



Statutory Rules 1996 No. *K*<sup>1</sup>

*263/*

## Bankruptcy Regulations

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Department,

Statutory Rules 1996 No. *h* <sup>1</sup>

*263*

## Bankruptcy Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Bankruptcy Act 1966*.

Dated

*h*

1996.

*4 December*

*h*

*WILLIAM DEANE*

Governor-General

By His Excellency's Command,

*h*

*DARYL WILLIAMS*

Attorney-General and Minister for Justice

### PART 1—PRELIMINARY

#### Citation

**1.01.** These Regulations may be cited as the Bankruptcy Regulations.

[NOTE: These Regulations are made under the *Bankruptcy Act 1966* as amended in accordance with Schedule 1 to the *Bankruptcy Legislation Act 1996*, and in exercise of the power conferred by subs. 4 (1) of the *Acts Interpretation Act 1901*.]

## Commencement

**1.02.** These Regulations commence on 16 December 1996.

[NOTE: This date is the date of commencement of Schedules 1 and 2 to the *Bankruptcy Legislation Amendment Act 1996*.]

## Interpretation

**1.03. (1)** In these Regulations, unless the contrary intention appears:

“**Act**” means the *Bankruptcy Act 1966*;

“**commencement date**” means 16 December 1996;

“**contribution assessment period**” has the meaning given by section 139K of the Act;

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

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

“**registered liquidator**” has the meaning given by the Corporations Law;

“**taxing officer**” has the same meaning as in section 167 of the Act;

“**the court**”, in relation to a judgment or order, means the court by which the judgment was given or the order was made;

“**the Index**” means the National Personal Insolvency Index established by subregulation 13.02 (1);

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

- (a) a public holiday or a bank holiday in that place; or
- (b) a Saturday or a Sunday.

(2) A reference in these Regulations to a form of a specified number is a reference to the form of that number in Schedule 1.

**PART 2—ADMINISTRATION**

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

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

[NOTE: This rate is prescribed under subsection 20J (3) of the Act.]

**PART 3—COURTS**

**Paragraph 29 (5) (b) of the Act—prescribed countries**

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

TABLE

Jersey	Singapore
Malaysia	Switzerland
Papua New Guinea	United States of America

**PART 4—PROCEEDINGS IN CONNEXION WITH BANKRUPTCY**

*Division 1—Bankruptcy notices*

**Application for bankruptcy notice**

**4.01. (1)** In order to apply for the issue of a bankruptcy notice, a person must lodge with the Official Receiver:

- (a) a duly completed draft bankruptcy notice; and

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

[NOTE: For bankruptcy notices, see r. 4.02 and Form 1.]

(2) If documents are lodged with the Official Receiver in accordance with subregulation (1), he or she must sign (by hand or by facsimile reproduction) and date the copies of the bankruptcy notice lodged in accordance with paragraph (1) (c), and return to the applicant the additional copies referred to in that paragraph.

### Form of bankruptcy notices

**4.02. (1)** For the purposes of subsection 41 (2) of the Act, the form of bankruptcy notice set out in Form 1 is prescribed.

(2) A bankruptcy notice must follow Form 1 in respect of its format (for example, bold or italic typeface, underlining and notes).

(3) Subregulation (2) is not to be taken as expressing an intention contrary to section 25C of the *Acts Interpretation Act 1901*.

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

### **Inspection of bankruptcy notices**

**4.03. (1)** Subject to subregulation (2), the only persons who may inspect a bankruptcy notice lodged with the Official Receiver are:

- (a) a person specified in the notice; and
- (b) a party to a proceeding to which the notice relates; and
- (c) a solicitor acting for a person mentioned in paragraph (a) or (b).

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

### **Judgment or order in foreign currency**

**4.04. (1)** This regulation applies to a bankruptcy notice if the judgment or order lodged under subregulation 4.01 (1) in relation to the notice is expressed in an amount of foreign currency (whether or not the judgment or order is also expressed in an amount of Australian currency).

**(2)** A bankruptcy notice to which this regulation applies must:

- (a) contain a statement to the effect that payment of the amount of foreign currency expressed in the judgment or order may be paid in that foreign currency or by means of a specified amount of Australian currency that is stated to be equivalent to the amount of foreign currency; and
- (b) set out:
  - (i) the applicable rate of exchange, being the rate worked out in accordance with subregulation (3); and
  - (ii) the conversion calculation; and

- (iii) a statement that the conversion of the amount of foreign currency into Australian currency has been made in accordance with this regulation.

(3) For the purposes of paragraph (2) (b), the conversion of an amount of foreign currency into an equivalent amount of Australian currency must be done in accordance with the exchange rate that, on the second working day before the day on which the relevant application is lodged under subregulation 4.01 (1), is the relevant opening telegraphic transfer rate of the Commonwealth Bank of Australia.

### *Division 2—Petitions*

#### **Copy of petition to be given to Official Receiver**

**4.05.** A creditor who presents a petition under Division 2 of Part IV of the Act must, within 3 days, give a copy of the petition to the Official Receiver.

#### **Control of debtor's property before sequestration**

**4.06. (1)** Where the Court makes a direction or other order under subsection 50 (1) of the Act, the creditor who applied for the direction or other order must, within 7 days, serve the following documents in accordance with subregulation (2):

- (a) a copy of the application;
- (b) a copy of any affidavit filed in support of the application;
- (c) a certified copy of the direction or other order.

**(2)** The documents must be served:

- (a) on the trustee who the Court has directed to take control of the debtor's property; and
- (b) except where that person is the Official Trustee—on the Official Receiver.



**Expenses of trustee before sequestration****4.07. (1) Where:**

- (a) the Court makes a direction or other order under subsection 50 (1) of the Act; and
- (b) the amount deposited, in accordance with the direction or other order of the Court, with the Official Trustee or a registered trustee is insufficient to meet the fees and expenses incurred by the Official Trustee or registered trustee:
  - (i) as a result of the direction or other order; or
  - (ii) in carrying out an examination of a person as a result of the issue of a summons under subsection 50 (2) of the Act;

the Official Trustee or registered trustee may:

- (c) request the creditor who made the application under subsection 50 (1) of the Act; or
- (d) apply to the Court for an order directing that creditor;

to deposit with the Official Trustee or the registered trustee a specified additional sum.

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

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

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

- (f) as a result of the direction; or

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

less the amount of any fees or expenses so incurred.

#### **Application for damages where petition dismissed**

##### **4.08. Where:**

- (a) the Court has made a direction or other order under subsection 50 (1) of the Act; and
- (b) the creditor's petition against the debtor is subsequently dismissed;

the debtor may, within 21 days after the day on which the petition is dismissed, apply to the Court for an order for:

- (c) the assessment of the amount of any damage resulting from the control of the property of the debtor by the Official Trustee or a registered trustee in accordance with the order; and
- (d) the payment by the creditor to the debtor of an amount so assessed.

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

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

- (a) by omitting from subsection (2) “An” and substituting “Subject to subsection (2A), an”;
- (b) by inserting after subsection (2) the following subsection:
  - “(2A) The Court or a magistrate may direct that an examination, or any part of an examination, under this section shall be held in private.”;
- (c) by omitting from subsection (9) “is the trustee” and substituting “has been directed to take control of the property of the debtor”;
- (d) by omitting subsection (10A);
- (e) by omitting subsection (14) and substituting the following subsections:

“(14) Subject to subsection (14A), the applicant for an examination under this section is to pay the costs incurred in connection with the examination.

“(14A) The Court or a magistrate may order that all or some of the costs mentioned in subsection (14) are to be paid by the debtor.”.

### **Acceptance of debtor’s declaration**

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

### **Prescribed information to be supplied by Official Receiver to debtor**

**4.11. (1)** For the purposes of subsections 54D (1), 55 (3A), 56B (5), 57 (3A) and 185E (1) of the Act, the following information is prescribed:

- (a) information about alternatives to bankruptcy;
- (b) information about the consequences of bankruptcy;
- (c) information about sources of financial advice and guidance to persons facing or contemplating bankruptcy;
- (d) information about a debtor’s right to choose whether the bankruptcy is administered by a registered trustee or the Official Trustee;
- (e) a statement that it is an act of bankruptcy for a debtor:
  - (i) to present to the Official Receiver, under section 54A of the Act, a declaration of intention to present a debtor’s petition; or
  - (ii) to give to the Official Trustee, under section 185C of the Act, a written proposal for a debt agreement.

**(2)** The information must be factual and objective.

**(3)** The Official Receiver must not accept a debtor’s petition under section 55, 56B or 57 of the Act unless the debtor has given to the Official Receiver a signed acknowledgment (which may be included in or appended to the petition) that the debtor has received and read the prescribed information.

**(4)** If the debtor presents a petition without having given the acknowledgement, the Official Receiver must:

- (a) if the debtor presents the petition in person—give the prescribed information to the debtor; or
- (b) if the debtor presents the petition by post—post the prescribed information to the debtor.

(5) Where a person intending to present a petition (“the intending petitioner”) is unable to properly read the petition, prescribed information and acknowledgement (“the relevant material”) because he or she is:

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

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

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

#### **Debtor’s petition—filing of trustee’s consent**

**4.12.** Where:

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

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

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

**4.13. (1)** Notice by the Official Receiver under subsection 56C (2) of the Act must:

- (a) be in writing; and

- (b) state that the petition has been referred to the Court specified in the notice; and
  - (c) state the date, time and place of hearing of the petition.
- (2) The Official Receiver must give the notice:
- (a) at least 7 days before that date; and
  - (b) in accordance with regulation 16.01;

to each member to whom, under that subsection, it is required to be given.

### ***Division 3—Miscellaneous***

#### **Notification by trustee to creditors**

**4.14. (1)** The trustee of a person who becomes bankrupt must, within 28 days after the day on which the trustee receives the bankrupt's statement of affairs, give to each creditor of the bankrupt:

- (a) a notice stating the fact and date of the bankruptcy; and
- (b) a summary of the statement of affairs of the bankrupt.

(2) If the trustee does not receive the statement of affairs within 60 days after the date of bankruptcy, he or she must give notice in writing to each creditor of the bankrupt of whom the trustee is aware:

- (a) stating that the trustee has not received the statement of affairs; and
- (b) setting out what the trustee knows of the bankrupt's affairs.

#### **Exercise of proxy by trustee's representative at meeting**

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

#### **Lodgment of proxies by fax—section 64M of the Act**

**4.16.** For the purposes of section 64M of the Act:

- (a) an instrument appointing a proxy may be lodged with the trustee by facsimile transmission; and

- (b) an instrument so lodged may be circulated by the trustee under subsection 64M (2) of the Act.

### **Inspection and copying of statement of affairs, composition or scheme of arrangement**

**4.17.** Where a person states in writing that he or she is a creditor of a bankrupt, the person may, personally or by an agent, inspect and copy:

- (a) a statement of affairs filed by the bankrupt under paragraph 54 (1) (a) or (2) (a) of the Act; or
- (b) where a proposal for a composition or scheme of arrangement in relation to the bankrupt has been accepted under subsection 73 (4) of the Act—the composition or scheme of arrangement.

### **Proposal and report for a composition or arrangement**

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

### **Meetings of creditors—modification of Division 5 of Part IV of the Act**

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

## **PART 5—CONTROL OVER PERSON AND PROPERTY OF DEBTORS AND BANKRUPTS**

### **Where debtor or bankrupt is arrested**

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

**PART 6—ADMINISTRATION OF PROPERTY**

*Division 1—Order of Payment of Debts*

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

**6.01.** (1) Payment of proceeds under paragraph 109 (1) (a) of the Act is to be in the order set out in Schedule 3.

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

**Maximum amount payable to employee**

**6.02.** (1) For the purposes of paragraph 109 (1) (e) of the Act, the maximum amount due to or in respect of an employee of a bankrupt is:

- (a) in the case of a bankruptcy occurring in the period commencing on the commencement date and ending at the end of 30 June 1997—\$3,100; or
- (b) in the case of a bankruptcy occurring in a financial year commencing on 1 July 1997 or on 1 July of a subsequent year—the amount worked out in accordance with subregulation (2).

(2) For the purposes of subparagraph (1) (b), the applicable amount is:

- (a) in the case of the financial year commencing on 1 July 1997—\$3,100 increased in accordance with the CPI rate for the financial year that commenced on 1 July 1996 and rounded down to the nearest multiple of \$50; and

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

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

[NOTE: For the meaning of “financial year”, see para. 22 (1) (e) of the *Acts Interpretation Act 1901*.]

### *Division 2—Property available for Payment of Debts*

#### **Household property**

**6.03. (1)** For the purposes of subparagraph 116 (2) (b) (i) of the Act, household property of the bankrupt specified in this regulation is household property to which subsection 116 (1) of the Act (which deals with property divisible among the creditors) does not extend.

**(2)** Subsection 116 (1) of the Act does not extend to household property (including recreational and sports equipment) that is reasonably necessary for the domestic use of the bankrupt’s household, having regard to current social standards.

**(3)** In particular (but without limiting by implication the generality of subregulation (2)), subsection 116 (1) of the Act does not extend to property of the following kinds:

- (a) in the case of kitchen equipment, cutlery, crockery, foodstuffs, heating equipment, cooling equipment, telephone equipment, fire detectors and extinguishers, anti-burglar devices, bedding, linen, towels and other household effects—that property to the extent that it is reasonably appropriate for the household, having regard to the criteria mentioned in subregulation (5);
- (b) sufficient household furniture;
- (c) sufficient beds for the members of the household; and



- (d) educational, sporting or recreational items (including books) that are wholly or mainly for the use of children or students in the household;
- (e) 1 television set;
- (f) 1 set of stereo equipment;
- (g) 1 radio;
- (h) either:
  - (i) 1 washing machine and 1 clothes drier; or
  - (ii) 1 combined washing machine and clothes drier;
- (i) either:
  - (A) 1 refrigerator and 1 freezer; or
  - (B) 1 combination refrigerator/freezer;
- (j) 1 generator, if relied on to supply electrical power to the household;
- (k) 1 telephone appliance;
- (l) 1 video recorder.

(4) For the purposes of deciding whether property, other than property of a kind mentioned in paragraphs (3) (b) to (l) (both inclusive), is property to which subregulation (2) applies, regard must be had to the following criteria:

- (a) the number and ages of members of the bankrupt's household;
- (b) any special health or medical needs of any of those members;
- (c) any special climatic or other factors (including geographical isolation) of the place where the household residence is located;
- (d) whether the property is reasonably necessary for the functioning or servicing of the household as a viable and properly run household;
- (e) whether the costs of seizure, storage and sale of the property would be likely exceed the sale price of the property;
- (f) if paragraph (e) does not apply—whether for any other reason (for example, costs of transport) the sale of the property would be likely to be uneconomical.

(5) The preceding provisions of this regulation do not prevent subsection 116 (1) of the Act from extending to antique items.

(6) For the purposes of subregulation (5), an item is taken to be antique if, and only if, a substantial part of its market value is attributable to its age or historical significance.

**Property divisible among creditors—prescribed amounts**

**6.04. (1)** For the purposes of subparagraph 116 (2) (c) (i) of the Act, the maximum total value of bankrupt's property that is for use by the bankrupt in earning income by personal exertion is:

- (a) in the case of a bankruptcy occurring in the period commencing on the commencement date and ending at the end of 30 June 1997—\$2,600; or
- (b) in the case of a bankruptcy occurring in a financial year commencing on 1 July 1997 or on 1 July of a subsequent year—the amount worked out in accordance with subregulation (2).

(2) For the purposes of subparagraph (1) (b), the applicable amount is:

- (a) in the case of the financial year commencing on 1 July 1997—\$2,600 increased in accordance with the CPI rate for the financial year that commenced on 1 July 1996 and rounded down to the nearest multiple of \$50; and
- (b) in the case of a subsequent financial year—the amount worked out in accordance with this subregulation for the immediately preceding financial year, increased in accordance with the CPI rate for that financial year and rounded down to the nearest multiple of \$50.

(3) For the purposes of paragraph 116 (2) (ca) of the Act, the maximum aggregate value of property used by the bankrupt primarily as a means of transport is:

- (a) in the case of a bankruptcy occurring in the period commencing on the commencement date and ending at the end of 30 June 1997—\$5,000; or
- (b) in the case of a bankruptcy occurring in a financial year commencing on 1 July 1997 or on 1 July of a subsequent year—the amount worked out in accordance with subregulation (4).

- (4) For the purposes of subparagraph (3) (b), the applicable amount is:
- (a) in the case of the financial year commencing on 1 July 1997—\$5,000 increased in accordance with the CPI rate for the financial year that commenced on 1 July 1996 and rounded down to the nearest multiple of \$50; and
  - (b) in the case of a subsequent financial year—the amount worked out in accordance with this subregulation for the immediately preceding financial year, increased in accordance with the CPI rate for that financial year and rounded down to the nearest multiple of \$50.

### *Division 3—Apportionment of property*

#### **Interpretation**

**6.05.** In this Division, unless the contrary intention appears:

“**actuary**” has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*;

“**accumulation fund**” has the same meaning as in the Superannuation Industry (Supervision) Regulations;

“**approved deposit fund**” has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*;

“**defined benefit fund**” has the same meaning as in the Superannuation Industry (Supervision) Regulations;

“**member**” means:

- (a) in relation to a regulated superannuation fund—a person who:
  - (i) is a member of the fund; or
  - (ii) receives a pension from the fund; or
  - (iii) has deferred his or her entitlement to receive a benefit from the fund; and
- (b) in relation to an approved deposit fund—a depositor in the fund;

“**pension RBL**”, in relation to a bankrupt, means the bankrupt’s pension RBL worked out under section 140ZD of the *Income Tax Assessment Act 1936*;

“**preserved component**” means the component of a bankrupt’s interest in a fund that consists of preserved benefits (ascertained in

accordance with Subdivision 6.1.2 of the Superannuation Industry (Supervision) Regulations);

“**regulated superannuation fund**” has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*;

“**restricted non-preserved component**” means the component of a bankrupt’s interest in a fund that consists of restricted non-preserved benefits (ascertained in accordance with Subdivision 6.1.3 of the Superannuation Industry (Supervision) Regulations);

“**unrestricted non-preserved component**” means the component of a bankrupt’s interest in a fund that consists of unrestricted non-preserved benefits (ascertained in accordance with Subdivision 6.1.4 of the Superannuation Industry (Supervision) Regulations);

“**withdrawal benefit**” has the same meaning as in the Superannuation Industry (Supervision) Regulations.

### **Method of apportionment—subsection 116 (6) of the Act**

#### *Purposes and application*

**6.06. (1)** This regulation is made under subsection 116 (6) of the Act and, accordingly, it sets out the method for apportioning items of property for the purposes of paragraph 116 (5) (b) of the Act. The method is to apply in respect of property of a bankrupt (in this regulation called “**the bankrupt’s property**”), where:

- (a) that property is covered by paragraph 116 (2) (d) of the Act; and
- (b) the total value of the bankrupt’s property exceeds the amount of the bankrupt’s pension RBL.

#### *One item of property—life assurance or endowment assurance*

- (2) If the bankrupt’s property:
  - (a) consists of only 1 item; and
  - (b) is in the form of:
    - (i) a policy of life assurance or endowment assurance; or
    - (ii) proceeds of a policy of that kind, being proceeds that are received by the bankrupt on or after the date of the bankruptcy;

the method of determining how the property is to be apportioned is to extend subsection 116 (1) of the Act to the proportion of that property that exceeds the amount of the bankrupt’s pension RBL.

*One item of property—payment from regulated superannuation fund or approved deposit fund*

- (3) If the bankrupt's property:
- (a) consists of only 1 item; and
  - (b) is in the form of a payment from a regulated superannuation fund or an approved deposit fund, being a payment that:
    - (i) is received by the bankrupt on or after the date of the bankruptcy; and
    - (ii) is not a pension, within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

the method of determining how the property is to be apportioned is to extend subsection 116 (1) of the Act to the proportion of that property that exceeds the amount of the bankrupt's pension RBL.

*One item of property—interest in regulated superannuation fund or approved deposit fund*

- (4) If the bankrupt's property:
- (a) consists of only 1 item; and
  - (b) is in the form of an interest in a regulated superannuation fund or an approved deposit fund;

the method of determining how the property is to be apportioned is to extend subsection 116 (1) of the Act to the components of the property in the following order:

- (c) the unrestricted non-preserved component of the property;
- (d) the restricted non-preserved component of the property;
- (e) the preserved component of the property;

until the value of the bankrupt's residuary interest in the property equals the value of the bankrupt's pension RBL.

EXAMPLE: Assume that the bankrupt has one item of property, namely an interest of \$1,200,000 in a regulated superannuation fund. This property has the following components:

- (a) an unrestricted non-preserved component of \$100,000;
- (b) a restricted non-preserved component of \$200,000;
- (c) a preserved component of \$900,000.

The amount (\$400,000) by which the property exceeds the pension RBL (\$800,000) is available towards satisfying the creditors in the bankruptcy.

The amount of \$400,000 is met by applying the whole of the non-preserved components (\$100,000 + \$200,000 = \$300,000) and \$100,000 from the preserved component.

[NOTE: The amount of the pension RBL (in the above example, \$800,000) is always protected and remains in the fund.]

*More than 1 item of property*

(5) If the bankrupt's property consists of more than 1 item, the method of determining how the property is to be apportioned is to extend subsection 116 (1) of the Act to the items in the following order:

- (a) proceeds of a policy of life assurance or endowment assurance received by the bankrupt on or after the date of the bankruptcy;
- (b) policies of life assurance or endowment assurance;
- (c) a payment from a regulated superannuation fund or an approved deposit fund, being a payment that:
  - (i) is received by the bankrupt on or after the date of the bankruptcy; and
  - (ii) is not a pension, within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- (d) the unrestricted non-preserved component of any interest in an approved deposit fund;
- (e) the unrestricted non-preserved component of any interest in an accumulation fund;
- (f) the restricted non-preserved component of any interest in an accumulation fund;
- (g) the preserved component of any interest in an approved deposit fund;
- (h) the preserved component of any interest in an accumulation fund;
- (i) the unrestricted non-preserved component of any interest in a defined benefit fund;
- (j) the restricted non-preserved component of any interest in a defined benefit fund;
- (k) the preserved component of any interest in a defined benefit fund;

until the value of the bankrupt's residuary interest in the property equals the value of the bankrupt's pension RBL.

**Method of working out value of property—subsection 116 (7) of the Act**

**6.07. (1)** This regulation is made under subsection 116 (7), and for the purposes of subsection 116 (5), of the Act.

(2) In the case of property that is an interest in a policy of life assurance or endowment assurance, the value of the bankrupt's interest in the property is taken to be the amount available in cash on voluntary termination of the policy at the date of bankruptcy.

(3) In the case of property that is an interest in an accumulation fund or an approved deposit fund, the value of the bankrupt's interest in the property is taken to be the withdrawal benefit of the bankrupt in the fund at the date of bankruptcy.

(4) Subject to subregulation (5), in the case of property that is an interest in a defined benefit fund, the value of the bankrupt's interest in the property is taken to be the withdrawal benefit of the bankrupt in the fund at the date of bankruptcy.

(5) If the withdrawal benefit is not an immediately payable lump sum, the amount of the withdrawal benefit is to be determined by an actuary for the purposes of subregulation (4).

**Evidentiary certificate by trustee—subsection 116 (8) of the Act**

**6.08. (1)** This regulation is made under subsection 116 (8) of the Act.

(2) Where the bankrupt has an interest in a regulated superannuation fund or an approved deposit fund of the kind referred to in that subsection, the trustee of the bankrupt must give a request in writing to the trustee of the fund to provide a written certificate setting out the following particulars:

- (a) the withdrawal benefit of the bankrupt in the fund at the date of bankruptcy; and
- (b) the amount of each payment (if any) that the fund has paid to the bankrupt, and the date of each payment.

(3) The trustee of a fund who receives a request under subregulation (2) must sign and date a certificate setting out the requested particulars so far as it is reasonably practicable to do so,

and give it to the relevant trustee in bankruptcy within 28 days of doing so or within any further period that the relevant trustee allows.

(4) A document that purports, or appears to the court, to be a certificate given under subregulation (3) is evidence of its contents and may be tendered in evidence without being proved.

#### *Division 4—Undervalued transactions*

##### **Transfers exempt from being void against trustee**

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

#### *Division 5—Realisation of Property*

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

**6.10. (1)** A notice of disclaimer under subsection 133 (1) or (1A) of the Act must:

- (a) in every case—adequately identify:
  - (i) the bankrupt to whom the notice relates; and
  - (ii) the property or contract being disclaimed; and
- (b) in the case of disclaimer, without the leave of the Court, of:
  - (i) a lease—set out facts showing that subsection 133 (4) of the Act has been complied with; or
  - (ii) a contract—set out facts showing that the contract is, for the purposes of subsection 133 (5A) of the Act, an unprofitable contract.

(2) A trustee who gives a notice of disclaimer under subsection 133 (1) or (1A) of the Act must give the notice to each person who, to the trustee's knowledge:

- (a) in the case of disclaimer of property—has an interest in the property; or



- (b) in the case of a contract—is entitled to a benefit of, or subject to a burden or liability under, the contract.

### ***Division 6—Fringe benefits: modification of the FBTA Act***

#### **Interpretation**

**6.11** In this Division:

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

#### **Definition of “income”—section 139L of the Act**

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

**(2)** For those purposes, the following modifications of the FBTA Act apply:

- (a) a reference to a year of tax is taken to be a reference to a contribution assessment period;
- (b) a reference to the taxable value of a benefit is taken to be a reference to the value, for the purposes of the Act, of the benefit;
- (c) a reference to the declaration date is taken to be a reference to the date occurring 21 days after the end of the contribution assessment period in relation to the bankrupt;
- (d) a reference to a declaration to be given to the employer is taken to be a reference to a declaration to be given to the trustee;
- (e) a reference to a form approved by the Commissioner is taken to be a reference to a form approved by the Inspector-General;
- (f) subject to paragraph (d), a reference to an employer, or to the employer, is taken to be a reference to any person (other than the bankrupt);
- (g) a reference to an employee, or to the employee, is taken to be a reference to a bankrupt, or to the bankrupt, as the case requires;

- (h) a reference (however expressed) to:
  - (i) the employment of the employee; or
  - (ii) an associate of the employee;is to be disregarded.

(3) In spite of subregulations (1) and (2), the modifications specified or referred to in those subregulations do not apply in relation to the provision of a fringe benefit, within the meaning of the FBTA Act, where the provider of the fringe benefit:

- (a) was the employer of the bankrupt; and
- (b) provided the fringe benefit to the bankrupt in respect of his or her employment by the provider; and
- (c) was not an employer over whom the bankrupt exercised effective control, whether directly or indirectly.

### *Division 7—Contributions by bankrupt*

#### **Interpretation**

**6.13.** In this Division:

“**contributing bankrupt**” means a bankrupt who is liable to make contributions;

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

#### **Contributions by bankrupt—modes of payment**

**6.14. (1)** A contributing bankrupt may pay a contribution in any of the following ways:

- (a) in cash to the trustee at the trustee’s office during business hours;
- (b) by bank draft, cheque, money order or postal order payable to the trustee and delivered or posted to that office;
- (c) by deposit of the amount of the contribution in, or transfer of that amount to, the trustee’s bank account;
- (d) any other method authorised in writing by the trustee.

(2) In the case of payment by cheque, payment is taken to occur when the cheque is cleared and the amount of the payment is credited to the account into which the cheque is deposited.

(3) The trustee may, on reasonable notice in writing to the bankrupt, vary or cancel an authorisation under paragraph (1) (d).

(4) If the trustee incurs a delivery or postal charge (including a surcharge) or bank charge in connection with the receipt or processing of payment of a contribution, the trustee may reimburse himself or herself for the amount of the charge from the bankrupt's estate.

### **Contributions where bankrupt dies**

**6.15.** If a contributing bankrupt dies during a contribution assessment period:

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

[NOTE: For proceedings in bankruptcy on the death of the bankrupt, see s. 63 of the Act.]

### **Reasons for application to Official Receiver to vary contributions**

**6.16.** For the purposes of paragraph 139T (2) (f), of the Act, it is a prescribed reason that a circumstance has occurred in relation to the bankrupt or a dependant of the bankrupt that, in the opinion of the Official Receiver:

- (a) is of an exceptional nature; and
- (b) imposes an excessive financial burden on the bankrupt.

### **Certificate of outstanding contribution**

**6.17. (1)** A trustee may give a certificate, signed and dated by the trustee, stating:

- (a) that the trustee has made an assessment under subsection 139W (1) or (2) of the Act in relation to a bankrupt; and
- (b) the amount of the contribution to which the assessment relates that the bankrupt is liable to pay; and
- (c) that the trustee has given notice setting out particulars of the assessment to the bankrupt under subsection 139W (4) of the Act; and
- (d) the respective dates of the assessment and the notice.

(2) In proceedings against the bankrupt for recovery of the amount, or part of the amount, of a contribution, the certificate:

- (a) is evidence that the bankrupt is liable to pay the amount of contribution stated in the certificate; and
- (b) may be tendered in evidence without further proof.

### **Discharged bankrupt to give information if contribution unpaid**

**6.18.** Where:

- (a) a person is discharged from bankruptcy; and
- (b) immediately before being discharged he or she was a contributing bankrupt; and
- (c) after the discharge he or she remains liable, under section 139R of the Act, in respect of a contribution that is due and unpaid;

the person must at once give notice in writing to the trustee in relation to the bankruptcy if any change occurs in the particulars:

- (d) set out in the person's statement of affairs in relation to the bankruptcy; or
- (e) notified by the person under section 80 of the Act.

**Penalty:** 10 penalty units

[NOTE: For penalty units, see the *Crimes Act 1914*, s. 4AA. At the date of making these Regulations the amount of a penalty unit is \$100.]

**Division 8—Notice under section 139ZL of the Act**

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

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

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

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

Penalty: 2 penalty units

**(2)** Within 21 days after commencing employment with an employer, the bankrupt must give notice in writing to the trustee stating:

- (a) the employer's name and postal address; and
- (b) the address of the place where the bankrupt is employed; and
- (c) the amount of the bankrupt's average gross weekly income from the employment.

Penalty: 2 penalty units

[NOTE: For penalty units, see the *Crimes Act 1914*, s. 4AA. At the date of making these Regulations the amount of a penalty unit is \$100.]

***Division 9—Distribution of property*****Minimum amount of dividend**

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

**Manner of declaring final dividend**

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

**PART 7—DISCHARGE AND ANNULMENT****Trustee to inform the Official Receiver of return of bankrupt to Australia**

**7.01. (1)** This regulation applies to a registered trustee who is the trustee of the estate of a bankrupt, if:

- (a) an objection to the discharge of the bankrupt has been made on a ground, or on grounds that include a ground, referred to in paragraph 149D (1) (a) or (h) of the Act (which refer to the bankrupt being out of Australia); and
- (b) the bankrupt has returned to Australia; and
- (c) the trustee becomes aware that the bankrupt has returned to Australia.

**(2)** Within 7 days after becoming aware that the bankrupt has returned to Australia, the registered trustee must give notice in writing to the Official Receiver stating:

- (a) that the bankrupt has returned to Australia; and
- (b) the date on which:
  - (i) the bankrupt returned; or
  - (ii) if the trustee does not know that date—the trustee became aware that the bankrupt had returned.

Penalty: 1 penalty unit

**Trustee to inform the Official Receiver of cancellation of objection**

**7.02. (1)** This regulation applies where the Administrative Appeals Tribunal (the “AAT”), on an application under section 149Q of the Act for review of a decision of a registered trustee to file a notice of objection to the discharge of a bankrupt, cancels or varies the decision.

**(2)** Where this regulation applies, the registered trustee must, by notice in writing, inform the Official Receiver of the decision of the AAT.

**(3)** The registered trustee must give the notice within 7 days of being notified of the decision of the AAT.

Penalty: 1 penalty unit

[NOTE: For penalty units, see the *Crimes Act 1914*, s. 4AA. At the date of making these Regulations the amount of a penalty unit is \$100.]

**PART 8—TRUSTEES*****Division 1—Application for registration, or extension of registration, as a trustee***

[NOTE: For committees that deal with such applications, see Part 15.]

**Documents to accompany application for registration**

**8.01. (1)** For the purposes of paragraph 154A (3) (a) of the Act, the following documents must accompany an application to be registered as a trustee:

- (a) if the applicant relies on a qualification referred to in paragraph 8.02 (1) (a):
  - (i) an original statement in accordance with subregulation (2), certified by the appropriate officer of the university, college of advanced education or other tertiary institution; or

- (ii) a copy of the statement, certified as a copy by a person before whom an affidavit may be sworn under section 262 of the Act;
- (b) 2 references, signed by the respective referees, that contain the particulars specified in subregulation (3).

(2) A statement referred to in subparagraph (1) (a) (i) must set out the relevant qualification of the applicant and state that the qualification represents:

- (a) a course of study in accountancy of not less than 3 years' duration; and
- (b) a course of study in commercial law of not less than 2 years' duration.

(3) For the purposes of paragraph 1 (b), each reference must contain the following particulars:

- (a) the name, address and telephone number of the referee;
- (b) the occupation of the referee;
- (c) the period during which, and the circumstances under which, the referee has known the applicant;
- (d) the referee's opinion about the following matters:
  - (i) the applicant's abilities in oral and written communication;
  - (ii) the applicant's knowledge of the powers, duties and functions of a registered trustee or registered liquidator;
  - (iii) if the applicant has insufficient knowledge, or no knowledge, of the powers, duties and functions of a registered trustee or registered liquidator—whether the applicant has the capacity to acquire that knowledge within a short period of time;
  - (iv) the applicant's knowledge of business management and his or her ability to successfully conduct business activities;
- (e) whether, in the referee's opinion, the applicant has experience in assisting a registered trustee or a registered liquidator within the meaning of the *Companies Act 1981* or the Corporations Law in carrying out the functions of the trustee or liquidator and, if so:
  - (i) the nature of the activities that the applicant was required to carry out in acquiring that experience; and



- (ii) the length of the period of time during which the applicant carried out those activities; and
  - (iii) whether the applicant carried out those activities in a competent manner;
- (f) the referee's reasons for supporting the application.

### **Qualifications, experience, knowledge and abilities of applicants**

**8.02. (1)** For the purposes of paragraph 155A (2) (a) of the Act, the following qualifications, experience, knowledge and abilities are prescribed in relation to an applicant for registration as a trustee:

- (a) completion of the academic requirements for the award of a degree, diploma or similar qualification from an Australian university or college of advanced education, or other Australian tertiary institution of an equivalent standard, being a degree, diploma or similar qualification granted to a person who has completed:
  - (i) a course of study in accountancy of not less than 3 years' duration; and
  - (ii) a course of study in commercial law of not less than 2 years' duration;
- (b) engagement in relevant employment on a full-time basis for a total of not less than 2 years in the preceding 5 years;
- (c) the ability to perform satisfactorily the duties of a registered trustee.

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

**(2)** In this regulation:

**“relevant employment”** means employment that:

- (a) involves assisting a liquidator or trustee in the performance of his or her duties as a liquidator or trustee; and
- (b) involves the providing of advice in relation to bankruptcy matters; and

- (c) provides experience in insolvency administrations outside bankruptcy, including administration of receiverships, the winding up of corporations and any other similar functions.

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

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

- (a) the applicant's full name, and any alias;
- (b) the applicant's business address;
- (c) the applicant's occupation;
- (d) the date on which details in respect of the applicant are entered on the Index.

**Extension of registration—proof of insurance**

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

*Division 2—Application for change or removal of conditions on practising as a registered trustee*

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

**8.05.** For the purposes of paragraph 155E (3) (a) of the Act, an application to change or remove any conditions that apply to the applicant's practice as a registered trustee must have with it 2 references, signed by the respective referees, that contain the particulars specified in subregulation 8.01 (3).

*Division 3—Appointment as trustee of estate***Certificate of appointment under subsection 156A (3) of the Act**

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

*Notice by registered trustee of acceptance under subsection  
Division 4—Trustee’s remuneration***Fixed remuneration—prescribed rates under subsections 162 (2) and (3) of the Act**

**8.07. (1)** For the purposes of subsection 162 (2) of the Act, the rate is:

- (a) if the moneys received by the trustee do not exceed \$30,000—10 percent; or
- (b) if the moneys received by the trustee exceed \$30,000 but do not exceed \$50,000—10 percent in respect of the first \$30,000 and 7.5 percent in respect of the balance of those moneys; or
- (c) if the moneys received by the trustee exceed \$50,000—10 percent in respect of the first \$30,000, 7.5 percent in respect of the next \$20,000 and 5 percent in respect of the balance of those moneys.

**(2)** For the purposes of subsection 162 (3) of the Act, the prescribed rate is 2.5 percent.

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

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

- (a) in accordance with the scale of charges set out in the document known as the “IPAA Guide to Hourly Rates - effective 1 November 1996”, published by the Insolvency Practitioners Association of Australia; and

(b) at the level of 85 percent of those charges.”.

### **Taxation of trustee’s remuneration and costs—preliminary**

**8.09. (1)** Where the trustee of the estate of a bankrupt claims remuneration under section 162 of the Act, the bankrupt or a creditor who is dissatisfied with the amount of the claim may, by notice in writing lodged within 14 days of being notified in writing or becoming aware of the amount of the claim, request a taxing officer to tax the claim.

(2) The taxing officer must, promptly after receiving a request in accordance with subregulation (1), give notice in writing to the trustee to lodge a detailed bill of costs, in accordance with regulation 8.10, with the taxing officer within 28 days or such further period as the taxing officer may, in writing, allow.

(3) On receiving the bill of costs, the taxing officer must give notice in writing of the date, time and place for the taxation, at least 5 days before the taxation, to the trustee and the person requesting the taxation.

(4) Subject to subregulation (5), if the trustee fails to comply with a notice given under subregulation (2):

- (a) the trustee forfeits his or her right to disbursements and expenses; and
- (b) any amount that, apart from this subregulation, would have been applied as the trustee’s remuneration is to be applied for the benefit of the creditors.

(5) A trustee who is aggrieved by the operation of subregulation (4) in respect of his or her claim, or intended claim, for costs may apply to the Court for relief, and the Court may:

- (a) grant such relief; and
- (b) grant the relief on such terms, if any;

as it thinks fit.

### **Bill of costs**

**8.10. (1)** A bill of costs required under subsection 167 (1) of the Act or regulation 8.09 must:

- (a) be typed or printed on only one side of each sheet of paper; and
- (b) have a margin on the left-hand side of each sheet of paper; and
- (c) show separately the trustee's:
  - (i) professional fees; and
  - (ii) disbursements and expenses; and
- (d) in the case of a detailed bill of costs:
  - (i) number each item consecutively; and
  - (ii) in respect of each item—specify the date or dates on which the work referred to in the item was done, or the disbursement or expenditure referred to in the item was made, as the case may require.

(2) If a bill of costs complies substantially, but not strictly, with subregulation (1), it is taken, for those purposes, to be duly lodged. However, the taxing officer may require trustee to rectify the bill of costs in accordance with any direction that the taxing officer thinks fit, and if the trustee defaults the bill ceases to be so taken.

### **Taxation—hearing**

**8.11. (1)** The trustee and the person requesting a taxation may attend, or be represented at, the hearing of the taxation.

(2) At the hearing of the taxation the person requesting the taxation may object to an item in the bill of costs:

- (a) if the person has given notice in writing, at least 2 clear days before the hearing, of the nature and grounds of the objection; or
- (b) with the leave of the taxing officer—without having given such notice.

(3) The taxing officer may disallow an item or part of an item, or reduce the amount of an item or part of an item, if:

- (a) he or she considers that:
  - (i) the amount of the costs or disbursements in the item is unreasonably high; or
  - (ii) any of the costs or disbursements in the item were incurred or made improperly, unreasonably, negligently or unnecessarily; or

- (b) in the case of any disbursements in the item—they are not proved, to the taxing officer’s satisfaction, by production of a receipt, voucher or similar document.

(4) The taxing officer must, within 7 days of concluding the taxation, sign a certificate of taxation and send it to the trustee and the person requesting the taxation.

(5) An account in respect of the fee for taxation must be sent to the person requesting the taxation, and the fee is payable by that person within 7 days of receipt.

(6) In this regulation:

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

### **Remuneration of Official Trustee**

**8.12.** For the purposes of subsection 163 (1) of the Act, the fees and charges specified in regulation 16.07 and Schedule 10 are prescribed as the remuneration of the Official Trustee.

### *Division 5—Registered trustee ceasing to be trustee of an estate*

#### **Notice of removal of trustee of estate**

**8.13. (1)** This regulation applies in relation to the removal of a registered trustee if:

- (a) the Court removes the trustee, under subsection 156A (5) or 179 (1) of the Act, from the office of trustee of an estate; or
- (b) the creditors remove the trustee, under section 181 of the Act, from that office.

(2) In the event of such a removal, the person specified in paragraph (3) (a) or (b) (as the case requires) must give notice in writing to the Official Receiver, in accordance with the applicable paragraph, stating the name of the registered trustee, the fact and the date of the removal and whether the removal was by the Court or the creditors.

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

Penalty: 1 penalty unit

#### **Notice of finalisation of administration; entry on the Index**

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

Penalty: 1 penalty unit

[NOTE: For penalty units, see the *Crimes Act 1914*, s. 4AA. At the date of making these Regulations the amount of a penalty unit is \$100.]

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

### ***Division 6—Transitional***

#### **Applications under subsection 162 (5) of the Act**

**8.15. (1)** Where, before the commencement day:

- (a) an application was lodged under subsection 162 (5) of the Act for review of the amount of remuneration ; and
- (b) the review had not commenced;

the review is to be undertaken by the taxing officer.

(2) The rules and procedure that applied in relation to a review under subsection 162 (5) of the Act are taken to apply, as nearly as practicable, in relation to a review under subregulation (1).

**PART 9—DEBT AGREEMENTS****Modifications of the Act—meetings of affected creditors**

**9.01.** For the purposes of subsection 185A (2) of the Act, Division 5 of Part IV of the Act is modified in accordance with Schedule 5 in relation to any meeting called under paragraph 185A (1) (a) of the Act.

**PART 10—ARRANGEMENTS WITH CREDITORS  
WITHOUT SEQUESTRATION****Form of consent to exercise powers given by an authority under section 188 of the Act**

**10.01.** (1) A registered trustee or solicitor who gives a consent under subsection 188 (5) of the Act must sign a form of consent in accordance with the approved form.

(2) The registered trustee or solicitor must, within 14 days of consenting, give a copy of the signed form:

- (a) if the debtor resides, to the knowledge of the registered trustee or solicitor, in a District—to the Official Receiver for that District; or
- (b) in any other case—to the Official Receiver for the District in which the registered trustee or solicitor carries on business.

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

**10.02.** For the purposes of section 187A of the Act, the provisions specified in Part 1 of Schedule 6 are modified in accordance with that Part in relation to their application, in accordance with that section, to joint debtors, whether partners or not.

**Statement of debtor's affairs etc—section 188A of the Act**

**10.03.** Where a controlling trustee (other than the Official Trustee) receives a statement and proposal under section 188A of the



Act, he or she must within 3 working days give a copy of the statement and proposal to the Official Receiver.

**Documents for meeting in accordance with section 194 of the Act**

**10.04.** Where a meeting of a debtor's creditors is to be held in accordance with section 194 of the Act, the controlling trustee must give to each of the creditors, at least 10 days before the meeting:

- (a) notice in writing of the date, time and place of the meeting; and
- (b) a copy of the controlling trustee's report, prepared in accordance with subsection 189A (1) of the Act, in relation to the debtor's affairs; and
- (c) a copy of the controlling trustee's statement, prepared in accordance with subsection 189B (1) of the Act, in relation to special resolutions expected to be passed at the meeting.

**Modifications of Division 5 of Part IV of the Act—meeting of debtor's creditors**

**10.05.** For the purposes of section 196 of the Act, the provisions specified in Part 2 of Schedule 6 are modified in accordance with that Part in relation to their application, in accordance with that section, to a meeting called under an authority under section 188 of the Act.

**Application of section 64M of Part IV of the Act—meeting of debtor's creditors**

**10.06** For the purposes of section 64M of the Act in its application, in accordance with section 196 of the Act, to a meeting called under an authority under section 188 of the Act:

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

**Modifications of Part VIII of the Act—controlling trustees**

**10.07.** For the purposes of section 210 of the Act, the provisions specified in Part 3 of Schedule 6 are modified in accordance with that Part in relation to their application, in accordance with that section, to the controlling trustee of a debtor.

**Meeting if trustee does not execute deed**

**10.08. (1)** A meeting of creditors under subsection 217 (1) of the Act must be called in accordance with notice in writing of the meeting that was given at least 7 days before the meeting to each of the following persons (other than the person giving the notice):

- (a) the debtor;
- (b) the trustee required to execute the deed;
- (c) each creditor whose identity and address are known to, or can reasonably be ascertained by, the person giving the notice.

**(2)** A notice under subregulation (1) must set out the terms of any resolution proposed under subsection 217 (1) of the Act that is known to the person giving the notice.

**Notification of deed of assignment or deed of arrangement or special resolution accepting a composition**

**10.09.** A notification under paragraph 218 (1) (a) or subsection 218 (2) of the Act must:

- (a) be given in writing and in accordance with regulation 16.01; and
- (b) in the case of a notification about a deed of assignment or a deed of arrangement—state that the deed has been executed by the debtor and the trustee.

**Sequestration order, or order avoiding a deed or composition—notice to Official Receiver**

**10.10. (1)** This regulation does not apply in relation to an applicant if the applicant is the Official Receiver, the Official Trustee, the Inspector-General or a person authorised by the Inspector-General under subsection 221 (1) or 222 (4) of the Act.

(2) Where the Court makes a sequestration order under subsection 221 (1) or 222 (7) of the Act, the applicant for the order is to give notice in writing to the Official Receiver of the making of the order.

(3) Where the Court makes an order, under subsection 222 (2) or (4) of the Act, in respect of a deed or composition or a provision of a deed or composition, the applicant for the order is to give a copy of the order to the Official Receiver.

(4) A notice, or copy of an order, required by this regulation is to be given within 3 working days.

Penalty: 1 penalty unit

[NOTE: For penalty units, see the *Crimes Act 1914*, s. 4AA. At the date of making these Regulations the amount of a penalty unit is \$100.]

### **Application of section 64M of the Act to meetings called under section 223 of the Act**

**10.11.** For the purposes of section 64M of the Act in its application, in accordance with section 223A of the Act, to a meeting called under section 223 of the Act:

- (a) an instrument appointing a proxy may be lodged, by facsimile transmission, with the person who called the meeting; and
- (b) an instrument so lodged may be circulated by that person under subsection 64M (2) of the Act as so applying.

### **Modifications for the purposes of section 231 of the Act—deeds of assignment**

**10.12. (1)** For the purposes of subsection 231 (2) of the Act, the provisions specified in Part 4 of Schedule 6 are modified in accordance with that Part in relation to their application, in accordance with that subsection, to a deed of assignment of a kind mentioned in that subsection.

(2) For the purposes of subsection 231 (4) of the Act, the provisions specified in Part 3 of Schedule 6 are modified in accordance with that Part in relation to their application, in accordance with that subsection, to a trustee of a deed of assignment.

**Certificate relating to realisation of divisible property and non-availability of dividend, or payment of final dividend**

**10.13. (1)** Where the trustee of a deed of assignment is satisfied that the divisible property of the debtor has, so far as practicable, been realised and no dividend is payable to the creditors, the trustee must, if requested in writing by the debtor to do so, give to the debtor, within 7 days, a certificate signed by the trustee to that effect.

- (2) In any proceedings, a certificate under subregulation (1):
- (a) is evidence of the facts stated in it; and
  - (b) may be tendered in evidence without further proof.

(3) Where the trustee of a deed of assignment gives a certificate to the debtor under subsection 232 (1) of the Act or subregulation (1), the trustee must, within 7 days, give a copy of the certificate to the Official Receiver.

Penalty: 1 penalty unit

**Modifications for the purposes of section 237 of the Act—deeds of arrangement**

**10.14. (1)** For the purposes of subsection 237 (2) of the Act, the provisions specified in Part 5 of Schedule 6 are modified in accordance with that Part in relation to their application, in accordance with that subsection, to a deed of arrangement of a kind mentioned in that subsection.

(2) For the purposes of subsection 237 (4) of the Act, the provisions specified in Part 3 of Schedule 6 are modified in accordance with that Part in relation to their application, in accordance with that subsection, to a trustee of a deed of arrangement.

**Certificate that provisions of deed of arrangement have been carried out—copy to Official Receiver**

**10.15.** Where the trustee of a deed of arrangement gives a certificate to the debtor under subsection 237A (1) of the Act, the trustee must, within 7 days, give a copy of the certificate to the Official Receiver.

Penalty: 1 penalty unit

**Modifications for the purposes of section 243 of the Act—  
compositions**

**10.16.** For the purposes of subsection 243 (3) of the Act, the provisions specified in Parts 3 and 6 of Schedule 6 are modified in accordance with that Part in relation to their application, in accordance with that subsection, to a composition under Part X of the Act.

**Certificate that terms of composition have been carried out—  
copy to Official Receiver**

**10.17.** Where the trustee of a composition gives a certificate to the debtor under subsection 243A (1) of the Act, the trustee must, within 7 days, give a copy of the certificate to the Official Receiver.

Penalty: 1 penalty unit

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

**10.18.** Where, at a meeting, a special resolution is passed under subsection 204 (1) of the Act, the controlling trustee must give to the Official Receiver, within 7 days after the date on which the resolution is passed:

- (a) a copy of the resolution; and
- (b) notice in writing specifying the following particulars for entry in the Index:
  - (i) the date of the resolution;
  - (ii) in respect of the debtor:
    - (A) the debtor's full name, and any alias;
    - (B) the debtor's address;
    - (C) the debtor's occupation (if any);
  - (iii) in the case of a resolution concerning a deed of arrangement, deed of assignment or composition—the name of each trustee of the deed or composition who has been nominated under subsection 204 (4) of the Act.

Penalty: 1 penalty unit

(2) This regulation does not apply to the Official Trustee.

[NOTE: For penalty units, see the *Crimes Act 1914*, s. 4AA. At the date of making these Regulations the amount of a penalty unit is \$100.]

## **PART 11—ADMINISTRATION OF ESTATES OF DECEASED PERSONS IN BANKRUPTCY**

### **Statement of affairs and of administration of estate**

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

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

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

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

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

**PART 12—UNCLAIMED DIVIDENDS OR MONEYS****Statement where moneys paid into Consolidated Revenue Fund**

**12.01. (1)** Where a trustee pays moneys, under subsection 254 (2) of the Act, into the Consolidated Revenue Fund, he or she must, at the time of payment, give to the officer to whom the moneys are paid a statement setting out the name and address of:

- (a) the trustee; and
- (b) the relevant bankrupt, debtor or (subject to subregulation (2)) deceased person, as the case requires; and
- (c) each person who, so far as the trustee is aware, is entitled to the moneys or any part of the moneys.

**(2)** For the purposes of paragraph (1) (b), where the relevant person is a deceased person, the address to be stated is that person's address at the date of his or her death.

**(3)** Where the Official Trustee or Official Receiver, or a registered trustee, pays moneys, under subsection 254 (2A) of the Act, into the Consolidated Revenue Fund, he or she must, at the time of payment give to the officer to whom the moneys are paid a statement setting out the name and address of:

- (a) the trustee; and
- (b) each person who, so far as the Official Trustee, Official Receiver or registered trustee is aware, is entitled to the moneys or any part of the moneys.

**(4)** A registered trustee who gives a statement to an officer in accordance with subregulation (1) or (3) must, within 7 days, give a copy of the statement to the Official Receiver.

Penalty: 1 penalty unit

[NOTE: For penalty units, see the *Crimes Act 1914*, s. 4AA. At the date of making these Regulations the amount of a penalty unit is \$100.]



## PART 13—NATIONAL PERSONAL INSOLVENCY INDEX

### *Division 1—Preliminary*

#### **Interpretation**

**13.01.** In this Part:  
“**BIOS**” means the electronic database, known as the Bankruptcy Index Online System, maintained before the commencement date by Registrars in Bankruptcy.

#### **Establishment and maintenance of the National Personal Insolvency Index**

**13.02. (1)** For the purposes of the definition of “National Personal Insolvency Index” in subsection 5 (1) of the Act, there is established an electronic index to be known as the National Personal Insolvency Index.

(2) The Inspector-General has responsibility for the operation of the Index.

(3) Each Official Receiver is to maintain the Index on behalf of the Inspector-General.

### *Division 2—Information to be entered on the Index*

#### **What information is to be entered on the Index?**

**13.03. (1)** Subject to this regulation, the following information is to be entered on the Index:

- (a) in respect of each bankruptcy, debt agreement under Part IX of the Act, arrangement under Part X of the Act, administration under Part XI of the Act or order under section 253E of the Act, occurring or made on or after the commencement date—information of the kind specified in Schedule 8, to the extent applicable;
- (b) the information on BIOS in respect of bankruptcies (including completed bankruptcies);

- (c) in respect of each registered trustee or controlling trustee (other than the Official Trustee):
  - (i) the trustee's full name, and any alias;
  - (ii) the trustee's business address;
  - (iii) the trustee's occupation;
  - (iv) the date on which details in respect of the trustee are entered on the Index;
  - (v) the date (if any) of termination of the trustee's registration as a trustee;
- (d) in respect of each applicant for registration as a trustee:
  - (i) the applicant's full name, and any alias;
  - (ii) the applicant's business address (or, if none, his or her residential address);
  - (iii) the applicant's occupation;
  - (iv) the date on which details in respect of the applicant are entered on the Index;
- (e) in respect of each debtor specified in subregulation (3):
  - (i) the debtor's full name, and any alias;
  - (ii) the debtor's address;
  - (iii) the debtor's occupation (if any);
  - (iv) the date on which details in respect of the debtor are entered on the Index;
- (f) information that, under these Regulations, the Official Receiver:
  - (i) receives for entry on the Index; or
  - (ii) is required to enter on the Index.

**(2)** Paragraph (1) (a) is taken to apply also to bankruptcies that:

- (a) occurred before the commencement date; and
- (b) were not completed before the commencement date.

**(3)** For the purposes of paragraph (1) (e), the following debtors are specified:

- (a) a debtor whose property is subject, by reason of a direction of the Court under paragraph 50 (1) (a) of the Act, to the control of the Official Trustee or a registered trustee;
- (b) a debtor who signed an authority under subsection 188 (1) of the Act;

- (c) subject to subregulation (5), in the case of a deceased debtor—where a petition for an order for the administration of the debtor’s estate has been presented under Part XI of the Act;
- (d) a debtor who has applied to the Court under subsection 253E (1) of the Act for an order staying all or any proceedings under a petition.

(4) In the application of paragraph (3) (c) (concerning certain deceased debtors) to paragraph (1) (c), the information to be entered is the information that applied in respect of the debtor immediately before his or her death.

- (5) Subregulation (1) applies subject to:
- (a) any decision of the Inspector-General under paragraph 13.04 (3) (a); and
  - (b) any order or direction of the Administrative Appeals Tribunal on an application under regulation 13.05.

- (6) If an entry on the Index contains information that is, in the opinion of the Official Receiver, in any particular:
- (a) contrary to, or inconsistent with, a decision, order or direction of a kind mentioned in subregulation (6); or
  - (b) inaccurate or misleading;
- the Official Receiver must correct the entry without delay.

#### **Application for certain information not to be on the Index**

**13.04. (1)** Subject to subregulation (4), a person who is a debtor or bankrupt may apply in writing to the Inspector -General for information in respect of the person:

- (a) not to be entered on the Index, on the ground that the entry of the information would jeopardise, or be likely to jeopardise, the person’s safety; or
- (b) for information on the Index to be removed on the ground that:
  - (i) its inclusion jeopardises, or is likely to jeopardise, the person’s safety; or
  - (ii) it is inaccurate or misleading; or
- (c) for information on the Index to be corrected on the ground that it is inaccurate or misleading.

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

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

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

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

(4) An application or a decision must not be made under this regulation to remove from the Index any of the following items of information in respect of a person:

- (a) the person's name;
- (b) the person's date of birth.

### **Application to the AAT**

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

## *Division 3—Miscellaneous*

### **Inspection of the Index**

- 13.06. (1)** On payment of any applicable fee, a person may:
- (a) inspect the Index; and
  - (b) take an extract of information entered on the Index; and

(c) obtain a copy of the extract.

(2) On payment of any applicable fee, a person may, by application in writing, request the Official Receiver to search the Index and provide an extract specified in the application.

(3) If an application is lodged in accordance with subregulation (2), the Official Receiver must conduct the search and, within 14 days of receiving the application:

- (a) send the requested extract to the applicant; or
- (b) notify that applicant in writing that the requested extract is not on the Index.

(4) This regulation applies subject to regulation 13.09.

[NOTE: For applicable fees, see r.16.09.]

### **Copy of extract to be evidence**

**13.07. (1)** In any proceedings, a copy of a document that qualifies under subregulation (2):

- (a) is proof, in the absence of evidence to the contrary, of information on the Index that is stated in it; and
- (b) may be tendered in evidence without further proof.

(2) An document qualifies if it:

- (a) purports (irrespective of the form of wording used) to be an extract of information on the Index; and
- (b) does not appear to the Court to have been revised or tampered with in a way that affects, or is likely to affect, the information.

### **Immunity from defamation**

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

(2) An officer has immunity from actions for defamation arising out of publication of material in the Index or publication of extracts of material from the Index, if the publication was done:

- (a) by an officer acting in the course of his or her duty; and
- (b) in good faith.

(3) A person who provides material for entry in the Index has immunity from actions for defamation arising out of publication of the material by way of providing it for such inclusion, publication of the material in the Index or publication of extracts of the material from the Index, if the publication was done:

- (a) in the performance of a function or duty under these Regulations or any other law of the Commonwealth; and
- (b) in good faith.

(4) Nothing in subregulation (2) or (3) affects by implication the generality of subregulation (1).

(5) The immunity of the Inspector-General or another officer under this regulation arising out of publication of material extends to the Commonwealth and the Official Trustee to the extent that the Commonwealth or the Official Trustee would, apart from this subregulation, be liable in respect of the publication.

(6) Nothing in this regulation affects by implication any other ground of defence.

### **Access to the Index**

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

### **Information extracted from the Index to be evidence**

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

**PART 14—OFFENCES UNDER THE ACT**

**Apprehension under a warrant—notification to Registrar in certain cases**

**14.01. (1)** This regulation applies where:

- (a) a warrant issued under subsection 264B (1) of the Act for the apprehension of a person is executed; and
- (b) the person executing the warrant considers that it is impracticable to bring the apprehended person forthwith before the Court, a Registrar or a magistrate.

(2) Where this regulation applies, the person executing the warrant must immediately notify a Registrar of the apprehension and of the date and time when the person considers that it will be practicable to bring the apprehended person before the Court, a Registrar or a magistrate.

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

**14.02. (1)** Where a Registrar receives a notification under subregulation 14.01 (2), he or she must, without delay:

- (a) fix a date, time and place for the apprehended person to be brought before the Court, a Registrar or a magistrate; and
- (b) direct the person who gave the notification to bring the apprehended person before the Court, a Registrar or a magistrate accordingly.

(2) The time and date fixed under paragraph (1) (a) must be the earliest that, in the Registrar's opinion, are practicable.

(3) A person to whom a direction is given under paragraph (1) (b) must comply with it.

**PART 15—REGISTRATION OF REGISTERED TRUSTEES***Division 1—Preliminary***Interpretation**

**15.01.** In this Part, unless the contrary intention appears:

“**chairperson**” means the chairperson of a committee;

“**committee**” means a committee convened under subsection 155 (1), 155E (4) or 155H (2) of the Act;

“**member**”, in relation to a committee, includes the chairperson.

*Division 2—Committee that considers applications and involuntary termination of registration***Trustee chosen by the Insolvency Practitioners Association of Australia**

**15.02.** A registered trustee chosen by the Insolvency Practitioners Association of Australia under paragraph 155 (2) (c), 155E (5) (c) or 155H (3) (c) of the Act must have practised as a registered trustee for at least 5 years.

**Chairperson of a committee**

**15.03.** The chairperson of a committee is:

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

**Resignation of chairperson**

**15.04. (1)** A chairperson other than the Inspector-General may resign the office of chairperson by notice in writing signed by the chairperson and given to the Inspector-General.

**(2)** A notice of resignation takes effect when the Inspector-General receives it.



### Resignation of members

**15.05. (1)** A member of a committee other than the Inspector-General may resign from the committee by notice in writing signed by the member and given to the Inspector-General.

**(2)** A notice of resignation takes effect when the Inspector-General receives it.

### Removal of members from a committee

**15.06. (1)** The Inspector-General may terminate the appointment of a member of a committee if:

- (a) the member becomes physically or mentally incapable of performing the duties of a member; or
- (b) the member becomes a bankrupt; or
- (c) the member signs an authority under section 188 of the Act that is effective for the purposes of Part X of the Act; or
- (d) the member becomes a party, as a debtor, to a debt agreement; or
- (e) the member has been convicted of an offence involving fraud or dishonesty; or
- (f) the member neglects his or her duty as a member.

**(2)** The Inspector-General may terminate the appointment of a member of a committee convened to consider an application under subsection 154A (1) or 155E (1) of the Act if:

- (a) the member:
  - (i) is a close relative of the applicant; or
  - (ii) has a financial or personal relationship with the applicant; and
- (b) the Inspector-General believes that relationship may affect the impartiality of the member.

**(3)** The Inspector-General may terminate the appointment of a member of a committee convened under subsection 155H (2) of the Act to consider whether a trustee should continue to be registered if:

- (a) the member:
  - (i) is a close relative of the trustee; or

- (ii) has a financial or personal relationship with the trustee; and
- (b) the Inspector-General believes that the relationship may affect the impartiality of the member.

### Convening of a replacement committee

**15.07. (1)** This regulation applies where:

- (a) either of the following events occurs:
  - (i) a member of a committee resigns or dies;
  - (ii) the appointment of a member of a committee is terminated under regulation 15.06; and
- (b) at the time of that occurrence, the committee has not made a decision under subsection 155A (1), 155F (1) or 155I (1) of the Act, as the case requires.

**(2)** Where this regulation applies:

- (a) the Inspector-General must convene another committee (“**the new committee**”) in place of the committee referred to in subregulation (1) (“**the previous committee**”); and
- (b) the new committee must not have regard to any proceedings of the previous committee.

### General procedures of a committee

**15.08. (1)** Subject to the Act and this Division, a committee may determine its procedure.

**(2)** A committee must observe natural justice.

**(3)** A committee is not bound by any rules of evidence but may inform itself on any matter as it sees fit.

**(4)** A committee must keep a written record of its decisions.

### Procedure at committee meetings

**15.09. (1)** Subject to this regulation, all members of a committee must be present in order to constitute a quorum for a meeting of the committee.

(2) At a meeting of a committee a matter is to be decided by a majority of the votes of the members.

(3) Any member may participate in a meeting by telephone.

(4) A member who participates in a meeting by telephone is taken to be present at the meeting.

(5) A committee may keep minutes of proceedings at its meetings.

### **Resolutions without meeting**

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

- (a) on the day on which the document is signed; or
- (b) if the members signed the document on different days—on the day on which the document is signed by the member who makes up the majority.

(2) Two or more separate documents that are identical in all material respects (apart from signatures), each of which is signed by 1 or more members, are taken for the purposes of subregulation (1) to constitute a single document.

### **Inquiries by the committee**

**15.11. (1)** A committee considering an application made under subsection 154A (1) of the Act may make inquiries of any person for the purposes of deciding whether the applicant should be registered as a trustee or not.

(2) If the committee decides that the applicant should be registered, the committee may make inquiries of any person for the purposes of deciding what conditions, if any, should apply to the applicant's practice as a registered trustee.

(3) A committee considering an application made under subsection 155E (1) of the Act may make inquiries of any person for the purposes of deciding:

- (a) whether the conditions on the applicant's practice as a registered trustee should be changed; or
  - (b) whether specified modifications should be made to the conditions that apply to the applicant's practice as a registered trustee.
- (4) A committee acting under subregulation (1), (2) or (3) may make further inquiries:
- (a) that are reasonable in order for the committee to have sufficient information to make a decision referred to in the applicable subregulation; or
  - (b) that the Chairperson of the committee believes are appropriate in order for the committee to have sufficient information to make the decision.
- (5) A committee considering under subsection 155H (2) of the Act whether a trustee should continue to be registered may make inquiries:
- (a) that are reasonable in order for the committee to have sufficient information to decide the question; or
  - (b) that the Chairperson of the committee believes are appropriate in order for the committee to have sufficient information to decide the question.
- (6) Before making a decision under subsection 155A (1), 155F (1) or 155I (1) of the Act that is adverse to a person, a committee must:
- (a) inform the person of any information or material that the committee relies on, or proposes to rely on, in making the decision; and
  - (b) give the person a reasonable opportunity to reply to or rebut the information or material.

### *Division 3—Interviews*

#### **Notice of interview**

**15.12. (1)** If a committee is required under subsection 155 (3) or 155E (6) of the Act to interview an applicant, the Inspector-General or officer of the Department on the committee must, after consultation with the other members of the committee:

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

(2) If a committee is required to interview a trustee under regulation 15.14, the Inspector-General or officer on the committee must, after consultation with the other members of the committee relating to a suitable date, time and place of the interview:

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

### **Applicant interviews**

**15.13.** (1) Subject to subregulations (6) and (7), if a committee is required to interview an applicant under subsection 155 (3) or 155E (6) of the Act:

- (a) the committee must interview the applicant as soon as practicable; and
- (b) any member of the committee may participate in the interview by telephone; and
- (c) the applicant may participate in the interview by telephone.

(2) A member or applicant who participates in an interview as provided by paragraph (1) (b) or (c) is taken to be present at the interview.

(3) If the applicant fails to attend, or participate by telephone in, the interview and does not, within 7 days, give the committee a reasonable excuse for that failure:

- (a) the application is taken to have lapsed; and
- (b) the application fee is not refundable.

(4) If an applicant who fails to attend, or participate by telephone in, an interview gives the committee, within 7 days, a reasonable excuse for that failure, the committee must arrange another interview.

(5) At the interview, the committee may ask the applicant any question that the committee reasonably believes to be related to:

- (a) the application; or

- (b) a reference accompanying the application; or
  - (c) whether the applicant has the qualifications, experience, knowledge and abilities to perform the functions of a registered trustee.
- (6) A committee must not interview an applicant under subsection 155 (3) of the Act until:
- (a) the Inspector-General has received the information and documents in relation to the application that are prescribed by regulation 8.01 for the purposes of subsection 154A (3) of the Act; and
  - (b) any fee imposed by an Act for making the application has been paid.
- (7) A committee must not interview an applicant under subsection 155E (6) of the Act until:
- (a) the Inspector-General has received the information and documents in relation to the application that are prescribed by regulation 8.05 for the purposes of subsection 155E (3) of the Act; and
  - (b) any fee imposed by an Act for making the application has been paid.

#### **Involuntary termination of registration—interview**

**15.14. (1)** If the Inspector-General is required under subsection 155H (2) of the Act to convene a committee to consider whether a trustee should continue to be registered:

- (a) the committee must interview the trustee as soon as practicable; and
- (b) any member of the committee may participate in the interview by telephone; and
- (c) the trustee may participate in the interview by telephone.

(2) A member or trustee who participates in an interview as provided by paragraph (1) (b) or (c) is taken to be present at the interview.

(3) If the trustee fails to attend, or participate by telephone in, the interview and does not, within 7 days, give the committee a reasonable excuse for that failure, the committee may proceed with its consideration of the matter.

(4) If a trustee who fails to attend, or participate by telephone in, an interview gives the committee, within 7 days, a reasonable excuse for that failure, the committee must arrange another interview.

#### *Division 4—Procedure of Committee*

##### **Report of committee decision**

**15.15. (1)** A report required to be given by a committee to the applicant and Inspector-General under subsection 155A (6) or 155F (2) of the Act, or to the trustee and Inspector-General under subsection 155I (4) of the Act, must:

- (a) be in writing; and
- (b) be signed by each member of the committee; and
- (c) in the case of a majority decision—set out the reasons of the minority member.

(2) The report must be given by the committee to the applicant or trustee (as the case requires) and to the Inspector-General within 14 days of the committee making its decision.

##### **Disclosure of interests**

**15.16. (1)** This regulation applies where:

- (a) a member of a committee convened to consider an application under subsection 154A (1) or 155E (1) of the Act:
  - (i) is a close relative of the applicant; or
  - (ii) has a financial or personal relationship with the applicant; or
- (b) a member of a committee convened under subsection 155H (2) of the Act to consider whether a trustee should continue to be registered:
  - (i) is a close relative of the trustee; or
  - (ii) has a financial or personal relationship with the trustee.

(2) Where this regulation applies, the member must, as soon as practicable after becoming aware of the identity of the applicant

or trustee, disclose the nature of the relationship to the other members of the committee and to the Inspector-General.

### **Confidentiality**

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

### **Evidence of proceedings at committee meetings**

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

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

### **Time for deciding matters under subsection 155I (1) of the Act**

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

## **PART 16—MISCELLANEOUS**

### *Division 1—Provisions concerning documents (including inventories)*

#### **Service of documents**

**16.01. (1)** Unless the contrary intention appears, where a document is required or permitted by the Act or these Regulations to be given or sent to, or served on, a person (other than a person mentioned in regulation 16.02), the document may be:

- (a) sent by post, or by a courier service, to the person at his or her last-known address; or
- (b) left, in an envelope or similar packaging marked with the person's name and any relevant document exchange



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

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

**16.02. (1)** Unless the contrary intention appears, where a document is required or permitted by the Act or these Regulations to be given or sent to, or filed or lodged with, the Inspector-General, the Official Receiver or the Official Trustee, the document must:

- (a) be posted to, or delivered at:
  - (i) in the case of a document for the Inspector-General—the office of the Inspector-General; or
  - (ii) in the case of a document for the Official Receiver or the Official Trustee—the office of the Official Receiver; or
- (b) sent by facsimile transmission:
  - (i) in the case of a document for the Inspector-General—to a facility maintained by the Inspector-General for receipt of facsimile transmissions for receipt of facsimile transmissions; or
  - (ii) in the case of a document for the Official Receiver or the Official Trustee—to a facility maintained by the Official Receiver for receipt of facsimile transmissions; or
- (c) sent by another mode of electronic transmission (for example, by electronic mail):
  - (i) in the case of a document for the Inspector-General—to the office of the Inspector-General; or
  - (ii) in the case of a document for the Official Receiver or the Official Trustee—to the office of the Official Receiver.

(2) Where subregulation (1) applies, the document is taken to be received, filed or lodged only when the document (or, where applicable, a copy of it) is actually received by, or on behalf of, the Inspector-General or the Official Receiver (as the case requires).

### **Inventory by trustee taking possession of, or attaching, property**

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

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

*Division 2—Fees*

*Subdivision A—General provisions*

**Schedule 9—fees to be taken by the Official Receiver**

**16.04.** The fees specified in Schedule 9 are payable in respect of the matters in relation to which they are so specified.

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

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

**Payment of fees**

**16.06. (1)** Where a fee is payable in respect of:

- (a) the lodgment or filing of a document with the Official Receiver; or
- (b) sealing, issuing or otherwise dealing with a document by the Official Receiver;

the document must not be lodged, filed, sealed, issued or otherwise dealt with unless the fee has been paid.

**(2)** Where a fee is payable in respect of the doing of a matter or thing by the Official Receiver, the matter or thing must not be done unless the fee has been paid.

**Fees payable to the Official Trustee**

**16.07. (1)** Subject to subregulation (2), the fees specified in Schedule 10 are payable to the Official Trustee, by way of remuneration under subsection 163 (1) of the Act, in respect of the matters in relation to which they are so specified.

**(2)** If the total amount of fees payable, in respect of a particular bankruptcy, for matters that are specified in Schedule 10

would, apart from this subregulation, be less than \$265, a fee of \$265 is payable for those matters.

**EXAMPLE:** In a particular bankruptcy, a total of 10 matters arise under Schedule 10, for which the total fees specified in the Schedule amount to \$220; in that case, a fee of \$265 is payable.

- (3) Where the Official Trustee:
- (a) acts as trustee of the estate of:
    - (i) a bankrupt; or
    - (ii) a deceased person in respect of whose estate an order for administration has been made under Part XI of the Act; or
  - (b) acts, under Part X of the Act:
    - (i) as controlling trustee; or
    - (ii) as trustee as the result of a deed of assignment, deed of arrangement or composition;

a fee is payable out of the estate to the Official Trustee, subject to regulation 16.08, as follows:

- (c) if the prescribed amount in respect of the estate or the debtor does not exceed \$4,000—a fee of \$4,000 or the prescribed amount, whichever is the less;
- (d) if the prescribed amount in respect of the estate or the debtor exceeds \$4,000 but does not exceed \$50,000—a fee equal to the sum of \$4,000 and an amount equal to 15 percent of the amount by which the prescribed amount exceeds \$4,000;
- (e) if the prescribed amount in respect of the estate or the debtor exceeds \$50,000—a fee equal to the sum of \$10,900 and an amount equal to 10 percent of the amount by which the prescribed amount exceeds \$50,000.

(4) For the purposes of subregulation (3), the prescribed amount in respect of an estate or a debtor is determined using the formula:

$$\text{amount realised} \text{ — (business costs + securities)}$$

where:

“amount realised”, subject to subregulations (5) and (6), means the total amount realised, or brought to credit, by the Official Trustee in the estate or in relation to the debtor, as the case may be;

**“business costs”** means the amount paid by the Official Trustee in carrying on the business of the bankrupt, deceased person or debtor;  
**“securities”** means the amount paid to secured creditors in respect of their securities.

(5) Where:

- (a) the Official Trustee administers the estate of a bankrupt or deceased person; and
- (b) the bankrupt, or a person acting on behalf of the bankrupt or deceased person, applies property that has vested in the Official Trustee by reason of section 58 of the Act in payment of a creditor of the estate; and
- (c) the Official Trustee is consequently prevented from realising or bringing to credit the value of that property;

the property so applied is taken for the purposes of the definition of “amount realised” in subregulation (4), unless the Court otherwise orders, to have been realised or brought to credit by the Official Trustee.

(6) For the purposes of the definition of “amount realised” in subregulation (4), the total amount realised or brought to credit:

- (a) includes any amount that is:
  - (i) offered under a proposal for a composition or scheme of arrangement under Division 6 of Part IV of the Act; and
  - (ii) accepted by the creditors in accordance with subsection 73 (4) of the Act; and
- (b) does not include any amounts paid to the trustee by creditors under:
  - (i) an indemnity in respect of costs; or
  - (ii) section 50 of the Act.

(7) Where the Official Trustee carries on the business of a bankrupt or deceased person or, having been directed to take control of the property of a debtor under section 50 of the Act, carries on the business of the debtor, the Official Trustee is entitled to receive a fee calculated at the rate of 2.5 percent of the amount received by the Official Trustee in the course of carrying on the business of the bankrupt, deceased person or debtor.

(8) Where the Official Trustee:

- (a) takes control of the property of a debtor under a direction of the Court under section 50 of the Act; or
- (b) administers a debt agreement, or property under a debt agreement, made under section 185H of the Act;

a fee is payable to the Official Trustee in respect of time spent by the Official Trustee, or an officer assisting the Official Trustee, in exercising control of the property, as follows:

- (c) if the Official Trustee or other officer occupies, or is for the time being performing the duties of, an office or position in the Senior Executive Service of the Australian Public Service—\$240 for each hour or part of an hour; and
- (d) if the Official Trustee or other officer occupies, or is for the time being performing the duties of, an office or position of Insolvency and Trustee Officer Grade 2, or an equivalent or higher office or position (other than one referred to in paragraph (a)) in the Australian Public Service—\$155 for each hour or part of an hour; and
- (e) if the officer occupies, or is for the time being performing the duties of, an office or position of Insolvency and Trustee Officer Grade 1, or an equivalent or lower office or position in the Australian Public Service—\$130 for each hour or part of an hour.

(9) A fee payable under subregulation (7) or (8) is in addition to any fee payable under subregulation (3).

[NOTE: See also regulation 8.12 (prescribed remuneration of the Official Trustee).]

**“Prescribed amount”—restriction on amount of fee payable**

**16.08. (1)** For the purposes of calculating a fee payable under paragraph 16.07 (3) (c), (d) or (e), the applicable “prescribed amount” is not to exceed the total of:

- (a) the amount of the debts of the estate or debtor; and
- (b) the costs of administration of the estate.

(2) In subregulation (1):

**“costs of administration”** means the proper costs, charges and expenses of the administration, other than:

- (a) any realisation charge paid or payable by the Official Trustee under an Act; and
- (b) any fees paid or payable to the Official Trustee under regulation 16.07 or to the Official Receiver under Subdivision C of this Division;

“debts” means the total of:

- (a) the taxed costs of the petitioning creditor; and
- (b) proved debts of the estate or debtor, including interest accrued before the date of bankruptcy; and
- (c) interest accrued on and after that date on those debts if they are interest bearing debts.

### **Fees in respect of the Index**

**16.09. (1)** The following fees are prescribed in respect of the Index:

- (a) for personal inspection of the Index—\$10;
- (b) for an extract of information in the Index—\$2 per page;
- (c) for searching the Index on written request, including provision of a requested extract, if any, to the applicant—\$15.

**(2)** For the purposes of subregulation (1), if the fee prescribed by paragraph (1) (c) applies, the fee prescribed by paragraph (1) (b) does not apply.

### **Waiver or remission of fees by Inspector-General**

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

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

- (a) payment of the fee by the person liable to pay it has imposed, or would impose, undue hardship on the person; or
- (b) because of other exceptional circumstances, it is proper and reasonable to do so.

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

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

(4) In this regulation:

“fee” means a fee payable under a provision, other than regulation 16.04, of this Subdivision, or prescribed in Subdivision B of this Division.

### Application to the AAT

**16.11.** A person who made an application for the waiver or remission of a fee and who is aggrieved by a decision under subregulation 13.04 (1) in respect of the application may apply to the Administrative Appeals Tribunal for review of the decision.

### *Subdivision B—Fees for the purposes of specific provisions of the Act*

#### Prescribed fees of Official Receiver and fees payable on taxation

**16.12. (1)** For the purposes of subsection 163A (2) of the Act, the prescribed fees of the Official Receiver or officer assisting the Official Receiver under subsection 15 (1) of the Act are as set out in subregulation (3).

(2) The fees payable on taxation of costs under, or for the purposes of, subsection 167 (1) of the Act or regulation 8.09 are as set out in subregulation (3).

[NOTE: For provisions in these Regulations concerning taxation of costs, see regulations 8.09 to 8.11.]

- (3) The fees referred to in subregulations (1) and (2) are:
  - (a) if the Official Receiver or other officer occupies, or is for the time being performing the duties of, an office or position in the Senior Executive Service of the Australian Public Service—\$240 for each hour or part of an hour; and



- (b) if the Official Receiver or other officer occupies, or is for the time being performing the duties of, an office or position of Insolvency and Trustee Officer Grade 2, or an equivalent or higher office or position (other than one referred to in paragraph (a)) in the Australian Public Service—\$155 for each hour or part of an hour; and
- (c) if the officer occupies, or is for the time being performing the duties of, an office or position of Insolvency and Trustee Officer Grade 1, or an equivalent or lower office or position in the Australian Public Service—\$130 for each hour or part of an hour.

**Inspection and copying—documents filed under Part X of the Act, and statements of deceased debtor’s affairs**

**16.13.** For the purposes of subsections 226 (3) and (4) and 246 (5) of the Act, the prescribed fees are:

- (a) for each inspection, including the provision of an office copy of 1 page—\$20.00; and
- (b) for the provision of each additional office copy page—\$2.00.

*Division 3—Temporary provisions*

**Where account is given after distribution of final dividend—paragraph 175 (1) (a) of the Act**

**16.14. (1)** A person who gives an account to the Official Receiver under paragraph 175 (1) (a) of the Act in respect of an estate or a debtor must pay to the Official Receiver the appropriate fee in accordance with this regulation.

**(2)** A reference in subregulation (3) to the “prescribed amount” is a reference to the amount worked out:

- (a) in the case of an account in respect of:
  - (i) a composition or scheme of arrangement under Division 6 of Part IV of the Act; or
  - (ii) a composition under Part X of the Act; in accordance with subregulation (4); and
- (b) in any other case—in accordance with subregulation (5).

- (3) Subject to regulation 16.16, the fee payable is:
- (a) if the prescribed amount in respect of the estate or debtor is less than \$50,000—a fee equal to 3% of that prescribed amount;
  - (b) if the prescribed amount in respect of the estate or debtor exceeds \$50,000 but does not exceed \$100,000—a fee equal to the sum of \$1,500 and an amount equal to 2.5% of the amount by which the prescribed amount exceeds \$50,000; or
  - (c) in any other case—a fee equal to the sum of \$2,750 and an amount equal to 1.25% of the amount by which the prescribed amount exceeds \$100,000;

less:

- (d) the fee or the sum of the fees paid on giving a previous account or previous accounts in respect of the estate or debtor; and
- (e) any fee paid by the Official Trustee in respect of the estate under regulation 16.08.

(4) Where paragraph (2) (a) applies, the prescribed amount for the purposes of subregulation (3) is the total amount received by the trustee, or the sum of the total amounts received by each trustee, for distribution to the creditors of the debtor or the total amount (if any) distributed by the debtor to his creditors in accordance with the composition or scheme of arrangement, as the case may be.

(5) Where paragraph (2) (b) applies, the prescribed amount for the purposes of subregulation (3) is an amount equal to the total amount received by the trustee, or the sum of the total amounts received by each trustee, of the estate or in relation to the debtor, as the case may be, up to the end of the period to which the account relates less:

- (a) any amounts paid to secured creditors in respect of their securities before that date; and
- (b) any amounts paid by any trustee in carrying on the business of the bankrupt, deceased person or debtor; and
- (c) the amount of any surplus to which the bankrupt is entitled by reason of section 154 of the Act.

(6) Where 2 or more trustees act in succession, the amount paid by one of those trustees to the other trustee is taken, for the

purposes of subregulation (4) or (5), not to be an amount received by the trustee to whom it is paid.

### **Fees payable by Official Trustee**

**16.15. (1)** Where the Official Trustee:

- (a) acts as trustee of the estate of a bankrupt or a deceased person in respect of whose estate an order for administration has been made under Part XI of the Act; or
- (b) acts as controlling trustee, or as trustee as the result of a deed of assignment or deed of arrangement under Part X of the Act;

a fee is payable to the Official Receiver by the Official Trustee, in accordance with subregulation (2), in respect of the estate:

- (c) on the declaration of a dividend by the Official Trustee; or
- (d) on the Official Trustee's ceasing to act as the trustee.

**(2)** The fee payable under subregulation (1) is a fee equal to the fee that would be payable if:

- (a) the Official Trustee had filed a statement under subsection 175 (1) of the Act of his or her receipts and payments in respect of the estate at the date of declaring the dividend or ceasing to act as trustee, as the case may be; and
- (b) the prescribed amount in respect of the estate were an amount worked out in accordance with subregulation 16.14 (5).

### **“Prescribed amount”—restriction on amount of fee payable**

**16.16. (1)** For the purposes of calculating a fee payable under subregulation 16.14 (3), the applicable “prescribed amount” is not to exceed the total of:

- (a) the amount of the debts of the estate or debtor; and
- (b) the costs of administration of the estate.

**(2)** In subregulation (1):

**“costs of administration”** means the proper costs, charges and expenses of the administration, other than:

- (a) any realisation charge paid or payable by the trustee (or, where the Official Trustee is the trustee of the estate, the Official Trustee) under an Act; and
- (b) any fees paid or payable to the Official Trustee under regulation 16.07 or to the Official Receiver under this Subdivision;

“debts” means the total of:

- (a) the taxed costs of the petitioning creditor; and
- (b) proved debts of the estate or debtor; and
- (c) interest on those debts if they are interest bearing debts.

**Trustee’s account—prescribed form**

**16.17.** For the purposes of paragraph 175 (1) (a) of the Act, Form 2 is prescribed.

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**SCHEDULE 1** Subregulation 1.03 (2)**FORMS****FORM 1** Regulation 4.02*Bankruptcy Act 1966***BANKRUPTCY NOTICE**

(prescribed under subsection 41 (2) of the Act)

To: (name) \_\_\_\_\_  
 (“the debtor”)

of (address) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**This Bankruptcy Notice is an important document. You should get legal advice if you are unsure of what to do after you have read it.**

1. (name) \_\_\_\_\_  
 (“the creditor”)

of (address) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

claims you owe the creditor a debt of \$[amount], as shown in the Schedule.

## SCHEDULE 1—continued

2. The creditor claims that the debt is due and payable by you. A copy of the judgment or order relied upon by the creditor is attached. At the time of applying for this Notice, execution of the judgment or order had not been stayed.
3. You are required, within [*insert number in accordance with the note to this paragraph*] days after service on you of this Bankruptcy Notice:
  - (a) to pay to the creditor the amount of the debt; or
  - (b) to make an arrangement to the creditor's satisfaction for settlement of the debt.

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

4. Payment of the debt can be made to:

(name) \_\_\_\_\_  
 of (address\*) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*\*the address must be within Australia*

5. **Bankruptcy proceedings may be taken against you** if, within the time stated in paragraph 3, above:
  - (a) you do not comply with the requirements of either paragraph 3 (a) or paragraph 3 (b) above; and
  - (b) the Federal Court does not extend, or is not deemed to have extended, the time for compliance with this Bankruptcy Notice (*see the "Information for debtors" section, below*).

## SCHEDULE 1—continued

Column 1	Column 2
1. Amount of judgment or order	
<b>plus</b> 2. Legal costs if ordered to be paid and a specific amount was not included in the judgment or order ( <i>see Note 1, below</i> )	
<b>plus</b> 3. If claimed in this Bankruptcy Notice, interest accrued since the date of judgment or order ( <i>see Note 2, below</i> )	
4. Subtotal	
<b>less</b> 5. Payments made since date of judgment or order	
6. Subtotal	
<b>plus</b> 7. Cost of this Bankruptcy Notice	
<b>8. Total debt owing</b>	

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

---

### Notes to the Schedule

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

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

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

If interest is being claimed in this Bankruptcy Notice, details of the calculation of the amount of interest claimed are to be set out in a

## SCHEDULE 1—continued

document attached to this Bankruptcy Notice. The document must state:

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

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

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

Total debt owing, expressed in foreign currency		amount
Commonwealth Bank of Australia opening telegraphic transfer rate on ___/___/___ (date)	x  rate	
Australian dollar equivalent	= \$	amount

\* *delete Note 3 if not applicable*

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### Information for debtors

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

- (a) that you have instituted proceedings to set aside the judgment or order in respect of which this Bankruptcy Notice has been issued;
- (b) that you have filed with the Federal Court of Australia an application (on one or more grounds, apart from the



**SCHEDULE 1—continued**

grounds mentioned in paragraph 2, below) to set aside this Bankruptcy Notice.

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

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

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

**NB:**

- (i) If you file, at the Federal Court Registry, an application mentioned in **paragraph 1 (a) or (b)** of “**Information for debtors**”, you must still comply with this Bankruptcy Notice within the time stated in paragraph 3 above unless the Court extends the time for you to comply.
- (ii) If you file, at the Federal Court Registry, an application mentioned in **paragraph 2 (a)** of “**Information for debtors**”, you need not comply with this Bankruptcy Notice until the Court decides whether you have grounds for a counterclaim, set off or cross demand. Whether you will have to comply at that stage will depend on the Court's decision.

**WARNING**

The above information is based on provisions of section 41 of the *Bankruptcy Act 1966*. The information is a summary only, and not a complete statement of the relevant law. It might be unwise to rely solely on this summary. If you need a more detailed explanation, you should seek legal advice.

**SCHEDULE 1**—continued

3. The nearest Federal Court Registry to the debtor's address as shown on this Bankruptcy Notice is located at:

[set out the address of the relevant Registry]

This notice was prepared by and issued on the application of:

(name)

\_\_\_\_\_

of (address for service)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(telephone/fax/

\_\_\_\_\_

DX numbers)

\_\_\_\_\_

FOR OFFICIAL USE ONLY

Dated this [date] day of [month] [year]

Official Receiver for the Bankruptcy District of:

(or an officer authorised by the Official Receiver)

**SCHEDULE 1—continued**

FORM 2

Regulation 16.17

**TRUSTEE’S ACCOUNT OF RECEIPTS AND PAYMENTS**

*(Title)*

Particulars of the receipts and payments for the period commencing on *(date)*, and ending on *(date)*, are as follows:

*Receipts*

Particulars	Estimated value according to bankrupt’s Statement of Affairs	Total receipts as shown in last trustee’s account filed	Receipts in this period	Total receipts to date
Receipts in respect of assets shown in bankrupt’s Statement of Affairs:	\$	\$	\$	\$
Other receipts:				
Total				

## SCHEDULE 1—continued

*Payments*

Particulars	Total payments as shown in last trustee's account filed	Payments in this period	Total payments to date
Legal expenses Trustee's remuneration ( <i>specify basis of calculation</i> ) Fees paid under the <i>Bankruptcy Act 1966</i> , or to the Registrar of the Federal Court Costs of securing and protecting assets Charges of auctioneers, estate agents, etc. Postage and stationery Printing or copying Advertising Allowance to debtor Trading payments Amounts paid to secured creditors Amounts paid to creditors entitled to priority in payment of their debts Dividend now declared of     in the \$ on Dividends previously declared of     in the \$ on Total			
Total			

Dated     (date)

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 (signature of trustee)
 

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## SCHEDULE 2

Regulation 4.19

**MODIFICATIONS UNDER SECTION 76A OF THE ACT—  
MEETINGS OF CREDITORS UNDER DIVISION 6 OF PART  
IV OF THE ACT****1. Section 64B (Certain matters to be included in notice of meeting)****1.1 Add at the end:**

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

**2. Section 64E (Notice about voting by proxy)****2.1 Omit the section, substitute:****Notice—proxy voting and voting on bankrupt’s proposal**

“64E. (1) The trustee must attach to the notice a form for use in:

- (a) appointing a proxy; and
- (b) expressing under subsection 73 (5) the creditor’s assent to, or dissent from, the bankrupt’s proposal.

“(2) The notice must tell the creditors that if a creditor wishes to appoint a person to represent the creditor at the meeting as the creditor’s proxy, the creditor must complete the form of appointment of proxy and either:

- (a) arrange for the proxy to give the completed form to the trustee before the meeting; or
- (b) send the completed form with the statement given by the creditor to the trustee in accordance with section 64D.

“(3) The notice must tell creditors that if a creditor wishes to use the form to express his or her assent to or dissent from the

**SCHEDULE 2—continued**

bankrupt's proposal, the creditor must arrange for the form to be given to the trustee before the meeting.”.

**3. Section 64G (Agenda to be set out in notice of meeting)****3.1 Paragraph 64G (g):**

Omit the paragraph, substitute:

“(g) consideration of the bankrupt's proposals for a composition or scheme of arrangement;”.

**3.2 Paragraph 64G (k):**

Omit the paragraph, substitute:

“(k) proposal of:

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

**4. Section 64R (Tabling of bankrupt's statement of affairs)****4.1 Omit the section, substitute:****Provision of bankrupt's statement of affairs, bankrupt's proposal and trustee's report**

“64R. (1) The President must then ask whether each creditor, or representative of a creditor, at the meeting has with him or her a copy of:

- (a) the bankrupt's proposal; and
- (b) the trustee's report on the proposal.

“(2) If the meeting is the first meeting of the creditors, the President must also ask each creditor or representative whether the creditor or representative has a copy of the bankrupt's statement of affairs with him or her.

“(3) If a creditor or representative indicates that he or she does not have a copy of the proposal, the report or the statement of affairs with him or her, the trustee must give the creditor or

**SCHEDULE 2—continued**

representative, as soon as practicable, a copy of the proposal, report or statement, as the case requires.

“(4) If the trustee cannot give a creditor or representative a copy of the proposal, report or statement of affairs within a reasonable time, the meeting is to be adjourned to a time and place decided by the meeting.

“(5) In this section, a reference to a statement of affairs is taken to include a reference to a summary of such a statement.”.

**5. Section 64S (Statements and questions)**

**5.1 Subsection 64S (1)**

Omit the subsection, substitute:

“(1) The President must then invite the bankrupt to make a statement outlining his or her proposal to the meeting.

“(1A) The President must then ask the trustee to comment on his or her report on the bankrupt’s proposal.”.

**6. Section 64T (Motions)**

**6.1 Omit the section, substitute:**

**Motions**

“64T. (1) The President must then call for a motion for a special resolution to approve the bankrupt’s proposal for a composition or scheme of arrangement.

“(2) If a motion is:  
(a) not proposed; or  
(b) proposed but not passed;  
the President may close the meeting.”.

**SCHEDULE 2—continued****7. Section 64U (Remuneration of registered trustee)****7.1 Subsection 64U (1)**

Omit the subsection, substitute:

“(1) If:

- (a) a special resolution, accepting the bankrupt’s proposal, has been passed at the meeting; and
- (b) a registered trustee has consented to be the trustee of the composition or scheme of arrangement; and
- (c) the President has told the creditors and representatives at the meeting that provision for remuneration of the trustee may be included in the instrument setting out the terms of the composition or scheme;

the President must then ask the trustee of the composition or scheme of arrangement to state the basis on which the trustee wishes to be remunerated.”.

**7.2. Subsection 64U (8):**

Omit the subsection, substitute:

“(8) If:

- (a) a special resolution, accepting the bankrupt’s proposal, has been passed at the meeting; and
- (b) the trustee of the bankruptcy is a registered trustee;

the President must ask the trustee to lay before the meeting a statement of the amount of remuneration drawn by the trustee from the funds of the bankrupt’s estate before the meeting was held.

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

**8. Section 64V (Appointment of committee of inspection)**

**8.1** Omit the section.

**9. Section 64W (Other business)**

**9.1** Omit the section.



**SCHEDULE 2—continued**

**10. Section 64X (Next meeting)**

10.1 Omit the section.

**11. Section 64ZB (Manner of voting)**

11.1 After subsection 64ZB (1), insert:

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

**12. Section 64ZE (Joint bankruptcies)**

12.1 Omit the section.

## SCHEDULE 3

Regulation 6.01

**PARAGRAPH 109 (1) (a) OF THE ACT—ORDER OF  
PAYMENT OF FIRST PRIORITY DEBTS**

1. Realisations charges payable under an Act, and fees payable under regulation 16.14 or 16.15
2. Expenses reasonably incurred by or on behalf of the trustee:
  - (a) in protecting all or part of the bankrupt's assets; or
  - (b) in carrying on, in accordance with the Act, a business of the bankrupt; or
  - (c) by way of an advance made to the trustee of the bankrupt's estate for payment of properly incurred expenses of the estate for any proper purpose (other than remuneration of the trustee)
3. Other fees, costs, charges and expenses payable by the trustee in administering the bankrupt's estate
4. Where:
  - (a) a creditor has deposited an amount in accordance with an order made under section 50 of the Act; and
  - (b) the amount, or part of the amount, has been used for meeting the expenses referred to in that regulation;
 the amount, or part of the amount, that has been so used
5. The taxed costs of the petitioning creditor, the administrator of the estate of a deceased person or the applicant under Part X of the Act for a sequestration order and, if a petitioning creditor under Part X of the Act also applied for an order under Division 5 or 6 of Part IX of the Act, any taxed costs of the creditor in respect of the application\*
6. The trustee's lawful remuneration
7. Where the creditors, or a majority of them, have approved payment of out-of-pocket expenses incurred by a member of the committee of inspection—those expenses, to the extent that the trustee of the bankrupt's estate allows them as being fair and reasonable
8. Costs of any audit carried out under section 175 of the Act

[\*NOTE: For the extended application of item 5, see subregulation 6.01 (2).]

## SCHEDULE 4

Regulation 6.12

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**MODIFICATIONS OF THE *FRINGE BENEFITS TAX*  
*ASSESSMENT ACT 1986***

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**1. Section 7 (Car benefits)****1.1 Subsections 7 (1), (2), (3) and (4):**

Omit the subsections, substitute:

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

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

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

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

**2. Section 8 (Exempt car benefits)****2.1 Subsections 8 (1) and (2):**

Omit the subsections.

**3. Section 9 (Taxable value of car fringe benefits—statutory formula)****3.1 Subparagraphs 9 (2) (c) (i) and (ii):**

Omit the subparagraphs, substitute:

“(i) for the first contribution assessment period:

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

(B) where the annualised number of whole kilometres travelled by the car during the year preceding the bankruptcy was not more than 40,000 and not less than 25,000—0.11; or

(C) where the annualised number of whole kilometres travelled by the car during the year preceding the bankruptcy was less

**SCHEDULE 4—continued**

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

**3.2 Paragraph 9 (2) (d):**

Omit the paragraph, substitute:

- “(d) the annualised number of whole kilometres travelled by the car during a contribution assessment period is:
- (i) if records of the bankrupt show the number of kilometres travelled by the car during the year preceding that period—that number of kilometres; or

**SCHEDULE 4—continued**

- (ii) in any other case—the number of kilometres worked out in accordance with the following formula:

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

where:

- A** is the number of whole kilometres travelled by the car during the period (in this subsection referred to as the ‘holding period’) constituting that part of the contribution assessment period during which the provider held the car; and
- B** is the number of days in the contribution assessment period; and
- C** is the number of days in the holding period; and”.

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

Omit the sub-subparagraph.

**3.4 Subsection 9 (2):**

Add at the end:

“EXAMPLES:

**1. Assessment in the first contribution assessment period**

A car is purchased in June 1994 for Christopher’s use. The purchase price of the car is \$20,000. During the period up to till 30 June 1995, Christopher uses the car on 200 days and travels 10,000 kilometres in that period. Christopher is declared bankrupt on 1 July 1992. His contribution to expenses is \$300.

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

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

**SCHEDULE 4—continued**

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

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

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

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

**2. Assessment in the second contribution assessment period**

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

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

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

4.1 Omit the section.

**5. Section 10A (No reduction of operating cost in a log book year of tax unless log book records and odometer records are maintained)**

5.1 Omit the section.

**SCHEDULE 4—continued**

**6. Section 10B (no reduction of operating cost in a non-log book year of tax unless log book records and odometer records are maintained in log book year of tax)**

6.1 Omit the section.

**7. Section 10C (Nominated business percentage to be reduced if it exceeds business percentage established during applicable log book period or if it is unreasonable)**

7.1 Omit the section.

**8. Section 11 (Calculation of depreciation and interest)**

8.1 Omit the section.

**9. Section 12 (Depreciated value)**

9.1 Omit the section.

**10. Section 13 (Expenditure to be increased in certain circumstances)**

10.1 Subsection 13 (1):

Omit all the words after “section 9”.

**11. Section 22A (Taxable value of in-house expense payment fringe benefits)**

11.1 Omit the section.

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

12.1 Omit “external”.

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

13.1 Omit the section, substitute:

**SCHEDULE 4—continued****Taxable value of housing fringe benefits**

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

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

14.1 Omit the section.

**15. Section 29 (Taxable value of remote area accommodation)**

15.1 Omit the section.

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

16.1 Omit the section.

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

17.1 Add at the end:

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

- (a) in relation to a person of the age of 12 years or over—\$42; and
- (b) in relation to a person under the age of 12 years—\$21.

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

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



**SCHEDULE 4—continued**

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

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

$$\$220 - 100 - (80 - 42) = \$82."$$

**18. Section 32: (Airline transport benefits)**

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

Omit "and".

18.2 Paragraph 32 (c):

Omit the paragraph.

**19. Section 36 (Taxable value of board fringe benefits)**

19.1 Omit the section, substitute:

**Taxable value of board fringe benefits**

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

(a) in relation to a contribution assessment period beginning:

(i) on 1 July 1992; or

(ii) during the year beginning on 1 July 1992;

\$1; or

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

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

where:

**CPI** is the increase in the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities published by the Australian Statistician in respect of the period that commences on 1 July 1992 and

**SCHEDULE 4—continued**

ends immediately before the start of the financial year in which the contribution assessment period commences.”.

**20. Section 37 (Reduction of taxable value—“otherwise deductible” rule)**

20.1 Omit the section.

**21. Division 11 of Part III (Property fringe benefits)**

21.1 Omit the Division.

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

22.1 Omit the section, substitute:

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

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

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

23.1 Omit the section.

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

24.1 Omit the section.

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

25.1 Omit the section, substitute:

**SCHEDULE 4—continued**

**Value of residual fringe benefits**

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

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

26.1 Omit the section.

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

27.1 Omit the Division.

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

28.1 Omit the Division.

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

29.1 Omit the Division.

**30. Section 136 (Interpretation)**

30.1 Subsection 136 (1):

Insert the following definition:

“‘**contribution assessment period**’ has the meaning given by section 139K of the *Bankruptcy Act 1966* as in force from time to time;”.

30.2 Subsection 136 (1) (definition of “family member”):

Omit the definition, substitute:

“‘**family member**’, in relation to:

- (a) a benefit provided to a employee, or to an associate of a employee, means:

## SCHEDULE 4—continued

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

## 30.3 Subsection 136 (1) (definition of “fringe benefit”):

Omit the definition, substitute:

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

- (a) a benefit provided to the bankrupt by his or her spouse under, or by way of, a *bona fide*:
  - (i) domestic arrangement; or
  - (ii) maintenance agreement;
    - between the spouses; or
- (b) a benefit provided under a maintenance order, within the meaning of the *Bankruptcy Act 1966* as in force from time to time; or
- (c) the benefit of an order by a court in favour of the bankrupt in respect of costs of litigation; or
- (d) educational expenses paid by any person in respect of a child of:
  - (i) the bankrupt; or
  - (ii) the bankrupt’s spouse; or
- (e) the amount of a refund, or part of a refund, due by the Commissioner to the bankrupt under a law of the Commonwealth, being an amount that the Commissioner has lawfully offset against a tax liability, within the meaning of the *Taxation Administration Act 1953* as in force from time to time, of the bankrupt; or
- (f) subject to subsection (1A), a benefit of a kind referred to in paragraphs (f) to (p) (inclusive) of the definition of ‘fringe benefit’ in this Act (in its unmodified form) as in force at the beginning of 1 July 1992; or

**SCHEDULE 4—continued**

- (g) support by way of one or both of the following:
    - (i) lodging (including any board); or
    - (ii) occasional use of a motor vehicle used for domestic purposes;  
up to a value of \$250 a week, if the support is provided by a person in the person's principal place of residence, and the person is:
      - (iii) a close relative; or
      - (iv) a brother or sister (including a half-brother, half-sister, adoptive brother or adoptive sister);
- of the bankrupt;”.

30.4 After subsection 136 (1), insert:

“(1A) For the purposes of paragraph (b) of the definition of ‘fringe benefit’ in subsection (1), paragraph (h) of the paragraphs referred to in that paragraph has effect as if “the employee, or by a relative of the employee,” were omitted and “the bankrupt” substituted.”.

## SCHEDULE 5

Regulation 9.01

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**MODIFICATIONS UNDER SECTION 185A OF THE ACT—  
MEETINGS TO CONSIDER PROPOSALS RELATING TO  
DEBT AGREEMENTS**

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**1. Section 63A (Definitions):**

1.1 Subsection 63A (1) (definition of “joint bankruptcy”):

Omit the definition.

1.2 Subsection 63A (1) (definition of “meeting”):

Omit all the words after “creditors” (first occurring).

1.3 Subsection 63A (1) (definition of “minutes secretary”):

Omit the definition.

**2. Section 63B (Trustee’s representative)**

2.1 After subsection 63B (1), insert:

“(1A) For the purposes of subsection (1), the trustee may, by signed writing, delegate the trustee’s power to conduct meetings to a particular person or to a class of persons.”.

**3. Section 64 (Trustee to convene meetings)**

3.1 Omit the section, substitute:

**Notice of meeting called under section 185A**

“64. (1) If the trustee calls a meeting of affected creditors to consider a proposal relating to a debt agreement, the trustee must give at least 5 working days’ notice of the proposed meeting to the affected creditors known to the trustee.

“(2) The notice must set out the date on which, and time and place at which, the meeting is to be held.

**SCHEDULE 5—continued**

“(3) An affected creditor who receives notice of a meeting may give notice to the trustee, so that the notice is received by the trustee at least 2 working days before the date of the meeting, that the time or place of the meeting is not convenient to the affected creditor.

“(4) If the trustee receives notice that the time, date or place of a proposed meeting is not convenient to a majority of the affected creditors, the trustee must:

- (a) immediately notify the affected creditors to whom notice of the proposed meeting has been given that the meeting has been postponed; and
- (b) at the same time, or as soon as practicable afterwards, give notice to the affected creditors known to the trustee of a proposed meeting at another time or place, or both.

“(5) Where the trustee gives a notice under paragraph (4) (b):

- (a) the trustee must comply with subsection (1); and
- (b) subsections (2) and (3) apply in relation to the notice.

“(6) Notice under this section may be given:

- (a) in any case—in writing or by electronic transmission; or
- (b) in the case of notice under subsection (3) or paragraph (4) (a)—orally (in person or by telephone).”.

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

4.1 Omit the section, substitute:

**References to “notice”**

“64A. In the following provisions of this Subdivision, a reference to a notice is taken to be a reference to a notice under subsection 64 (1) or paragraph 64 (4) (b).”.

**SCHEDULE 5—continued****5. Section 64B (Certain matters to be included in notice of meeting)**

5.1 Subsections 64B (3) and(4):

Omit the subsections, substitute:

“(3) The notice must include:

(a) a statement of the purpose of the meeting; and

(b) a summary of the debt agreement proposal, variation proposal or termination proposal, as the case requires.”.

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

6.1 Omit the section, substitute:

**Agenda**

“64G. The trustee must make a written agenda available to each of the affected creditors at the meeting.”.

**7. Section 64K (Opening of meeting)**

7.1 Subsection 64K (1):

Omit all the words after “meeting”.

**8. Section 64L (Appointment of minutes secretary)**

8.1 Omit the section, substitute:

**Proceedings to be recorded**

“64L. The trustee must ensure that an accurate record in writing is made of the proceedings (including voting) at the meeting.”.

**9. Section 64N (Quorum)**

9.1 Subsection 64N (7):

After “63B (1)”, insert “or (1A)”.



**SCHEDULE 5—continued**

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

10.1 Omit the section.

**11. Section 64Q (Whether holding of meeting is convenient to majority of creditors)**

11.1 Omit the section.

**12. Section 64R (Tabling of bankrupt's statement of affairs)**

12.1 Subsection 64R (1):

Omit all the words from and including “the President”, substitute “the trustee must:

- (a) lay the debtor's statement of affairs and debt agreement proposal before the meeting; and
- (b) explain the proposal to the affected creditors at the meeting.”.

12.2 Subsection 64R (2):

Omit “statement of affairs,”, substitute “statement of affairs, or a summary of it, and the debt agreement proposal,”.

**13. Section 64S (Statements and questions)**

13.1 Omit “President” (wherever occurring), substitute “trustee”.

**14. Section 64T (Motions)**

14.1 Omit “President”, substitute “trustee”.

**15. Section 64U (Remuneration of registered trustee)**

15.1 Omit the section, substitute:

**Remuneration of trustee**

“64U. Remuneration to the trustee or other person is payable only in accordance with the debt agreement.”.

**SCHEDULE 5—continued****16. Section 64V (Appointment of committee of inspection)**

16.1 Omit the section.

**17. Section 64W (Other business)**

17.1 Omit the section.

**18. Section 64X (Next meeting)**

18.1 Omit the section.

**19. Section 64Y (Adjournment of meeting)**

19.1 Paragraph 64Y (1) (b):

Omit the paragraph, substitute:

“(b) without limiting the application of paragraph (a), any matters required to be dealt with at the original meeting and not dealt with are to be dealt with at the adjourned meeting.”.

19.2 Subsection 64Y (2):

Omit “64A (2).”, substitute “64 (1).”.

**20. Section 64Z (Duties of minutes secretary)**

20.1 Omit the section.

**21. Section 64ZA (Entitlement to vote)**

21.1 Paragraph 64ZA (1) (a):

Omit the paragraph.

21.2 Subsection 64ZA (7):

Omit the subsection.

**SCHEDULE 5—continued**

**22. Section 64ZB (Manner of voting)**

22.1 Subsection 64ZB (4):

Omit “trustee, the President or the minutes secretary.”, substitute “trustee.”.

22.2 Subparagraphs 64ZB (7) (b) (i), (ii) and (v):

Omit “President”, substitute “trustee”.

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**SCHEDULE 6**Regulations 10.02,  
10.05, 10.07, 10.12,  
10.14, and 10.16**MODIFICATIONS UNDER PART X OF THE ACT—  
ARRANGEMENTS WITH CREDITORS WITHOUT  
SEQUESTRATION**

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**PART 1—MODIFICATIONS OF PART X OF THE ACT IN  
RELATION TO JOINT DEBTORS**

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**1. Section 187A (Application of Part to joint debtors)****1.1 Add at the end:**

“(2) In the application of this Part (other than subsection 187 (1A)) to joint debtors, whether partners or not, an expression specified in one of the following rules of interpretation apply to the extent that the context reasonably permits:

- (a) ‘a debtor’ is to be read as ‘joint debtors’;
- (b) ‘the debtor’ is to be read as ‘the joint debtors’;
- (c) ‘the debtor’s’ is to be read as ‘the joint debtors’;
- (d) where used in relation to a debtor:
  - (i) ‘he or she’ is to be read as ‘they’; and
  - (ii) ‘his or her’ is to be read as ‘their’; and
  - (iii) ‘him or her’ is to be read as ‘them’; and
  - (iv) a noun or verb in the singular form is to be read as being in the plural form.

“(3) Subsection (2) does not apply where specific modifications of this Part by the Bankruptcy Regulations otherwise require.

“(4) To the extent that the context reasonably permits, a reference (by operation of subsection (2)) to joint debtors is taken to include a reference to any of the joint debtors.

**SCHEDULE 6—continued**

“(5) A reference to the affairs, or examinable affairs, of a debtor is to be read as including a reference to the separate affairs, or separate examinable affairs, of a joint debtor.”.

**2. Section 188 (Debtor may authorise trustee or solicitor to call meeting of creditors etc.)**

2.1 Subsection 188 (1):

Omit “A debtor”, substitute “Where each joint debtor is a person”

2.2 Subsection 188 (1):

Before “may sign”, insert “the joint debtors”.

2.3 Subsection 188 (4):

Before “debtor”, insert “joint”.

2.4 Subsection 188 (5):

Omit “the District in which the”, substitute “each District in which a joint”.

**3. Section 188A (Statement of debtor’s affairs and proposal for dealing with them)**

3.1 Section 188A:

Omit “the debtor”, substitute “each joint debtor”.

**4. Section 189AB (Charge over debtor’s property that is subject to control)**

4.1 Subsection 189AB (1):

Omit “When the debtor’s property becomes subject to control under this Division, the debtor’s property is charged with:”, substitute “When the property of joint debtors becomes charged under this Division, the charges specified in subsection (1A) are created with respect to:”.

**SCHEDULE 6—continued**

4.2 After subsection 189AB (1), insert:

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

4.3 Subsections 189AB (2) and (3):  
Omit “The charge”, substitute “Each charge”.

**5. Section 189A (Report by controlling trustee)**

5.1 Paragraph 189A (1) (a):

Omit the paragraph, substitute:

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

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**PART 2—MODIFICATIONS OF DIVISION 5 OF PART IV OF  
THE ACT IN RELATION TO A MEETING CALLED UNDER AN  
AUTHORITY UNDER SECTION 188 OF THE ACT**

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**1. Section 63A (Definitions)**

1.1 Subsection 63A (1) (definition of “joint bankruptcy”):

Add at the end:

- “or (e) the situation arising out of the signing, by joint debtors for the purposes of section 188 or 223, of a joint authority or separate authorities for the administration of their joint estate;”.

**SCHEDULE 6—continued**

**2. Section 64G (Agenda to be set out in notice of meeting)**

**2.1 Paragraph 64G (g):**

Omit the paragraph, substitute:

“(g) in the case of the first meeting—tabling of the following documents:

- (i) the statement of affairs, and the proposal for dealing with them, required by section 188A;
- (ii) the report by the controlling trustee required by section 189A;
- (iii) the written statement by the controlling trustee required by section 189B;”.

**3. Section 64R (Tabling of bankrupt’s statement of affairs)**

**3.1 Subsection 64R (1):**

Omit the subsection, substitute:

“(1) In the case of the meeting referred to in paragraph 64G (g), the President must then request the trustee to lay before the meeting the documents specified in that paragraph, and the trustee must comply with the request.”.

**3.2 Subsection 64R (2):**

Omit “the statement of affairs,”, substitute “those documents,”.

**4. Section 64U (Remuneration of registered trustee)**

**4.1 Subsection 64U (1):**

Omit the subsection, substitute:

“(1) At the first meeting called under an authority under section 188 that is attended by:

- (a) the controlling trustee; or
- (b) where the creditors have passed a special resolution under paragraph 204 (1) (b) or (c)—the trustee of a deed of assignment, a deed of arrangement or a composition,

the President must ask the trustee to state the basis on which he or she wishes to be remunerated.”.

**SCHEDULE 6—continued****5. Section 64V (Appointment of committee of inspection)****5.1 Section 64V:**

Add at the end:

“(2) The President must also tell the creditors and their representatives that, in the case of a composition, there can be no committee of inspection.”.

**6. Section 64ZE (Joint bankruptcies)****6.1 Section 64ZE:**

Add at the end:

“(3) This section applies in relation to an arrangement under Part X only in the case of a deed of arrangement or a deed of assignment, where:

- (a) a joint estate forms part of the property that is the subject of the resolution or resolutions establishing the deed; and
- (b) the deed does not specifically provide for distribution of the joint estate.”.

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**PART 3—MODIFICATIONS OF PART VIII OF THE ACT IN  
RELATION TO A CONTROLLING TRUSTEE AND A TRUSTEE  
OF A DEED OF ASSIGNMENT, A DEED OF ARRANGEMENT  
OR A COMPOSITION**

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**1. New Division 1A****1.1 Before Division 1, insert in Part VIII:**



**SCHEDULE 6—continued**

***“Division 1A—Interpretation***

**Definition**

**“154AA.** In this Part, in its application to Part X, a reference to a registered trustee is taken to include a reference to a controlling trustee and a trustee of a deed of assignment, a deed of arrangement or a composition.”.

**2. Section 156A (Consent to act as a trustee)**

**2.1 Section 156A:**

Omit the section.

**3. Section 157 (Appointment of trustees)**

**3.1 Subsection 157 (1):**

Omit the subsection, substitute:

**“(1) Where:**

**(a) the Official Trustee is:**

**(i) under section 188 or 192, the controlling trustee in relation to a debtor; or**

**(ii) under Part X, the trustee of a deed of arrangement, a deed of assignment or a composition; and**

**(b) the creditors wish to appoint, in place of the Official Trustee:**

**(i) a registered trustee or a solicitor as the controlling trustee; or**

**(ii) a registered trustee as the trustee of the deed of arrangement, deed of assignment or composition;**

**the creditors may do so by resolution at a meeting of creditors.”.**

**SCHEDULE 6—continued****4. Section 158 (Appointment of more than one trustee etc)**

4.1 Omit the section, substitute:

**Appointment of more than 1 controlling trustee**

“**158.** The creditors may appoint 2 or more controlling trustees jointly, or jointly and severally.”.

**5. Section 159 (Vacancy in office of trustee)**

5.1 Omit the section.

**6. Section 160 (Official Trustee to be trustee when no registered trustee is trustee)**

6.1 Omit the section, substitute:

**Vacancy in position of trustee—Official Trustee to act**

“**160.** The Official Trustee is to act as the trustee under Part X during any period when that position would otherwise be vacant.”.

**7. Section 161 (Trustee may act in official name)**

7.1 After subsection 161 (1), insert:

“(1A) This section does not apply in relation to a trustee of a deed of arrangement or a deed of assignment under Part X.”.

**8. Section 180 (Resignation of trustee)**

8.1 Section 180:

Omit “trustee of an estate.”, substitute “trustee, other than controlling trustee, under Part X.”.

**9. Section 181 (Removal of trustee)**

9.1 Omit all the words from and including “registered trustee” (first occurring), substitute “controlling trustee or the trustee of a deed of

**SCHEDULE 6—continued**

assignment, a deed of arrangement or a composition, and may at that meeting or a subsequent meeting appoint another trustee to replace the trustee so removed.”.

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**PART 4—MODIFICATIONS UNDER SUBSECTION 231 (2) OF  
THE ACT IN RELATION TO DEEDS OF ASSIGNMENT**

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**1. Section 113 (Apprenticeship etc. claims)**

**1.1 Subsection 113 (1):**

Omit “presentation of a petition on which, or by virtue of which, a person became a bankrupt,”, substitute “making of a sequestration order,”.

**1.2 Subsection 113 (1):**

Omit “or, in the case of a debtor’s petition, the presentation of the petition”.

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**PART 5—MODIFICATIONS UNDER SUBSECTION 237 (2) OF  
THE ACT IN RELATION TO DEEDS OF ARRANGEMENT**

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**1. Section 113 (Apprenticeship etc. claims)**

**1.1 Subsection 113 (1):**

Omit “presentation of a petition on which, or by virtue of which, a person became a bankrupt,”, substitute “making of a sequestration order,”.

**1.2 Subsection 113 (1):**

Omit “or, in the case of a debtor’s petition, the presentation of the petition”.

**SCHEDULE 6—continued****2. Section 133 (Disclaimer of onerous property)**

2.1 After subsection 133 (12), insert:

“(12A) This section, as applied by subsection 237 (2) in relation to a deed of arrangement, extends only in relation to property of the debtor that the deed of arrangement vests in, or makes available to, the trustee.”.

**3. Section 134 (Powers exercisable at discretion of trustee)**

3.1 After paragraph 134 (1) (b), insert:

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

3.2 Add at the end:

“(5) Where a deed of arrangement under Part X assigns the business of the debtor to the trustee, the deed may:

- (a) authorise the trustee to carry on a business of a debtor; and
- (b) specify the period during which, and the conditions (if any) subject to which, the trustee may carry on the business.

“(6) The creditors may vary or terminate an authority under subsection (5) by passing a special resolution to that effect at a meeting called for the purpose.

“(7) This section, as applied by subsection 237 (2) in relation to a deed of arrangement, extends only in relation to property of the debtor that the deed of arrangement vests in, or makes available to, the trustee.”.

**SCHEDULE 6—continued**

**4. Section 135 (Powers exercisable by the trustee with permission)**

4.1 Add at the end:

“(2) This section, as applied by subsection 237 (2) in relation to a deed of arrangement, extends only in relation to property of the debtor that the deed of arrangement vests in, or makes available to, the trustee.”.

**5. Section 136 (Right to pay off mortgages)**

5.1 Add at the end:

“(3) This section, as applied by subsection 237 (2) in relation to a deed of arrangement, extends only in relation to property of the debtor that the deed of arrangement vests in, or makes available to, the trustee.”.

**6. Section 137 (Right of trustee to inspect goods held as security)**

6.1 Add at the end:

“(4) This section, as applied by subsection 237 (2) in relation to a deed of arrangement, extends only in relation to property of the debtor that the deed of arrangement vests in, or makes available to, the trustee.”.

**7. Section 138 (Limitation of trustee’s power in respect of copyright, patents etc.)**

7.1 After subsection 138 (1), insert:

“(1A) This section, as applied by subsection 237 (2) in relation to a deed of arrangement, extends only in relation to property of the debtor that the deed of arrangement vests in, or makes available to, the trustee.”.

**SCHEDULE 6—continued****8. Section 139 (Protection of trustee from personal liability in certain cases)****8.1 Add at the end:**

“(5) This section, as applied by subsection 237 (2) in relation to a deed of arrangement, extends only in relation to property of the debtor that the deed of arrangement vests in, or makes available to, the trustee.”.

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**PART 6—MODIFICATIONS UNDER SUBSECTION 243 (3) OF THE ACT IN RELATION TO COMPOSITIONS**

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**1. Section 162 (Additional remuneration of trustee)****1.1 Subsection 162 (1):**

Omit “the creditors or, if the creditors so resolve, by the committee of inspection.”, substitute “the creditors.”.

**1.2 Subsection 162 (2):**

Omit “the trustee, the trustee”, substitute “the trustee for distribution to creditors, the trustee”.

**1.3 Subsection 162 (6):**

Omit “the creditors or by the committee of inspection.”, substitute “the creditors.”.

**2. Section 177 (Control of creditors over trustees)**

**2.1** Omit “the creditors or by the committee of inspection.”, substitute “the creditors.”.

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## SCHEDULE 7

Regulation 11.02

**MODIFICATIONS UNDER PART XI OF THE ACT—  
ADMINISTRATION OF ESTATES OF DECEASED PERSONS**

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**1. Section 49 (Change of petitioners):**

1.1 Omit “debtor”, substitute “deceased debtor’s estate”.

**2. Section 50 (Taking control of debtor’s property before sequestration)****2.1 Subsection 50 (1):**

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

**2.2 Paragraph 50 (1) (a):**

Omit “debtor’s property;”, substitute “deceased debtor’s estate;”.

**2.3 Paragraph 50 (1) (b):**

Omit “property.”, substitute “estate.”.

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

Omit “debtor”, substitute “deceased debtor’s legal personal representative”.

**2.5 Subsection 50 (1B):**

Omit “debtor’s property”, insert “deceased debtor’s estate”.

**2.6 Subsection 50 (2):**

Omit “debtor” (first occurring), substitute “legal personal representative of the deceased debtor”.

**2.7 Subsection 50 (2):**

Before “debtor” (second and third occurring), insert “deceased debtor”.

**2.8 Subsection 50 (3):**

Omit “debtor and the debtor’s”, substitute “deceased debtor and the debtor’s”.

**SCHEDULE 7—continued****2.9 Subsection 50 (4):**

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

**2.10 Paragraph 50 (5) (a):**

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

**2.11 Paragraph 50 (5) (c):**

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

**2.12 Section 50:**

Add at the end:

“(6) In this section:

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

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

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

**3. Section 63A (Definitions)**

3. Insert the following definition:

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

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

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



**SCHEDULE 7—continued**

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

4.1 Paragraph 64A (1) (a):

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

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

5.1 Subsection 64B (1):

Before “place”, insert “former”.

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

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

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

**7. Section 64J (Preparation of attendance record)**

7.1 Subsection 64J (3):

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

**8. Section 64K (Opening of meeting)**

8.1 Subsection 64K (2):

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

8.2 Subsections 64K (2):

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

**SCHEDULE 7—continued****8.3 Subsections 64K (3) and (6):**

Omit “the bankrupt” (wherever occurring), substitute “the legal personal representative”.

**9. Section 64L (Appointment of minutes secretary)****9.1 Subsection 64L (2):**

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

**10. Section 64P (Election of person to preside at meeting)****10.1 Subsection 64P (2):**

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

**11. Section 64S (Statements and questions)****11.1 Subsection 64S (2):**

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

**11.2 Subsection 64S (2):**

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

**11.3 Subsection 64S (3):**

Omit “bankrupt”, substitute “legal personal representative”.

**12. Section 64Z (Duties of minutes secretary)****12.1 Paragraph 64Z (5) (d):**

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

**13. Section 64ZC (Appointment of proxies)****13.1 Subsection 64ZC (6):**

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

**SCHEDULE 7—continued**

**13.2 Subsection 64ZC (6):**

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

**14. Section 73 (Composition or arrangement)**

**14.1 Subsection 73 (1):**

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

**14.2 Subsection 73 (1):**

Omit “his or her” (wherever occurring), substitute “the deceased person’s”.

**14.3 Subsection 73 (2A):**

Omit “bankrupt’s”, substitute “deceased person’s”.

**14.4 Subsection 73 (3):**

Omit “bankrupt”, substitute “legal person representative”.

**14.5 Section 73:**

Add at the end:

“(6) In this section:

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

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

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

**15. Section 74 (Annulment of bankruptcy)**

**15.1** Omit the section, substitute:

**SCHEDULE 7—continued****Annulment of administration**

“74. (1) A special resolution under subsection 73 (4) takes effect on the date on which it is passed to annul the administration of the estate to which it relates.

“(2) As soon as practicable after that date the trustee of the estate must give to the Official Receiver a certificate, signed by the trustee, of the following matters:

- (a) the name of the estate;
- (b) the number of the administration;
- (c) the terms and date of the special resolution.

“(3) The Official Receiver must enter those matters in the official records.”.

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

16. Subsection 75 (2):

Omit the subsection.

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

Omit the subparagraphs, substitute:

- “(i) the creditors or the estate of the deceased person will suffer injustice or undue delay if the composition or scheme of arrangement proceeds; or
- (ii) the approval of the creditors resulted from a misrepresentation by the legal personal representative; or
- (iii) it is desirable that the deceased person’s:
  - (A) affairs be investigated; or
  - (B) estate be administered;under this Act; or
- (iv) it is likely that the creditors will receive a greater dividend if the estate is again administered under this Act;”.

**SCHEDULE 7—continued**

16.3 Subsection 75 (4):

Omit “trustee”, substitute “trustee, the legal personal representative”.

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

Omit the subsections, substitute:

“(6) In this section:

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

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

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

**17. Section 81 (Discovery of bankrupt’s property etc.)**

17.1 Subsection 81 (1):

Omit the subsection, substitute:

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

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

summon an examinable person in relation to the estate for examination in relation to the administration.

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

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

- (a) a person who is believed to be indebted to the estate; or
- (b) a person who may be able to give information the relevant person or the examinable affairs of the relevant person; or

**SCHEDULE 7—continued**

- (c) a person who has possession of books that may relate to:
  - (i) the relevant person; or
  - (ii) the examinable affairs of the relevant person; or
  - (iii) the estate; or
- (d) the executor under the relevant person's will; or
- (e) the administrator under letters of administration or court order;

of the relevant person's estate, or a part of that estate.”.

**17.2 Subsection 81 (1B):**

Omit paragraph (b), substitute:

“(b) relate to:

- (i) the relevant person; or
- (ii) the examinable affairs of the relevant person; or
- (iii) the estate.”.

**17.3 Subsection 81 (11AA):**

Omit the subsection.

**17.4 Subsection 81 (12):**

Before “relevant person” (first occurring), insert “estate of the”.

**17.5 Subsection 81 (14):**

Omit “person, other than the relevant person,”, substitute “person”.

**18. Section 82 (Debts provable in bankruptcy)****18.1 Subsection 82 (1):**

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

**SCHEDULE 7—continued**

**18.2 Subsection 82 (1A):**

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

**18.3 Paragraph 82 (8) (b):**

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

**19. Section 87 (Deduction of discounts)**

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

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

20.1 Omit “by a debtor to a creditor before the debtor became a bankrupt”, substitute:

“to a creditor by:

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

**21. Section 95 (Proof in respect of distinct contracts)**

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

**22. Section 99 (Application to the Court where creditor or bankrupt considers proof wrongly admitted)**

22.1 Subsection 99 (1):

Omit “bankrupt”, substitute “legal personal representative”.

**SCHEDULE 7—continued**

22.2 After subsection 99 (1), insert:

“(1A) In subsection (1):

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

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

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

**23. Section 109 (Priority payments)**

23.1 Paragraph 109 (1) (a):

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

23.2 Paragraph 109 (1) (b):

Omit the paragraph.

**24. Section 109A (Debts due to employees)**

24.1 Subsection 109A (1):

Omit the subsection, substitute:

“Where:

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

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



**SCHEDULE 7—continued**

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

**24.2 Subsection 109A (2):**

After “trustee (twice occurring), insert “or legal personal representative”.

**24.3 After subsection 109A (2), insert:**

“(2A) In subsection (2):

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

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

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

**25. Section 110 (Application of estates of joint debtors)**

**25.1** Omit the section.

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

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

**SCHEDULE 7—continued****27. Section 116 (Property divisible among creditors)**

27.1 After subsection 116 (1), insert:

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

27.2 Paragraphs 116 (2) (c) and (ca):  
Omit the paragraph.

27.3 Paragraph 116 (2) (g):  
Omit the paragraph, substitute:

“(g) any right of the estate of the deceased person to recover damages or compensation:

(i) for personal injury (including injury resulting in death) or wrong done to the deceased person in his or her lifetime; or

(ii) for personal injury (including injury resulting in death) or wrong done to the spouse or a member of the family of the deceased person (whether the injury or wrong was done before or after the death of the deceased person);

“(h) any damages or compensation recovered by the deceased person in his or her lifetime, or by the estate of the deceased person, in respect of an injury or wrong specified in subparagraph (g) (i) or (ii);”.

27.4 Subsection 116 (2B):  
Omit “(c) or (ca),”.

27.5 Subsection 116 (2C):  
Omit the subsection.

**SCHEDULE 7—continued**

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

28.1 Paragraph 117 (1) (b):

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

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

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

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

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

Omit “and”.

29.3 Paragraph 118 (1) (b):

Omit the paragraph.

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

Omit “bankrupt” (wherever occurring), substitute “debtor”.

29.5 Subsection 118 (3):

Omit “bankruptcy”, substitute “administration of the estate”.

29.6 Paragraph 118 (9) (a):

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

29.7 Subsection 118 (9):

Omit “in the bankruptcy.”, substitute “of the estate.”.

29.8 Subsection 118 (10):

Omit “debtor,” (twice occurring), substitute “deceased person’s estate”.

**SCHEDULE 7—continued****29.9 Paragraphs 118 (1) (a) and (b):**

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

**29.10 Subsection 118 (1):**

Omit “of the bankrupt”.

**30. Section 119 (Duties of sheriff after receiving notice of presentation of petition etc.)****30.1 Subsection 119 (1):**

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

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

Omit “debtor” (wherever occurring), substitute “estate”.

**30.3 Subsection 119 (2):**

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

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

Omit “debtor” (wherever occurring), substitute “estate”.

**30.5 Subsection 119 (3):**

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

**30.6 Subsection 119 (3):**

Omit “the debtor” (wherever occurring), substitute “the estate”.

**30.7 Subsection 119 (4):**

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

**SCHEDULE 7—continued**

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

Omit “debtor” (wherever occurring), substitute “estate”.

30.9 Subsection 119 (5):

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

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

Omit “debtor” (wherever occurring), substitute “estate”.

30.11 Subsection 119 (6):

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

30.12 Subsection 119 (6):

Omit “the debtor” (wherever occurring), substitute “the estate”.

30.13 Subsection 119 (7):

Omit “a debtor”, substitute “a deceased person’s estate”.

30.14 Subsection 119 (7):

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

**31. Section 119A (Duties of sheriff after receiving notice of bankruptcy etc.)**

31.1 Subsection 119A (1):

Omit “has become a bankrupt”, substitute “has died, and his or her estate has become subject to administration under Part XI”.

31.2 Subparagraph 119A (1) (a) (i):

Omit “bankrupt”, substitute “estate”.

31.3 Subparagraph 119A (1) (a) (ii):

Omit “bankrupt” (first occurring), substitute “estate”.

## SCHEDULE 7—continued

31.4 Subparagraph 119A (1) (a) (ii):

Omit “bankrupt became a bankrupt,” (twice occurring), substitute “debtor died,”.

31.5 Subparagraph 119A (1) (a) (ii):

Omit “bankrupt” (third occurring), substitute “debtor or estate”.

31.6 Subparagraph 119A (1) (a) (iii):

Omit “bankrupt;”, substitute “estate;”.

31.7 Subparagraph 119A (1) (b) (i):

Omit “the bankrupt” (first and third occurring), substitute “the estate”.

31.8 Subparagraphs 119A (1) (b) (i) and (ii):

Omit “bankrupt became a bankrupt,”, substitute “debtor died,”.

31.9 Subparagraph 119A (1) (b) (ii):

Omit “to the bankrupt;”, substitute “to the estate;”.

31.10 Subsection 119A (5):

Omit the subsection.

31.11 Paragraph 119A (6) (a):

Omit “bankrupt”, substitute “deceased person”.

31.12 Paragraph 119A (6) (b):

Omit “bankrupt”, substitute “estate”.

31.13 Subsection 119A (7):

Omit “a bankrupt”, substitute “the estate of a deceased person”.

**32. Section 122 (Avoidance of preferences)**

32.1 Subsection 122 (1):

Omit “insolvent (the *debtor*)”, substitute “insolvent and who subsequently dies (the *deceased debtor*)”.

**SCHEDULE 7—continued**

32.2 Subsection 122 (1):

Omit “in the debtor’s bankruptcy”, substitute “of the deceased debtor’s estate being administered under Part XI”.

32.3 Paragraph 122 (1) (b):

Omit the paragraph (including the table), substitute:

“(b) was made in the period beginning 6 months before the presentation of the petition for an order for the administration of the estate and ending immediately before the date of the order.”.

32.4 Subsection 122 (1A):

Omit “debtor”, substitute “deceased debtor before his or her death”.

32.5 Paragraphs 122 (1A) (a) and (b):

Before “debtor”, insert “deceased”.

32.6 Paragraph 122 (1A) (b):

Before “debtor’s”, insert “deceased”.

32.7 Paragraph 122 (2) (b):

After “debtor”, insert “or the estate of the deceased debtor”.

32.8 Subsection 122 (4A):

After “debtor” (twice occurring), insert “or the estate of the deceased debtor”.

**33. Section 123 (Protection of certain transfers of property against relation back etc.)**

33.1 Subsection 123 (1):

Omit “becomes a bankrupt:”, substitute “has died, and his or her estate has become subject to administration under Part XI:”.

33.2 Paragraphs 123 (1) (a), (b) and (c):

After “debtor” insert “before he or she died”.

33.3 Paragraph 123 (1) (c):

Omit “before the day on which the debtor became a bankrupt:”, substitute “on or before the day on which the debtor died:”.

**SCHEDULE 7—continued**

33.4 Subsection 123 (4):

Before “debtor”, insert “deceased”.

33.5 Subsection 123 (4):

Omit “became a bankrupt,”, substitute “died,”.

33.6 Subsection 123 (6):

Omit “a debtor becomes”, substitute “a deceased debtor before his or her death became”.

33.7 Subsection 123 (6):

Before “debtor” (second and third occurring), insert “deceased”.

**34. Section 124 (Protection of certain payments to bankrupt etc.)**

34.1 Subsection 124 (1):

Omit “becomes, or has become, a bankrupt”, substitute “has died, and his or her estate has become subject to administration under Part XI”.

34.2 Paragraph 124 (1) (a):

After “made”, insert “on or”.

34.3 Paragraph 124 (1) (a):

Omit “becomes a bankrupt”, substitute “dies”.

34.4 Paragraph 124 (1) (b):

Omit “on or”.

34.5 Paragraph 124 (1) (b):

Omit “became a bankrupt”, substitute “died”.

**35. Section 125 (Certain accounts of undischarged bankrupt)**

35.1 Subsection 125 (1):



**SCHEDULE 7—continued**

Omit “an undischarged bankrupt”, substitute “deceased and that his or her estate is being administered under Part XI”.

**36. Section 126 (Dealings with undischarged bankrupt in respect of after-acquired property)**

36.1 Omit the section.

**37. Section 127 (Limitation of time for making of claims by trustee etc)**

37.1 After subsection 127 (1), insert:

“(1A) In the application of Part XI to this section, the reference in subsection (1) to the date on which a person became bankrupt is taken to be a reference to the date on which administration of a deceased person’s estate commenced.”.

**38. Section 134 (Powers exercisable at discretion of trustee)**

38.1 Paragraph 134 (1) (m):

Omit “the bankrupt: (first occurring), substitute “the legal personal representative of a deceased person:”.

38.2 Subparagraph 134 (1) (m) (i):

Omit “the bankrupt;”, substitute “the estate of the deceased person;”.

38.3 Subparagraph 134 (1) (m) (ii):

Omit “bankrupt’s” (twice occurring), substitute “estate’s”.

38.4 Subparagraph 134 (1) (m) (iii):

Omit “bankrupt;”, substitute “estate”.

38.5 Paragraph 134 (1) (m):

Omit “bankrupt’s services, make such allowance to the bankrupt”, substitute “services of the legal personal representative of the deceased person, pay such remuneration to him or her”.

38.6 Paragraphs 134 (1) (n) and (o):

Omit “the bankrupt”, substitute “the estate of the deceased person”.

## SCHEDULE 7—continued

38.7 After subsection 134 (1), insert:

“(1AA) In subsection (1):

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

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

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

38.7 Subsection 134 (1A):

Omit “An allowance made to the bankrupt”, substitute “Remuneration paid to the legal personal representative of a deceased person”.

**39. Section 135 (Further powers exercisable by trustee)**

39.1 Paragraphs 135 (1) (b) and (c):

Omit “the bankrupt;”, substitute “the estate of the deceased person;”.

39.2 Paragraph 135 (1) (j):

Omit the paragraph, substitute:

- “(j) pay such remuneration out of the estate of the deceased person as he or she thinks fit to the legal personal representative of the deceased person.”.

39.3 Section 135:

Add at the end:

“(2) In subsection (1):

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

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

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

**SCHEDULE 7—continued**

**40. Section 138 (Limitation on trustee’s power in respect of copyright, patents etc.)**

40.1 Paragraph 138 (1) (a):

Omit “bankrupt”, substitute “estate of a deceased person”.

40.2 Paragraphs 138 (1) (b), (c) and (d):

Omit “bankrupt”, substitute “estate”.

**41 Section 139ZL (Official Receiver may require persons to make payments)**

41.1 Subsection 139ZL (6):

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

41.2 After subsection 139ZL (6), insert:

“(6A) In subsection (6):

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

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

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

**42. Section 139ZQ (Official Receiver may require payment)**

42.1 Subsection 139ZQ (5):

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

42.2 After subsection 139ZQ (5), insert:

“(5A) In subsection (5):

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

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

**SCHEDULE 7—continued**

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

**43. Section 143 (Provision to be made for creditors residing at a distance etc)**

43.1 Paragraph 143 (a):

Omit “bankrupt’s statement of”, substitute “statement of a deceased person’s”.

**44. Section 146 (Distribution of dividends where bankrupt fails to file statement of affairs)**

44.1 Omit “a bankrupt”, substitute “the legal personal representative of a deceased person”.

44.2 Omit “his or her affairs” (twice occurring), substitute “the deceased person’s affairs”.

44.3 Omit “bankrupt” (second occurring), substitute “legal personal representative”.

**45 Section 156A (Consent to act as trustee)**

45.1 Paragraph 156A (1) (a):

Before “debtor” (first occurring), insert “deceased”.

45.2 Paragraphs 156A (1) (a) and (3) (a):

Omit “debtor becomes a bankrupt;”, substitute “deceased debtor’s estate is administered under Part XI;”.

45.3 Paragraph 156A (3) (a):

Omit “estate of the bankrupt;”, substitute “estate;”.

**46. Section 161B (Trustee’s remuneration—minimum entitlement)**

46.1 Subsection 161B (2):

Omit the subsection.

**SCHEDULE 7—continued**

**47. Section 162 (Trustee’s remuneration—general)**

47.1 Subsection 162 (3):

Omit “bankrupt” (second occurring), substitute “legal personal representative of the deceased person”.

47.2 After subsection 162 (3), insert:

“(3A) In subsection (3):

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

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

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

**48. Section 170 (Trustee to give Official Receiver and bankrupt information etc)**

48.1 Subsection 170 (2):

Omit the subsection, substitute:

“(2) At the request of the legal personal representative of the deceased person, the trustee must give to the legal personal representative information reasonably required by the legal personal representative concerning the affairs of the deceased person.

“(3) In subsection (2):

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

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

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

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## SCHEDULE 8

Regulation 13.03

**INFORMATION ON THE NATIONAL PERSONAL  
INSOLVENCY INDEX**

[NOTE: References in this Schedule to sections, subsections and paragraphs are references to those provisions of the Act.]

<b>Item No.</b>	<b>Provision of the Act</b>	<b>Document from which information may be entered in the Index</b>	<b>Person who must give the document to the Official Receiver</b>	<b>Period within which the document must be provided to the Official Receiver</b>	<b>Information to be entered in the Index</b>
1	Section 50  trustee to take control of debtor's property before sequestration	court order	applicant (creditor)	as soon as practicable	<ul style="list-style-type: none"> <li>• date of order</li> <li>• particulars of debtor</li> <li>• date when trustee's control ends (subsection 50 (1B))</li> </ul>
2	Sections 43 and 47  creditor's petition	creditor's petition and verifying affidavit (subsections 47 (1) and (1A))	petitioning creditor	not applicable	<ul style="list-style-type: none"> <li>• date of petition</li> <li>• particulars of debtor</li> <li>• name of petitioning creditor</li> <li>• name and telephone number of petitioning creditor's solicitors</li> </ul>

SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
					<ul style="list-style-type: none"> <li>• date of court hearing for sequestration order</li> </ul>
3	Section 43 sequestration order	sequestration order (subsection 43 (1), section 52)	Creditor who obtained the order (subsection 52 (1A))	within 2 days	<ul style="list-style-type: none"> <li>• date of order</li> <li>• particulars of bankrupt</li> <li>• name of petitioning creditor</li> <li>• name and telephone number of petitioning creditor's solicitors</li> <li>• name of trustee</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
4	Section 55 debtor's petition	debtor's petition and statement of affairs (subsection 55 (2))	debtor (subsection 55 (1))	not applicable	<ul style="list-style-type: none"> <li>• particulars of debtor</li> <li>• date of acceptance (or, if the Court orders the Official Receiver to accept the petition, the date of commencement of the bankruptcy (subsection 55 (3B)))</li> <li>• name of trustee</li> </ul>



**SCHEDULE 8—continued**

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
5	Section 56B  debtor's petition against partnership	debtor's petition and statements of affairs (section 56B)	petitioning partners (subsection 56A (1))	not applicable	<ul style="list-style-type: none"> <li>• particulars of each debtor/partner</li> <li>• date of acceptance (or, if the Court orders the Official Receiver to accept the petition, the date of commencement of the bankruptcy of each partner (section 56C))</li> </ul>
					<ul style="list-style-type: none"> <li>• name of trustee</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
6	Section 57  debtor's petition by joint debtors who are not partners	debtor's petition and statements of affairs (subsection 57 (2))	2 or more petitioning debtors (subsection 57 (1))	not applicable	<ul style="list-style-type: none"> <li>• particulars of each debtor</li> <li>• date of acceptance (or, if the Court orders the Official Receiver to accept the petition, the date of commencement of the bankruptcy of each debtor subsection 57 (3B))</li> <li>• name of trustee</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
7	Section 74 annulment of bankruptcy by special resolution of creditors	written notice (subsection 74 (5A))	trustee (subsection 74 (5A))	as soon as practicable after passage of special resolution (subsection 74 (5A))	• date of annulment of the bankruptcy
8	Section 149 automatic discharge from bankruptcy	not applicable	not applicable	not applicable	• date of discharge
9	Sections 149B, 149C objection to discharge	Notice of objection (section 149B)	trustee or Official Receiver (section 149B)	trustee or Official Receiver (section 149B)	• date objection takes effect (ie day on which details of notice entered in the Index section 149G)

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
					<ul style="list-style-type: none"> <li>• grounds of objection</li> <li>• person lodging the notice (i.e. trustee or Official Receiver)</li> </ul>
10	Section 149H  trustee or Official Receiver ceasing to object on a particular ground	notice of ceasing to object (subsections 149H(1) and (2))	trustee (subsection 149H(1)) (see also subsection 149H(2) for Official Receiver)	at any time before discharge (subsections 149H(1) and (2))	<ul style="list-style-type: none"> <li>• date objection ceases to have effect (if at all) (ie day on which details of notice entered in the Index subsection 149H(3))</li> </ul>

**SCHEDULE 8—continued**

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
					<ul style="list-style-type: none"> <li>• grounds of objection to which notice relates</li> <li>• person lodging the notice (i.e. trustee or Official Receiver)</li> </ul>
11	Section 149J trustee or Official Receiver withdrawing objection	notice of withdrawal (subsection 149J (1))	trustee (subsection 149J (1)) (see also subsection 149J (2) for Official Receiver)	at any time before discharge (subsections 149J (1) and (2))	<ul style="list-style-type: none"> <li>• date withdrawal of objection takes effect (ie day on which details of notice entered in the Index subsection 149J (3))</li> </ul>
					<ul style="list-style-type: none"> <li>• person lodging the notice (i.e. trustee or Official Receiver)</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
12	Section 149N  Inspector-General's review of decision to object (also: section 149Q -AAT review of decision)	if the Inspector-General cancels the objection—written notice that objection cancelled (Order 72A, Federal Court Rules)	trustee (Order 72A, Federal Court Rules)	as soon as practicable after objection cancelled (Order 72A, Federal Court Rules)	<ul style="list-style-type: none"> <li>date the cancellation takes effect (subsection 149N (2))</li> </ul>
13	Sections 149S and 149ZF  early discharge from bankruptcy	[application for early discharge (subsection 149S (2)) certificate of discharge (subsection 149ZF(3))]	certificate—registered trustee (subsection 149ZF (3)) (see also Official Receiver: subsection 149ZF (3); see also subsection 149ZK (2) for decision on review)	as soon as practicable after trustee signs certificate (subsection 149ZF (3))	<ul style="list-style-type: none"> <li>date on which bankruptcy is discharged (subsection 149ZF (1); see also subsection 149ZK (2))</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
14	Section 153A annulment of bankruptcy on payment of debts	certificate (subsection 153A (2))	trustee (subsection 153A (2))	as soon as practicable after debts paid in full (subsection 153A (2))	• date of annulment
15	Section 153B annulment of bankruptcy by Court	court order (section 153B)	applicant (Order 72A, Federal Court Rules)	7 days (Order 72A, Federal Court Rules)	• date of annulment
16	Section 154A application for trustee registration	application, and information prescribed by the regulations (subsection 154A (2))	applicant trustee	not applicable	• date of application

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
17	Section 154C trustee registration	application, and information prescribed by the regulations (subsection 154A (2))	applicant trustee (Note: Inspector-General to register trustee: sections 155B and 155C)	not applicable	<ul style="list-style-type: none"> <li>• details of trustee</li> </ul>
18	Section 155G trustee voluntarily terminating registration	written request (subsection 155G (1))	trustee	not applicable	<ul style="list-style-type: none"> <li>• date trustee registration ceases (ie date of acceptance of request: subsection 155G (2))</li> </ul>



## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
19	Sections 155H and 155I  involuntary termination of trustee registration	no document specified	Inspector-General (see subsection 155I (6))	not applicable	<ul style="list-style-type: none"> <li>date trustee registration ceases (Inspector-General to give effect to decision to terminate registration: subsection 155I (6))</li> </ul>
20	Sections 184 and 184A  release of trustee by operation of law after 7 years	no document specified	registered trustee	not applicable	<ul style="list-style-type: none"> <li>fact that the administration of an estate is finalised</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
21	Part IX  debt agreement proposals	debt agreement proposal (subsection 185C (1)) and statement of affairs (section 185D)	debtor (proposal given to trustee: subsection 185E (1))	not applicable	<ul style="list-style-type: none"> <li>• date that proposal was given to Official Trustee</li> <li>• date that acceptance of proposal for processing and name and address of debt agreement processor are entered in the Index (subsection 185F (1))</li> <li>• particulars of debtor</li> <li>• date that a proposal lapses (if at all) (section 185G)</li> </ul>

SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
22	Part IX  debt agreements	debt agreement (subsection 185J (1))	not applicable	not applicable	<ul style="list-style-type: none"> <li>• particulars of debtor (if different from particulars in debt agreement proposal)</li> <li>• date that making of debt agreement entered in the Index (see definition of “provable debt” in subsection 185 (1); see also section 185H and subsection 185J (1))</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
					<ul style="list-style-type: none"> <li>• date of end or termination of debt agreement (sections 185N to 185 R, inclusive)</li> </ul>
23	Sections 185T and 185U  voiding a debt agreement	court order (subsection 185U (1))	debtor or creditor (subsection 185T (1))	7 days (Order 72A, Federal Court Rules)	<ul style="list-style-type: none"> <li>• date of order</li> <li>• whether agreement is voided in whole or in part</li> </ul>
24	Section 188  authority to be controlling trustee (Part X arrangements)	authority (subsection 188 (1))	registered trustee or solicitor (subsection 188 (5))	14 days of consent to act	<ul style="list-style-type: none"> <li>• date of authority</li> <li>• name of controlling trustee</li> <li>• particulars of debtor</li> </ul>

**SCHEDULE 8—continued**

<b>Item No.</b>	<b>Provision of the Act</b>	<b>Document from which information may be entered in the Index</b>	<b>Person who must give the document to the Official Receiver</b>	<b>Period within which the document must be provided to the Official Receiver</b>	<b>Information to be entered in the Index</b>
25	Section 204 and subsection 218 (1)  Part X arrangement: deed of assignment or arrangement	copy of deed (paragraph 218 (1) (b))	trustee (paragraph 218 (1) (b))	21 days of executing deed	<ul style="list-style-type: none"> <li>• date of execution of deed</li> <li>• particulars of debtor (if different from particulars in section 188 authority)</li> <li>• name of each nominated trustee of the deed (subsection 204 (4); see also section 215A)</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
26	Section 221 sequestration order for certain failures under Part X	court order (subsection 221 (1))	applicant (Order 72A, Federal Court Rules)	7 days (Order 72A, Federal Court Rules)	<ul style="list-style-type: none"> <li>• date of order</li> <li>• particulars of bankrupt (if different from particulars in section 188 authority))</li> <li>• name of petitioning creditor (if any)</li> <li>• name and telephone number of petitioning creditor's solicitors (if any)</li> <li>• name of trustee</li> </ul>

**SCHEDULE 8—continued**

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
27	Subsections 224A (1) and (2)  terminating deed of arrangement or composition in certain circumstances	deed or composition—copy of special resolution (subsection 224A (1)); deed only—written notice (subsection 224A (2))	trustee (subsection 224A (1))	forthwith (subsection 224A (1))	<ul style="list-style-type: none"> <li>date of termination</li> </ul>
28	Subsection 224A (3)  court order voiding, terminating or setting aside a Part X arrangement	written notice	registered trustee	7 days (Order 72A, Federal Court Rules)	<ul style="list-style-type: none"> <li>date that composition or deed of assignment or arrangement voided, or composition or deed of arrangement terminated, or composition set aside</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
29	Section 244 creditor's petition for Part XI administration (deceased estates)	creditor's petition and verifying affidavit (subsections 244 (1) and (5))	petitioning creditor	not applicable	<ul style="list-style-type: none"> <li>• date of petition</li> <li>• particulars of deceased</li> <li>• name of petitioning creditor</li> <li>• name and telephone number of petitioning creditor's solicitors</li> <li>• date of hearing for administration order</li> </ul>



## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
30	Section 244 and section 245 (death of debtor after creditor's petition under section 47)  Part XI administration (deceased estates)	court order (subsections 244 (14); 245 (3))	petitioning creditor (subsections 244 (14); 245 (3))	7 days (Order 72A, Federal Court Rules)	<ul style="list-style-type: none"> <li>• date of order</li> <li>• particulars of deceased (if particulars different from particulars in relevant creditor's petition)</li> <li>• name of trustee</li> </ul>
31	Section 247 administrator's petition for Part XI administration of deceased estate	petition and statement of affairs (subsection 247 (1))	administrator (subsection 247 (1))	not applicable	<ul style="list-style-type: none"> <li>• date of petition</li> <li>• particulars of deceased</li> <li>• name of administrator</li> <li>• name and telephone number of administrator's solicitors</li> </ul>

## SCHEDULE 8—continued

Item No.	Provision of the Act	Document from which information may be entered in the Index	Person who must give the document to the Official Receiver	Period within which the document must be provided to the Official Receiver	Information to be entered in the Index
32	Section 247 court order for Part XI administration on administrator's petition	court order (subsection 247 (1A))	applicant (Order 72A, Federal Court Rules)	7 days (Order 72A, Federal Court Rules)	<ul style="list-style-type: none"> <li>• date of order</li> <li>• the following particulars if different from those in administrator's petition:               <ul style="list-style-type: none"> <li>• particulars of deceased</li> <li>• name of administrator</li> <li>• name and telephone number of administrator's solicitors</li> <li>• name of trustee</li> </ul> </li> </ul>

**SCHEDULE 8**—continued

33	Section 253E stay of proceedings in relation to farmers' debts assistance	court order (subsection 253E (1))	applicant (Order 72A, Federal Court Rules	7 days (Order 72A, Federal Court Rules)	<ul style="list-style-type: none"> <li>• date of order</li> <li>• period of stay (subsection 253E (3))</li> </ul>
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**SCHEDULE 9**

Regulation 16.04

**OFFICIAL RECEIVER'S FEES**

<b>Item No.</b>	<b>Matter</b>	<b>Fee</b>
1	For the filing or lodging: (a) under subregulation 10.18 (1), of a copy of a special resolution concerning a composition; or (b) under paragraph 218 (1) (b) of the Act, of a copy of a deed of assignment or deed of arrangement entered into in pursuance of Part X of the Act	\$300.00
2	For each application for the issue of a bankruptcy notice	\$300.00
3	For each request for a copy or copies of a document or documents (regardless of the number of documents to which the request relates)	\$20.00
4	For each page included in a copy furnished in accordance with a request referred to in item 3, or taken or made in connection with an inspection of the kind referred to in item 5	\$2.00
5	For production of a file for inspection	\$20.00

**SCHEDULE 10** Regulations 8.12 and 16.07**OFFICIAL TRUSTEE'S FEES**

Column 1 Item No.	Column 2 Matter	Column 3 Fee
1	For the seizure, attachment and making of an inventory of property of a bankrupt, or of the estate of a deceased person in respect of which an order has been made under Part XI of the Act, by an acting on behalf of officer the trustee—for each hour or part of an hour of the officer's time	\$50.00
2	For expenditure in connexion with the estate of a bankrupt, or of a deceased person in respect of which an order has been made under Part XI of the Act, for official stationery, printing, books, postage, faxes and local telephone calls:	
	(a) in respect of each 10, or part of 10, creditors of the estate; and	\$30.00
	(b) in respect of each 10, or part of 10, debtors of the estate	\$30.00
3	For the use of a room for a meeting of creditors convened by the trustee:	
	(a) for the first hour of the meeting or, where the meeting does not exceed 1 hour, for the meeting; and	\$150.00
	(b) for each succeeding half-hour or part of a half-hour (if any)	\$75.00

**SCHEDULE 10**—continued

Column 1 Item No.	Column 2 Matter	Column 3 Fec
4	For giving notice: (a) of a sitting of the Court; or (b) of a meeting of creditors; or (c) of a bankruptcy and forwarding a summary of the statement of affairs; to creditors of the estate of a bankrupt, or of the estate of a deceased person in respect of which an order has been made under Part XI of the Act: (d) for the first 10 notices, or, where not more than 10 notices are given, for the notices; and (e) for each notice given after the first 10 notices	\$50.00      \$5.00
5	For giving notice under subsection 140 (3) of the Act: (a) for the first 10 notices, or, where not more than 10 notices are given, for the notices; and (b) for each notice given after the first 10 notices	\$50.00  \$5.00
6	For sending cheques and statements to creditors under subsection 140 (8) of the Act: (a) for the first 10 cheques and statements, or, where not more than 10 cheques and statements are sent, for the cheques and statements; and (b) for each cheque and statement sent after the first 10 cheques and statements	\$50.00  \$5.00
7	Receipt of proofs of debt, not exceeding 10	\$35.00

**SCHEDULE 10**—continued

Column 1 Item No.	Column 2 Matter	Column 3 Fee
8	Receipt of each proof of succeeding debt	\$3.50

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on

1

1996. 11 December