) because of section 222AOH or 222APG, one of the parallel liabilities is discharged to the extent of a particular amount; each of the others that is in existence at that time is discharged to the extent of the same amount. However, this section does not discharge a liability to a greater extent than the amount of the liability.

Refund if estimate exceeds underlying liability

“222AHB.(1) If:

- (a) an amount is paid or applied towards discharging a liability to pay an estimate; and
- (b) the amount exceeds the unpaid amount of the underlying liability as at the time (**‘the liability time’**) immediately before the payment or application;

the Commissioner must either refund the excess or:

- (c) apply the excess against any liability of the person to the Commonwealth that arises under or because of an Act of which the Commissioner has the general administration; and
- (d) refund so much of the excess as is not applied under paragraph (c).

“(2) If the Commissioner refunds or applies an amount under subsection (1), he or she must also reduce the amount of the estimate by the amount by which the unpaid amount of the estimate as at the liability time exceeded the unpaid amount of the underlying liability at that time.

Defences in recovery proceedings

“222AHC.(1) This section has effect for the purposes of proceedings, in so far as they relate to the recovery of the unpaid amount of an estimate.

“(2) The Commissioner or Deputy Commissioner is not entitled to recover if the person liable or the person’s trustee files an affidavit that complies with section 222AHE and verifies facts sufficient to prove that the underlying liability never existed or has been discharged in full.

“(3) If the person liable or the person’s trustee files an affidavit that complies with section 222AHE and verifies facts sufficient to prove that the unpaid amount of the underlying liability is a specified amount that is less than the unpaid amount of the estimate, the court is to enter judgment in favour of the Commissioner or Deputy Commissioner for the specified amount.

“(4) The court is to make whatever orders are necessary because of subsection (2) or (3).

“(5) If a judgment under subsection (3) is in effect, the Commissioner or a Deputy Commissioner is not entitled to recover the balance of the estimate (in the same or different proceedings or otherwise).

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“(6) However, the judgment does not prevent the Commissioner or a Deputy Commissioner from recovering (in the same or different proceedings or otherwise) the amount (if any) by which the unpaid amount of the underlying liability exceeds the amount specified in the affidavit.

“(7) Except as provided in subsection (2) or (3), it is not a defence that:

(a) the underlying liability never existed or has been discharged in full;
or

(b) the unpaid amount of the underlying liability is less than the unpaid amount of the estimate.

Effect of affidavit on estimate

“222AHD.(1) This subsection revokes an estimate if subsection 222AHC(2) prevents recovery of the unpaid amount because an affidavit verifies facts sufficient to prove that the underlying liability never existed.

“(2) If subsection 222AHC(2) prevents recovery of the unpaid amount of an estimate because an affidavit verifies facts sufficient to prove that the underlying liability has been discharged in full, the amount of the estimate is reduced by the unpaid amount of the estimate (immediately before the reduction).

Note: The effect of subsection (2) is to reduce to a nil amount the unpaid amount of the estimate.

“(3) While a judgment for an amount is in effect under subsection 222AHC(3), the amount of the estimate is reduced by the amount by which the unpaid amount of the estimate (immediately before the reduction) exceeds the first-mentioned amount.

Note: The effect of subsection (2) is to reduce the unpaid amount of the estimate to the amount of the judgment.

Requirements for affidavit under section 222AHC

“222AHE.(1) An affidavit for the purposes of section 222AHC must comply with this section.

“(2) The affidavit must be filed with the court, and a copy served on the Commissioner or Deputy Commissioner, as the case requires, within 14 days after the first day on which the person liable or the person’s trustee takes a procedural step as a party to the proceedings (for example, entering an appearance, filing a notice of intention to defend, or applying to set aside judgment entered in default of appearance).

“(3) However, the court may extend the period for compliance with subsection (2).

“(4) The facts that the affidavit must verify include:

(a) the total of the deductions made for the purposes of Division 2, 3A, 3B or 4, as the case requires, during the relevant period, or the fact that no deductions were so made;

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- (b) what has been done to comply with that Division in relation to the deductions (if any) so made;
- (c) without limiting paragraph (b), what has been done to discharge the liability to which the estimate relates.

“(5) The affidavit must be sworn by:

- (a) if the person is a company that has directors, a secretary or both—a director or secretary; or
- (b) if the person is an individual—the person; or
- (c) if the person is a government body—a prescribed person; or
- (d) if the person consists of 2 or more persons including one or more individuals and is neither a company nor a government body—that individual or one of those individuals; or
- (e) in any case—the person’s trustee.

“Subdivision D—Insolvency proceedings

Effect on statutory demand if estimate reduced or revoked

“222AIA.(1) If:

- (a) the Commissioner serves on a company a statutory demand relating to the company’s liability to pay the unpaid amount of an estimate; and
- (b) the amount of the estimate is later reduced or the estimate is later revoked;

then:

- (c) this subsection changes the statutory demand accordingly; and
- (d) the demand is taken to have had effect (as so changed) from the time when it was served on the company.

“(2) This subsection sets aside the statutory demand if subsection (1) reduces below the statutory minimum the amount of the debt, or the total of the amounts of the debts, to which the demand relates.

Defences on winding up application

“222AIB.(1) This section has effect for the purposes of:

- (a) an application under section 260, 459P, 462 or 464 of the Corporations Law of a State or Territory; or
- (b) an application for leave to make an application under section 459P of the Corporations Law.

“(2) The court is not to presume, merely because the company has failed to comply with a statutory demand, that the company is insolvent if:

- (a) the demand relates only to a liability in respect of an estimate and the sworn amount of the liability to which the estimate relates is less than the statutory minimum; or

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- (b) the demand relates only to liabilities in respect of 2 or more estimates and the total of the sworn amounts of the liabilities to which the estimates relate is less than the statutory minimum; or
- (c) the demand relates to:
 - (i) one or more liabilities in respect of one or more estimates; and
 - (ii) one or more liabilities none of which is a liability in respect of an estimate;and the total of:
 - (iii) the sworn amount of the liability to which the estimate relates, or the total of the sworn amounts of the liabilities to which the estimates relate, as the case may be; and
 - (iv) the amount of the liability, or the total of the liabilities, referred to in subparagraph (ii);is less than the statutory minimum.

“(3) The **sworn amount** of a liability to which an estimate relates is:

- (a) if the company has filed an affidavit that complies with section 222AID and verifies facts sufficient to prove that the liability never existed or has been discharged in full—a nil amount; or
- (b) if the company has filed an affidavit that complies with section 222AID and verifies facts sufficient to prove that the unpaid amount of the liability is a specified amount that is less than the unpaid amount of the estimate—the specified amount; or
- (c) otherwise—the unpaid amount of the estimate.

“(4) Except as provided in subsection (2), the company is not entitled to oppose the application on the ground that:

- (a) a liability to which an estimate relates never existed or has been discharged in full; or
- (b) the unpaid amount of such a liability is less than the unpaid amount of the estimate.

Effect of affidavit on estimate

“222AIC. If the unpaid amount of an estimate exceeds the amount that is the sworn amount of the underlying liability for the purposes of section 222AIB because of an affidavit filed for the purposes that section, the amount of the estimate is reduced by the excess.

Note: The effect is to reduce the unpaid amount of the estimate to the sworn amount of the underlying liability.

Requirements for affidavit under section 222AIB

“222AID.(1) An affidavit for the purposes of section 222AIB must comply with this section.

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“(2) The affidavit must be filed with the court, and a copy served on the applicant, within 14 days after notice of the application was served on the company.

“(3) However, the court may extend the period for compliance with subsection (2).

“(4) The facts that the affidavit must verify in relation to a liability to which an estimate relates include:

- (a) the deductions made for the purposes of Division 2, 3A, 3B or 4, as the case requires, during the relevant period, or the fact that no deductions were so made;
- (b) what has been done to comply with that Division in relation to the deductions (if any) so made;
- (c) without limiting paragraph (b), what has been done to discharge the liability to which the estimate relates.

“(5) The affidavit must be sworn by a director, secretary or trustee of the company.

Defences under section 222AIB not available on application to set aside statutory demand

“222AIE. A court is not to set aside or vary a statutory demand on a ground referred to in subsection 222AIB(4).

Estimate provable in bankruptcy or winding up

“222AIF.(1) A liability to pay the unpaid amount of an estimate is provable in a bankruptcy or winding up of the person liable, even if the estimate was made after the date of the bankruptcy, or after the relevant date within the meaning of the Corporations Law, as the case may be.

“(2) However, the liability is so provable only in so far as the underlying liability would be so provable if the unpaid amount of it were the same as the unpaid amount of the estimate.

Note: Subsection (2) prevents proof of an estimate if the underlying liability could not be proved because, for example, of when it arose.

“(3) Subsections (1) and (2) do not apply if the underlying liability has already been admitted to proof and the proof has not been set aside.

“(4) If the liability in respect of the estimate has been admitted to proof at a particular amount (**‘the admitted amount’**), the underlying liability is provable only in so far as the unpaid amount of it exceeds the admitted amount.

“(5) In so far as a liability is provable because of this section, it is taken for the purposes of the *Bankruptcy Act 1966* to be provable in bankruptcy under that Act.

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Rejection of proof of debt relating to estimate

“222AIG.(1) This section applies if the Commissioner lodges a proof of debt relating to the unpaid amount of an estimate.

“(2) The trustee of the person liable may reject the proof in whole on the ground that the underlying liability never existed or has been discharged in full, but may only do so if the trustee has given the Commissioner a statutory declaration that complies with section 222AIH and verifies facts sufficient to prove that ground.

“(3) The trustee may reject the proof in part on the ground that the unpaid amount of the estimate exceeds the unpaid amount of the underlying liability, but may only do so if the trustee has given the Commissioner a statutory declaration that complies with section 222AIH and verifies facts sufficient to prove that the unpaid amount of the underlying liability is a specified amount that is less than the unpaid amount of the estimate.

“(4) If the Commissioner appeals from, or applies for review of, the trustee’s decision, nothing in subsection (2) or (3) prevents evidence being adduced to contradict statements in the declaration.

“(5) This subsection revokes the estimate if:

- (a) the trustee rejects the proof under subsection (2) on the ground that the underlying liability never existed; and
- (b) the Commissioner does not appeal from, or apply for review of, the trustee’s decision, or the result of all appeals from, and applications for review of, the decision being finally determined or otherwise disposed of is that the proof is rejected in whole on that ground.

“(6) If:

- (a) the trustee:
 - (i) rejects the proof under subsection (2) on the ground that the underlying liability has been discharged in full; or
 - (ii) rejects the proof under subsection (3); and
- (b) the Commissioner does not appeal from, or apply for review of, the trustee’s decision;

the amount of the estimate is reduced by so much of the unpaid amount of the estimate (immediately before the reduction) as is rejected.

Note: The effect of subsection (6) is to reduce the unpaid amount of the estimate to nil if the proof is rejected in whole, and otherwise to the amount admitted to proof.

“(7) If:

- (a) the trustee rejects the proof under subsection (2) or (3); and

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(b) the Commissioner appeals from, or applies for review of, the trustee's decision and the result of all appeals from, and applications for review of, the decision being finally determined or otherwise disposed of is that the proof:

(i) is rejected in whole on the ground that the underlying liability has been discharged in full; or

(ii) is rejected in part;

the amount of the estimate is reduced by so much of the unpaid amount of the estimate (immediately before the reduction) as is rejected.

Note: The effect of subsection (7) is to reduce the unpaid amount of the estimate to nil if the proof is rejected in whole, and otherwise to the amount admitted to proof.

Requirements for statutory declaration under section 222AIG

“222AIH.(1) A statutory declaration for the purposes of section 222AIG must comply with this section.

“(2) The declaration must be a statutory declaration made under the *Statutory Declarations Act 1959*.

“(3) The facts that the declaration must verify include:

(a) the total of the deductions made for the purposes of Division 2, 3A, 3B or 4, as the case requires, during the relevant period, or the fact that no deductions were so made;

(b) what has been done to comply with that Division in relation to the deductions (if any) so made;

(c) without limiting paragraph (b), what has been done to discharge the liability to which the estimate relates.

“(4) The declaration must be made by:

(a) if the person liable is a company that has directors, a secretary or both—a director or secretary; or

(b) if the person liable is an individual—the person; or

(c) if the person liable is a government body—a prescribed person; or

(d) if the person liable consists of 2 or more persons including one or more individuals and is neither a company nor a government body—that individual or one of those individuals; or

(e) in any case—the trustee of the person liable.

Provisions altering effect of Corporations Law

“222AII. This Subdivision has effect despite any provision of the Corporations Law of a State or Territory.

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“Subdivision E—Penalty for late payment of estimate

Liability to penalty

“222AJA.(1) This section applies if a liability to pay an estimate remains undischarged at the end of 7 days after the Commissioner sends notice of the estimate to the person liable or to the person’s trustee, unless the person liable is the Commonwealth.

“(2) The unpaid amount of the estimate, as at the end of the 7 days, continues to be payable and is called **the principal amount**.

“(3) In addition, the person is liable to pay to the Commissioner, by way of penalty:

- (a) if the person is a government body or the estimate relates to a liability under subsection 221YN(1)—an amount at the rate of 16% per annum on so much of the principal amount as remains unpaid, computed from the due date of the underlying liability; and
- (b) otherwise:
 - (i) an amount equal to 20% of the principal amount; and
 - (ii) an amount at the rate of 16% per annum on the total of:
 - (A) so much of the principal amount as remains unpaid; and
 - (B) so much of the amount referred to in subparagraph (i) as remains unpaid;computed from the due date of the underlying liability.

“(4) The **due date** of the underlying liability is the due date referred to in paragraph 222AGA(1)(b).

“(5) If paragraph (3)(b) applies, the amount referred to in subparagraph (3)(b)(i) is not taken for the purposes of subparagraph (3)(b)(ii) to have ceased to be payable merely because a judgment has been given by, or entered in, a court.

Effect of paying penalty under this Subdivision or paying late payment penalty under Division 2, 3A, 3B or 4

“222AJB.(1) If a person is liable to a penalty payable under a provision of subsection 222AJA(3) in relation to an estimate, the following are **parallel liabilities**:

- (a) the person’s liability to the penalty;
- (b) a liability of the person to a penalty payable, under a corresponding provision of Division 2, 3A, 3B or 4, as the case requires, because the underlying liability remained undischarged;
- (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b);

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- (d) if the penalty is payable under paragraph 222AJA(3)(a)—a liability of the person to pay interest carried by a judgment debt, so far as the judgment is based on the liability to pay the estimate;
- (e) if the penalty is payable under subparagraph 222AJA(3)(b)(ii)—a liability of the person to pay interest carried by a judgment debt, so far as the judgment is based on:
 - (i) the liability to pay the estimate; or
 - (ii) liability to a penalty payable under subparagraph 222AJA(3)(b)(i) in relation to the estimate.

“(2) This means that if, at a particular time, an amount is paid or applied towards discharging one of the parallel liabilities, each of the others that is in existence at that time is discharged to the extent of the same amount. However, this section does not discharge a liability to a greater extent than the amount of the liability.

“(3) If, because a judgment debt carries interest, a provision of Division 2, 3A, 3B or 4, as the case requires, reduces the amount of a penalty payable as mentioned in paragraph (1)(b), the amount of the reduction is taken for the purposes of subsection (2) to have been applied towards discharging the person’s liability to the penalty.

Remission of penalties under this Subdivision

“222AJC.(1) If an amount is payable under a provision of subsection 222AJA(3) in relation to an estimate relating to a liability under a remittance provision, the Commissioner has the same powers to remit the amount as he or she or would have under Division 2, 3A, 3B or 4, as the case requires, if:

- (a) the liability to pay the estimate were a liability under the same remittance provision; and
- (b) the amount payable under that provision of subsection 222AJA(3) were payable under a corresponding provision of that Division.

Note: This Subdivision does not provide expressly for a penalty to be remitted if the unpaid amount of an estimate exceeds the unpaid amount of the underlying liability. The provisions about recovery of the unpaid amount of the estimate provide for reduction of the estimate in such a case. Subdivision F adjusts accordingly a liability under this Subdivision.

“(2) If the Commissioner decides to remit only part, or to remit no part, of an amount payable under subparagraph 222AJA(3)(b)(i), the Commissioner must give written notice of the decision to the person by whom the amount is, or but for the remission would be, payable.

“(3) If the person is dissatisfied with the decision, the person may object against it as set out in Part IVC of the *Taxation Administration Act 1953*.

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“Subdivision F—Effect on liabilities under this and other Divisions if estimate reduced or revoked

Liabilities adjusted with effect from when they arose

“222AKA.(1) If the amount of an estimate is reduced, or an estimate is revoked, section 222AHA, Subdivision E and Division 9 have effect, and are taken always to have had effect, as if:

- (a) the original amount of the estimate had been the reduced amount, not the amount set out under paragraph 222AGB(2)(c); or
 - (b) the estimate had never been made;
- as the case may be.

“(2) If because of subsection (1) an amount is taken to have been overpaid by a person, the Commissioner must either refund it or:

- (a) apply it against any liability of the person to the Commonwealth that arises under or because of an Act of which the Commissioner has the general administration; and
- (b) refund so much of it as is not applied under paragraph (a).

“(3) If the amount of an estimate is reduced again, or an estimate is revoked after its amount has been reduced on one or more occasions, subsections (1) and (2) apply again accordingly.

Reduction or revocation does not prejudice Commissioner’s rights in relation to underlying liability

“222AKB. Reduction of the amount of an estimate, or revocation of an estimate, does not affect the Commissioner’s rights or remedies in relation to the underlying liability, except so far as this Division expressly provides.

“Subdivision G—Payment agreements

Commissioner may make agreement

“222ALA.(1) The Commissioner may make with a person a written agreement under which the person is to pay specified amounts, on specified days, for the purpose of discharging one or more specified liabilities of the person, each of which is:

- (a) a liability under a remittance provision; or
- (b) a liability to pay an estimate.

“(2) An agreement may contain other provisions.

“(3) An agreement may also provide that, if the person contravenes specified provisions of it, so much of the total of the specified amounts as remains unpaid becomes due and payable on the day of the contravention. If an agreement so provides, the specified provisions are called **special conditions**.

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“(4) The amounts specified in an agreement are due and payable on the specified days.

“(5) However, if:

- (a) a specified amount is not paid on or before the specified day; or
- (b) the person contravenes a special condition;

so much of the total of the specified amounts as remains unpaid:

- (c) becomes due and payable on that day, or on the day of the contravention, as the case may be; and
- (d) is called **the balance payable under the agreement**.

“(6) Subsections (4) and (5) have effect despite Divisions 2, 3A, 3B and 4 and the other provisions of this Division, but are to be ignored:

- (a) in calculating a penalty under any of those Divisions; and
- (b) for the purposes of this Division (except this section) and Division 9.

“(7) The Commissioner may make with a person a written agreement varying or terminating an agreement with the person that is in force under this section.

“(8) Nothing in Division 9 obliges the Commissioner to enter into an agreement with a company.

Effect of certain payments

“222ALB.(1) If an amount is paid under an agreement relating to 2 or more liabilities at least one of which is:

- (a) a liability to pay an estimate; or
- (b) a liability to which an estimate relates;

the Commissioner may apply the amount, in whatever way he or she thinks appropriate, towards discharging any one or more of those liabilities.

“(2) If, because of a determination under subsection 221R(1B), 221YHN(5) or 221YHZJ(4), an amount is taken to have been applied towards discharging a liability to pay an amount under an agreement:

- (a) the Commissioner may determine in writing how he or she would have applied the amount under subsection (1) of this section if it had been paid under the agreement; and
- (b) if the Commissioner does so—section 222AHA has effect as if the amount had been paid under the agreement and then applied as set out in the determination under paragraph (a) of this subsection.

“(3) If, because of section 222AOH or 222APG, a liability to which an agreement relates is discharged to the extent of a particular amount, the liability to pay the amounts specified in the agreement is discharged to the extent of the same amount.

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“Subdivision H—Miscellaneous

Effect of judgment on liability on which it is based

“222AMA.(1) The unpaid amount of an estimate, or of a liability to which an estimate relates, does not cease to be payable merely because a judgment has been given by, or entered in, a court.

“(2) The provisions of this Division (except sections 222AHA, 222AIF and 222AIG) apply in relation to liability under a judgment, so far as it is based on:

- (a) a liability to pay an estimate; or
- (b) a liability to which an estimate relates;

in the same way as they apply to the liability referred to in paragraph (a) or (b) of this subsection.

“(3) Nothing in this Division affects the conclusiveness of a judgment as to the amount of a liability on which it is based.

Notices under this Division where trustee has control of affairs of person liable

“222AMB.(1) If:

- (a) the Commissioner has given a notice to a person under this Division; and
- (b) there is a trustee of the person;

the person must give a copy of the notice to the trustee as soon as practicable, and in any event within 7 days, after:

- (c) if the Commissioner gave the notice to the person before the day when the person’s property vested in, or control of the person’s property passed to, the trustee—that day; or
- (d) otherwise—the day when the Commissioner gave the notice to the person.

“(2) If the Commissioner sends a notice at different times to a person and to the person’s trustee, each notice is taken to have been sent at the later or latest of those times.

“Division 9—Penalties for directors of non-remitting companies

“Subdivision A—Object and interpretation

Object and outline

“222ANA.(1) The purpose of this Division is to ensure that a company either meets its obligations under Division 2, 3A, 3B, 4 or 8, or goes promptly into voluntary administration under Part 5.3A of the Corporations Law or into liquidation.

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“(2) The Division imposes a duty on the directors to cause the company to do so. The duty is enforced by penalties. However, a penalty can be recovered only if the Commissioner gives written notice to the person concerned. The penalty is automatically remitted if the company meets its obligations, or goes into voluntary administration or liquidation, within 14 days after the notice is given.

“(3) A penalty recovered under this Division is applied towards meeting the company’s obligations under the relevant Division. Conversely, amounts paid by the company reduce the amount of a penalty.

“(4) Sections 221R, 221YHN, 221YHZJ and 221YR provide for the recovery of amounts payable under this Division.

Interpretation

“222ANB.(1) Except so far as the contrary intention appears, an expression has the same meaning in this Division as in Division 8.

“(2) A deduction purporting to be made for the purposes of a Division is taken to be made for the purposes of that Division.

*“Subdivision B—Company failing to remit under
Division 2, 3A, 3B or 4*

Application

“222AOA.(1) This Subdivision applies if a company incorporated under the Corporations Law of a State or Territory has made, for the purposes of Division 2, 3A, 3B or 4, one or more deductions having a particular due date.

“(2) The earliest day on which the company made for the purposes of that Division a deduction that has that due date is called **the first deduction day**.

“(3) That due date is called **the due date**.

Directors to cause company to remit or to go into voluntary administration or liquidation

“222AOB.(1) The persons who are directors of the company from time to time on or after the first deduction day must cause the company to do at least one of the following on or before the due date:

- (a) comply with Division 2, 3A, 3B or 4, as the case may be, in relation to each deduction:
 - (i) that the company has made for the purposes of that Division; and
 - (ii) whose due date is the same as the due date;
- (b) make an agreement with the Commissioner under section 222ALA in relation to the company’s liability under a remittance provision in respect of such deductions;

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- (c) appoint an administrator of the company under section 436A of the Corporations Law;
- (d) begin to be wound up within the meaning of that Law.

“(2) This section is complied with when:

- (a) the company complies as mentioned in paragraph (1)(a); or
- (b) the company makes an agreement as mentioned in paragraph (1)(b);
or
- (c) an administrator of the company is appointed under section 436A, 436B or 436C of the Corporations Law; or
- (d) the company begins to be wound up within the meaning of that Law;

whichever first happens, even if the directors did not cause the event to happen.

“(3) If this section is not complied with on or before the due date, the persons who are directors of the company from time to time after the due date continue to be under the obligation imposed by subsection (1) until this section is complied with.

Penalty for directors in office on or before due date

“222AOC. If section 222AOB is not complied with on or before the due date, each person who was a director of the company at any time during the period beginning on the first deduction day and ending on the due date is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the company’s liability under a remittance provision in respect of deductions:

- (a) that the company has made for the purposes of Division 2, 3A, 3B or 4, as the case may be; and
- (b) whose due date is the same as the due date.

Penalty for new directors

“222AOD. If:

- (a) after the due date, a person becomes, or again becomes, a director of the company at a time when section 222AOB has not yet been complied with; and
- (b) at the end of 14 days after the person becomes a director, that section has still not been complied with;

the person is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the liability referred to in section 222AOC.

Commissioner must give 14 days’ notice before recovering penalty

“222AOE. The Commissioner is not entitled to recover from a person a penalty payable under this Subdivision until the end of 14 days after the Commissioner gives to the person a notice that:

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- (a) sets out details of the unpaid amount of the liability referred to in section 222AOC; and
- (b) states that the person is liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount, but that the penalty will be remitted if, at the end of 14 days after the notice is given:
 - (i) the liability has been discharged; or
 - (ii) an agreement relating to the liability is in force under section 222ALA; or
 - (iii) the company is under administration within the meaning of the Corporations Law; or
 - (iv) the company is being wound up.

How notice may be given

“222AOF.(1) If it appears from ASC documents that a person is, or has been within the last 7 days, a director of the company, the Commissioner may give the person a notice under section 222AOE by leaving it at, or sending it by post to, an address that appears from such documents to be, or to have been within the last 7 days, the person’s place of residence or business.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* are also relevant to giving a notice under section 222AOE.

“(2) In this section:

‘ASC document’ means a return:

- (a) lodged with the Australian Securities Commission under section 242 or 335 of the Corporations Law of a State or Territory; or
- (b) lodged with a person under a law that, for the purposes of the Corporations Law of a State or Territory, is a previous law corresponding to section 242 or 335 of that Law.

Remission of penalty if section 222AOB complied with before notice period ends

“222AOG. If:

- (a) a penalty is payable by a person under this Subdivision; and
- (b) section 222AOB is complied with at a time when the Commissioner has not yet given the person a notice under section 222AOE, or within 14 days after the Commissioner gives the person such a notice;

the penalty is remitted because of this section.

Effect of director paying penalty or company discharging underlying liability

“222AOH.(1) If one or more persons are liable to a penalty under this Subdivision, the following are **parallel liabilities**:

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- (a) the liability of that person, or of each of those persons, to the penalty;
- (b) the liability referred to in section 222AOC;
- (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b).

“(2) This means that if, at a particular time:

- (a) an amount is paid or applied towards discharging one of the parallel liabilities; or
- (b) because of section 222AHA, one of the parallel liabilities is discharged to the extent of a particular amount;

each of the others that is in existence at that time is discharged to the extent of the same amount. However, this subsection does not discharge a liability to a greater extent than the amount of the liability.

Director’s rights of indemnity and contribution

“222AOI. A person who pays an amount under section 222AOC or 222AOD has the same rights:

- (a) whether by way of indemnity, subrogation, contribution or otherwise; and
- (b) against the company or anyone else;

as if the payment had been made under a guarantee:

- (c) of the liability referred to in section 222AOC; and
- (d) under which the person, and every other person who has paid, or from whom the Commissioner is entitled to recover, a penalty under this Subdivision, were jointly and severally liable as guarantors.

Defences

“222AOJ.(1) This section has effect for the purposes of:

- (a) proceedings to recover from a person a penalty payable under this Subdivision; or
- (b) proceedings under section 222AOI against a person of the kind referred to in paragraph 222AOI(d).

“(2) It is a defence if it is proved that, because of illness or for some other good reason, the person did not take part in the management of the company at any time when:

- (a) the person was a director; and
- (b) the directors were under the obligation to comply with subsection 222AOB(1).

“(3) It is also a defence if it is proved that:

- (a) the person took all reasonable steps to ensure that the directors complied with subsection 222AOB(1); or

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(b) there were no such steps that the person could have taken.

“(4) In subsection (3):

‘reasonable’ means reasonable having regard to:

- (a) when, and for how long, the person was a director and took part in the management of the company; and
- (b) all other relevant circumstances.

“*Subdivision C—Company failing to pay estimate under Division 8*

Application

“222APA. This Subdivision applies if a company incorporated under the Corporations Law of a State or Territory becomes liable under section 222AHA to pay an estimate.

Directors to cause company to pay estimate or to go into voluntary administration or liquidation

“222APB.(1) The persons who are directors of the company from time to time on and after the day when the Commissioner sent to the company notice of the estimate must cause the company to do at least one of the following within 14 days after that day:

- (a) pay to the Commissioner the amount of the estimate;
- (b) make an agreement with the Commissioner under section 222ALA in relation to the company’s liability to pay the estimate;
- (c) appoint an administrator of the company under section 436A of the Corporations Law;
- (d) begin to be wound up within the meaning of that Law.

“(2) This section is complied with when:

- (a) the company’s liability to pay the estimate is discharged; or
- (b) the company makes an agreement as mentioned in paragraph (1)(b);
or
- (c) an administrator of the company is appointed under section 436A, 436B or 436C of the Corporations Law;

(d) the company begins to be wound up within the meaning of that Law; whichever first happens, even if the directors did not cause the event to happen.

“(3) If this section is not complied with before the end of the 14 days, the persons who are directors of the company from time to time after the 14 days continue to be under the obligation imposed by subsection (1) until this section is complied with.

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Penalty for directors in office within 14 days after notice of estimate

“222APC. If section 222APB is not complied with before the end of the 14 days, each person who was a director of the company at any time during the 14 days is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the estimate.

Penalty for new directors

“222APD. If:

- (a) after the end of the 14 days, a person becomes, or again becomes, a director of the company at a time when section 222APB has not yet been complied with; and
- (b) at the end of 14 days after the person becomes a director, that section has still not been complied with;

the person is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the estimate.

Commissioner must give 14 days’ notice before recovering penalty

“222APE.(1) The Commissioner is not entitled to recover from a person a penalty payable under this Subdivision until the end of 14 days after the Commissioner gives to the person a notice (**‘the penalty notice’**) that:

- (a) sets out details of the unpaid amount of the estimate; and
- (b) if the penalty notice is given within 14 days after the Commissioner sent to the company notice of the estimate—states that at the end of those 14 days the person will become liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount unless:
 - (i) the company’s liability to pay the estimate has been discharged; or
 - (ii) an agreement relating to that liability is in force under section 222ALA; or
 - (iii) the company is under administration within the meaning of the Corporations Law; or
 - (iv) the company is being wound up; and
- (c) if the penalty notice is given more than 14 days after the Commissioner sent to the company notice of the estimate—states that the person is liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount; and
- (d) states that the penalty will be remitted if, at the end of 14 days after the penalty notice is given:
 - (i) the company’s liability to pay the estimate has been discharged; or

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- (ii) an agreement relating to that liability is in force under section 222ALA; or
- (iii) the company is under administration within the meaning of the Corporations Law; or
- (iv) the company is being wound up.

“(2) Section 222AOF applies to a notice under this section in the same way as to a notice under section 222AOE.

Remission of penalty if section 222APB complied with before notice period ends

“222APF. If:

- (a) a penalty is payable by a person under this Subdivision; and
 - (b) section 222APB is complied with at a time when the Commissioner has not yet given the person a notice under section 222APE, or within 14 days after the Commissioner gives the person such a notice;
- the penalty is remitted because of this section.

Effect of director paying penalty or company discharging liability in respect of estimate

“222APG.(1) If one or more persons are liable to a penalty under this Subdivision, the following are **parallel liabilities**:

- (a) the liability of that person, or of each of those persons, to the penalty;
- (b) the company’s liability to pay the estimate;
- (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b).

“(2) This means that if, at a particular time:

- (a) an amount is paid or applied towards discharging one of the parallel liabilities; or
- (b) because of section 222AHA, one of the parallel liabilities is discharged to the extent of a particular amount;

each of the others that is in existence at that time is discharged to the extent of the same amount. However, this subsection does not discharge a liability to a greater extent than the amount of the liability.

Director’s rights of indemnity and contribution

“222APH. A person who pays an amount under section 222APC or 222APD has the same rights:

- (a) whether by way of indemnity, subrogation, contribution or otherwise; and
- (b) against the company or anyone else;

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as if the payment had been made under a guarantee:

- (c) of the liability to pay the estimate; and
- (d) under which the person, and every other person who has paid, or from whom the Commissioner is entitled to recover, a penalty under this Subdivision, were jointly and severally liable as guarantors.

Defences

“222API.(1) This section has effect for the purposes of:

- (a) proceedings to recover from a person a penalty payable under this Subdivision; or
- (b) proceedings under section 222APH against a person of the kind referred to in paragraph 222APH(d).

“(2) It is a defence if it is proved that, because of illness or for some other good reason, the person did not take part in the management of the company at any time when:

- (a) the person was a director; and
- (b) the directors were under the obligation to comply with subsection 222APB(1).

“(3) It is also a defence if it is proved that:

- (a) the person took all reasonable steps to ensure that the directors complied with subsection 222APB(1); or
- (b) there were no such steps that the person could have taken.

“(4) In subsection (3):

‘**reasonable**’ means reasonable having regard to:

- (a) when, and for how long, the person was a director and took part in the management of the company; and
- (b) all other relevant circumstances.

*“Subdivision D—Company contravening payment agreement under
Division 8*

Directors to ensure that company complies with payment agreement

“222AQA.(1) If a company incorporated under the Corporations Law of a State or Territory makes an agreement with the Commissioner under section 222ALA of this Act, the persons who are directors of the company from time to time must cause the company to comply with the agreement.

“(2) If the company contravenes the agreement by failing to pay a specified amount on or before the specified day, or by contravening a special condition, each person who was a director of the company at any time during the period beginning on the day when the agreement was made and ending on the day of the contravention is liable to pay to the Commissioner, by way of penalty, an amount equal to the balance payable under the agreement.

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Effect of director paying penalty or company discharging liability

“222AQB.(1) If one or more persons are liable under section 222AQA to a penalty equal to the balance payable under the agreement, the following are **parallel liabilities**:

- (a) the liability of that person, or of each of those persons, to the penalty;
- (b) the company’s liability to pay that balance;
- (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b).

“(2) This means that if, at a particular time, an amount is paid or applied towards discharging one of the parallel liabilities, each of the others that is in existence at that time is discharged to the extent of the same amount. However, this subsection does not discharge a liability to a greater extent than the amount of the liability.

“(3) If, because of subsection (2), the company’s liability to pay that balance is discharged to the extent of a particular amount:

- (a) the Commissioner may determine in writing how he or she would have applied the amount under subsection 222ALB(1) if it had been paid under the agreement; and
- (b) if the Commissioner does so—section 222AHA has effect as if the amount had been paid under the agreement and then applied as set out in the determination.

Director’s rights of indemnity and contribution

“222AQC. A person who pays an amount under section 222AQA has the same rights:

- (a) whether by way of indemnity, subrogation, contribution or otherwise; and
- (b) against the company or anyone else;

as if the payment had been made under a guarantee:

- (c) of the company’s liability to pay the balance payable under the agreement; and
- (d) under which the person and every other person who was a director of the company as mentioned in subsection 222AQA(2) were jointly and severally liable as guarantors.

Defences

“222AQD.(1) This section has effect for the purposes of:

- (a) proceedings to recover from a person a penalty payable under section 222AQA; or
- (b) proceedings under section 222AQC against a person of the kind referred to in paragraph 222AQC(d).

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“(2) It is a defence if it is proved that, because of illness or for some other good reason, the person did not take part in the management of the company at any time, during the period referred to in subsection 222AQA(2), when the person was a director.

“(3) It is also a defence if it is proved that:

- (a) the person took all reasonable steps to ensure that the company complied with the agreement; or
- (b) there were no such steps that the person could have taken.

“(4) In subsection (3):

‘reasonable’ means reasonable having regard to:

- (a) when, and for how long, the person was a director and took part in the management of the company; and
- (b) all other relevant circumstances.

“(5) If the person was a director of the company at the time when the agreement was made, he or she is not entitled to rely on a defence under subsection (2) or (3) unless it is also proved that, at that time, the person had reasonable grounds to expect, and did expect, that the company would comply with the agreement.

“Division 10—Miscellaneous

This Part not to limit or exclude Chapter 5 of the Corporations Law

“222ARA. To avoid doubt, this Part is not intended to limit or exclude the operation of Chapter 5 of the Corporations Law of a State or Territory, in so far as that Chapter can operate concurrently with this Part.”.

Application of certain amendments

17.(1) In this section:

“amended Act” means the Principal Act as amended by this Act.

(2) The amendment made by section 4 applies to a person who becomes required after the commencement of this section to give a notice to the Commissioner under subsection 215(1) of the amended Act.

(3) Subsection 222AGA(1) of the amended Act applies in relation to a deduction if, and only if, its due date (within the meaning of Division 8 of Part VI of that Act) is after 30 June 1993, even if the deduction was made before 1 July 1993.

(4) Subsection 222ALA(1) of the amended Act applies in relation to a liability under a remittance provision (within the meaning of Division 8 of Part VI of that Act) if, and only if, the liability arose because of deductions whose due date (within the meaning of that Division) is after 30 June 1993, even if the deductions were made before 1 July 1993.

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(5) Subdivision B of Division 9 of Part VI of the amended Act applies in relation to a deduction:

- (a) that was made after the commencement of this section; and
- (b) whose due date (within the meaning of that Division) is after 30 June 1993.

(6) Subsection 222ALA(1), and Subdivision C of Division 9 of Part VI, of the amended Act apply in relation to an estimate under section 222AGA of that Act, even if the estimate relates to deductions made before 1 July 1993.

**PART 3—AMENDMENT OF THE ADMINISTRATIVE
DECISIONS (JUDICIAL REVIEW) ACT 1977**

Principal Act

18. In this Part, “**Principal Act**” means the *Administrative Decisions (Judicial Review) Act 1977*².

Schedule 1

19. Schedule 1 to the Principal Act is amended by inserting after paragraph (e) the following paragraph:

“(ea) decisions of the Commissioner of Taxation under Subdivision B (except subsection 222AGF(3)) of Division 8 of Part VI of the *Income Tax Assessment Act 1936*;

Note: Subdivision B deals with the making, reduction and revocation of estimates of certain liabilities.”.

PART 4—AMENDMENTS OF THE CORPORATIONS LAW

Corporations Law

20. In this Part, “**Corporations Law**” means the Corporations Law set out in section 82 of the *Corporations Act 1989*³.

21. After section 443B of the Corporations Law the following section is inserted:

Certain taxation liabilities

“443BA.(1) The administrator of a company is liable to pay to the 30
Commissioner of Taxation:

- (a) each amount payable under a remittance provision because of a deduction made by the administrator; and
- (b) without limiting paragraph (a), so much of each amount payable under a remittance provision because of a deduction made by the 35
company during the administration as equals so much of the deduction as is attributable to a period throughout which the administration continued;

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even if the amount became payable after the end of the administration.

“(2) In this section:

‘**remittance provision**’ means any of the following provisions of the *Income Tax Assessment Act 1936*:

- (a) section 221F (except subsection 221F(12)) or section 221G (except subsection 221G(4A));
- (b) subsection 221YHDC(2);
- (c) subsection 221YHZD(1) or (1A);
- (d) subsection 221YN(1);

‘**unpaid amount**’, in relation to an estimate, has the same meaning as in Division 8 of Part VI of the *Income Tax Assessment Act 1936*.”.

Administrator not otherwise liable for company’s debts

22. Section 443C of the Corporations Law is amended by omitting “section 443A or 443B” and substituting “this Subdivision”.

Right of indemnity

23. Section 443D of the Corporations Law is amended by omitting “section 443A or 443B” and substituting “Subdivision A or a remittance provision as defined in subsection 443BA(3)”.

Creditor may serve statutory demand on company

24. Section 459E of the Corporations Law is amended by adding at the end the following subsections:

“(5) A demand under this section may relate to a liability under any of the following provisions of the *Income Tax Assessment Act 1936*:

- (a) section 221F (except subsection 221F(12)), section 221G (except subsection 221G(4A)) or section 221P;
- (b) subsection 221YHDC(2);
- (c) subsection 221YHZD(1) or (1A);
- (d) subsection 221YN(1);
- (e) section 222AHA;

even if the liability arose before the commencement of this section.

“(6) Subsection (5) is to avoid doubt and is not intended to limit the generality of a reference in this Law to a debt.”.

25. After section 588E of the Corporations Law the following section is inserted in Division 1 of Part 5.7B:

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Certain taxation liabilities taken to be debts

“588F.(1) For the purposes of this Part, a company’s liability under a remittance provision to pay to the Commissioner of Taxation an amount equal to a deduction made by the company, after the commencement of this section, from a payment:

- (a) is taken to be a debt; and
- (b) is taken to have been incurred when the deduction was made.

“(2) In this section:

‘**remittance provision**’ means any of the following provisions of the *Income Tax Assessment Act 1936*:

- (a) section 221F (except subsection 221F(12)) or section 221G (except subsection 221G(4A));
- (b) subsection 221YHDC(2);
- (c) subsection 221YHZD(1) or (1A);
- (d) subsection 221YN(1).

“(3) This section is not intended to limit the generality of a reference in this Law to a debt or to incurring a debt.”.

Transaction not voidable as against certain persons

26. Section 588FG of the Corporations Law is amended by adding at the end the following subsections:

“(3) For the purposes of paragraph (2)(c), if an amount has been paid or applied towards discharging to a particular extent a liability to pay tax, the discharge is valuable consideration provided:

- (a) by the person to whom the tax is payable; and
- (b) under any transaction that consists of, or involves, the payment or application.

“(4) In subsection (3):

‘**tax**’ means tax (however described) payable under a law of the Commonwealth or of a State or Territory, and includes, for example, a levy, a charge, and municipal or other rates.

“(5) For the purposes of paragraph (2)(c), if an amount has been paid or applied towards discharging to a particular extent a liability to the Commonwealth, or to the Commissioner of Taxation, that arose under or because of an Act of which the Commissioner has the general administration, the discharge is valuable consideration provided by the Commonwealth, or by the Commissioner, as the case requires, under any transaction that consists of, or involves, the payment or application.

“(6) Subsections (3) and (5):

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- (a) are to avoid doubt and are not intended to limit the cases where a person may be taken to have provided valuable consideration under a transaction; and
- (b) apply to an amount even if it was paid or applied before the commencement of this subsection.”.

27. After section 588FG of the Corporations Law the following sections are inserted:

Directors to indemnify Commissioner of Taxation if certain payments set aside

“588FGA.(1) This section applies if the Court makes an order under section 588FF against the Commissioner of Taxation because of the payment of an amount in respect of a liability under any of the following provisions of the *Income Tax Assessment Act 1936*:

- (a) section 221F (except subsection 221F(12)), section 221G (except subsection 221G(4A)) or section 221P;
- (b) subsection 221YHDC(2);
- (c) subsection 221YHZD(1) or (1A);
- (d) subsection 221YN(1);
- (e) section 222AHA.

“(2) Each person who was a director of the company when the payment was made is liable to indemnify the Commissioner in respect of any loss or damage resulting from the order.

“(3) An amount payable to the Commissioner under subsection (2):

- (a) is a debt due to the Commonwealth and payable to the Commissioner; and
- (b) may be recovered in a court of competent jurisdiction by the Commissioner, or a Deputy Commissioner of Taxation, suing in his or her official name.

“(4) The Court may, in the proceedings in which it made the order against the Commissioner, order a person to pay to the Commissioner an amount payable by the person under subsection (2).

“(5) A person who pays an amount under subsection (2) has the same rights:

- (a) whether by way of indemnity, subrogation, contribution or otherwise; and
- (b) against the company or anyone else;

as if the payment had been made under a guarantee:

- (c) of the liability referred to in subsection (1); and

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- (d) under which the person and every other person who was a director of the company as mentioned in subsection (2) were jointly and severally liable as guarantors.

Defences in proceedings under section 588FGA

“588FGB.(1) This section has effect for the purposes of:

- (a) proceedings to recover from a person an amount payable under subsection 588FGA(2); and
- (b) proceedings under subsection 588FGA(5) against a person of the kind referred to in paragraph 588FGA(5)(d).

“(2) The time when the payment referred to in subsection 588FGA(1) was made is called **the payment time**.

“(3) It is a defence if it is proved that, at the payment time, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent even if it made the payment.

“(4) Without limiting the generality of subsection (3), it is a defence if it is proved that, at the payment time, the person:

- (a) had reasonable grounds to believe, and did believe:
- (i) that a competent and reliable person (**‘the other person’**) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and
- (ii) that the other person was fulfilling that responsibility; and
- (b) expected, on the basis of information provided to the first-mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it made the payment.

“(5) It is a defence if it is proved that, because of illness or for some other good reason, the person did not take part in the management of the company at the payment time.

“(6) It is a defence if it is proved that:

- (a) the person took all reasonable steps to prevent the company from making the payment; or
- (b) there were no such steps the person could have taken.

“(7) In determining whether a defence under subsection (6) has been proved, the matters to which regard is to be had include, but are not limited to:

- (a) any action the person took with a view to appointing an administrator of the company; and
- (b) when that action was taken; and

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(c) the results of that action.”.

Application of amount paid as compensation

28. Section 588Y of the Corporations Law is amended by adding at the end the following subsection:

“(4) Subsection (2) does not apply in relation to a liability that is taken to be a debt because of section 588F.”.

PART 5—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Schedule

29. The Acts specified in the Schedule are amended as there set out.

Application of certain amendments of the *Bankruptcy Act 1966*

30.(1) The amendments of section 122 of the *Bankruptcy Act 1966* apply to a payment made on or after the day on which this Act receives the Royal Assent, even if the tax or other amount became payable before that day.

(2) Despite the repeal of subsection 123(5) of the *Bankruptcy Act 1966*, that subsection continues to apply in relation to a deduction in relation to which section 221P or 221YU of the *Income Tax Assessment Act 1936* applies.

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SCHEDULE 1

Section 29

AMENDMENTS OF ACTS CONSEQUENT ON THIS ACT

Bankruptcy Act 1966

Subsection 109(1):

Omit everything before “applying” (first occurring), substitute “Subject to this Act, the trustee must, before”.

After subsection 109(1):

Insert:

“(1A) Subsection (1) has effect subject to:

- (a) section 50 of the *Child Support (Registration and Collection) Act 1988*; and
- (b) section 221P, subsections 221YHJ(3), (4) and (5) and 221YHZD(3), (4) and (5) and section 221YU of the *Income Tax Assessment Act 1936*.

Note: The provisions of the *Income Tax Assessment Act 1936* referred to do not apply to liabilities arising after 30 June 1993.”.

Paragraph 122(4)(b):

Omit the paragraph, substitute:

“(b) a payment of tax, or of any other amount payable to the Commonwealth, or to the Commissioner of Taxation, under or because of an Act of which the Commissioner has the general administration, is taken to be made for valuable consideration and in the ordinary course of business; and”.

Subsection 122(7):

Omit the subsection, substitute:

“(7) In this section:

‘tax’ means tax (however described) payable under a law of the Commonwealth or of a State or Territory, and includes, for example, a levy, a charge, and municipal or other rates.”.

Subsection 123(5):

Omit the subsection.

Child Support (Registration and Collection) Act 1988

Subsection 50(2):

Add at the end the following note:

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SCHEDULE—continued

“Note: The subsections of the *Income Tax Assessment Act 1936* referred to in paragraphs (a) and (b) do not apply to liabilities arising after 30 June 1993.”

Crimes (Taxation Offences) Act 1980

Subsection 3(1) (paragraphs (a), (aa), (b), (c), (ca), (d), (e) and (g) of the definition of “income tax”):

Add at the end “and”.

Subsection 3(1) (definition of “income tax”):

Add at the end:

“(h) an amount payable to the Commissioner under Division 8 or 9 of Part VI of the *Income Tax Assessment Act*;”.

Crown Debts (Priority) Act 1981

Section 4:

Omit “, 221YHJ, 221YZD or”, substitute “, subsections 221YHJ(3), (4) and (5) or 221YHZD(3), (4) and (5) or section”.

After section 4:

Add:

“Note: The provisions of the *Income Tax Assessment Act 1936* referred to do not apply to liabilities arising after 30 June 1993.”

Life Insurance Policy Holders’ Protection Levies Collection Act 1991

Subsection 32(1):

Add at the end the following note:

“Note: The subsections of the *Income Tax Assessment Act 1936* referred to in paragraphs (a) and (b) do not apply to liabilities arising after 30 June 1993.”

NOTES

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93,

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NOTES—continued

- 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; Nos. 2, 11, 56, 70, 73, 105, 107, 129, 163 and 167, 1989; No. 97, 1989 (as amended by No. 105, 1989); Nos. 20, 35, 45, 57, 58, 60, 61, 87, 119 and 135, 1990; Nos. 4, 5, 6, 48, 55, 100, 203, 208 and 216, 1991; Nos. 3, 35, 69, 70, 80, 81, 92, 98, 101, 118, 138, 167, 190, 191, 208, 223, 224, 227, 237 and 238, 1992; and Nos. 000 and 000, 1993.
2. No. 59, 1977 as amended. For previous amendments, see Nos. 66, 1978; No. 111, 1980, Nos. 111, 115, 122, 137, 140 and 153, 1982; Nos. 62 and 144, 1983; Nos. 159 and 164, 1984; Nos. 4, 47 and 65, 1985; Nos. 41, 76, 102, 112 and 153, 1986; Nos. 62, 76, 141 and 145, 1987; No. 5, 1988; No. 8, 1988 (as amended by No. 120, 1988); Nos. 63, 87, 109, 111 and 127, 1988; Nos. 14, 107, 150, 153 and 159, 1989; Nos. 70, 77 and 118, 1990; Nos. 149 and 216, 1991; and Nos. 92, 151 and 196, 1992.
3. No. 109, 1989, as amended. For previous amendments, see Nos. 41 and 110, 1990; Nos. 110, 122 and 188, 1991; and Nos. 27 and 210, 1992.

[*Minister's second reading speech made in—
Senate on 19 May 1993
House of Representatives on 27 May 1993*]