

Bankruptcy Amendment Regulations 2001 (No. 1) 2001 No. 262

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 262

Issued by the authority of the Attorney-General

Bankruptcy Act 1966

Bankruptcy Amendment Regulations 2001 (No. 1)

Section 315 of the *Bankruptcy Act 1966* provides that the Governor-General may make regulations for the purposes of the Act.

The purpose of the Regulations is to amend the Bankruptcy Regulations (the principal Regulations) by applying Chapter 2 of the *Criminal Code* to the principal Regulations and making consequential amendments to the offence-creating provisions set out in the principal Regulations. The consequential amendments are designed to ensure that the offence-creating provisions will continue to operate in the same manner as they do at present following application of the *Criminal Code*.

Chapter 2 of the *Criminal Code* (the *Criminal Code*) is contained in a Schedule to the *Criminal Code Act 1995*. Its purpose is to codify the general principles of criminal responsibility under laws of the Commonwealth.

The *Criminal Code* provides that, unless otherwise specified in the relevant legislation, in order for an offence to be proved an accused must not only commit the physical elements of the offence but do so with the relevant fault element or elements, namely intention, knowledge, recklessness or negligence. An offence that does not require proof of the relevant fault element or elements is an offence of strict liability. The *Criminal Code* provides that in order for an offence to be an offence of strict liability it must be expressly stated to be such an offence.

The application of the *Criminal Code* to the principal Regulations is intended not to interfere with the policy underlying existing offences, and if an offence is currently one of strict liability then it is to remain so after the application of the *Criminal Code* to the principal Regulations.

Details of each of the Regulations are set out in the attachment.

The Regulations commence on gazettal.

ATTACHMENT

Bankruptcy Amendment Regulations 2001 (No. 1)

Regulation 1 refers to the name of the Regulations.

Regulation 2 provides for the Regulations to commence on gazettal.

Regulation 3 refers to the Schedule of the Regulations which contains the amendments to the principal Regulations.

Item [1] inserts regulation 1.04 which applies Chapter 2 of the *Criminal Code* to all offences against the Bankruptcy Regulations. Chapter 2 establishes the codified general principles of criminal responsibility. The standard note concerning Chapter 2 of the *Criminal Code* setting out the principles of criminal responsibility is added after regulation 1.04.

Item [2] consequentially amends regulation 6.18.

Item [3] omits the note following regulation 6.18. The note refers to the definition of penalty units in the *Crimes Act 1914*. The dollar amount per penalty unit has changed since the making of regulation 6.18 and is now \$110.

Item [4] inserts subregulation 6.18(2), which provides that an offence against subregulation 6.18(1) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 6.18(2). This amendment is necessary to ensure that the offence in subregulation 6.18(1) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.

Item [5] omits the note following subregulation 6.20(2). The note refers to the definition of penalty units in the *Crimes Act 1914*. The dollar amount per penalty unit has changed since the making of regulation 6.20 and is now \$110.

Item [6] inserts subregulation 6.20(3), which provides that an offence against subregulation 6.20(1) or (2) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 6.20(3). This amendment is necessary to ensure that the offences in subregulations 6.20(1) and (2) continue to be interpreted as offences of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.

Item [7] inserts subregulation 7.01(3), which provides that an offence against subregulation 7.01(2) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 7.01(3). This amendment is necessary to ensure that the offence in subregulation 7.01(2) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.

Item [8] omits the note and penalty following subregulation 7.02(3). The note refers to the definition of penalty units in the *Crimes Act 1914*. The dollar amount per penalty unit has changed since the making of regulation 7.02 and is now \$110. The penalty is recreated after new subregulation 7.02(4): see item [9].

Item [9] inserts subregulation 7.02(4), which provides that an offence against subregulation 7.02(3) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 7.02(4). This amendment is necessary to ensure that the offence in subregulation

7.02(3) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations. This item also recreates the penalty that previously followed subregulation 7.02(3): see item [8].

Item [10] consequentially amends regulation 8.04A.

Item [11] inserts subregulation 8.04A(2), which provides that an offence against subregulation 8.04A(1) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 8.04A(2). This amendment is necessary to ensure that the offence in subregulation 8.04A(1) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.

Item [12] omits the penalty following subregulation 8.13(3). The penalty is recreated after new subregulation 8.13(4): see item [13].

Item [13] inserts subregulation 8.13(4), which provides that an offence against subregulation 8.13(3) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 8.13(4). This amendment is necessary to ensure that the offence in subregulation 8.13(3) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations. This item also recreates the penalty that previously followed subregulation 8.13 (3): see item [12].

Item [14] omits the note following subregulation 8.14(1). The note refers to the definition of penalty units in the *Crimes Act 1914*. The dollar amount per penalty unit has changed since the making of subregulation 8.14(1) and is now \$110.

Item [15] inserts subregulation 8.14(3), which provides that an offence against subregulation 8.14(1) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 8.14(3). This amendment is necessary to ensure that the offence in subregulation 8.14(1) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.

Item [16] omits the note and penalty following subregulation 10.10(4). The note refers to the definition of penalty units in the *Crimes Act 1914*. The dollar amount per penalty unit has changed since the making of subregulation 10.10(4) and is now \$110. The penalty is recreated after new subregulation 10.10(5): see item [17].

Item [17] inserts subregulation 10.10(5), which provides that an offence against subregulation 10.10(4) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 10.10(5). This amendment is necessary to ensure that the offence in subregulation 10.10(4) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations. This item also recreates the penalty that previously followed subregulation 10.10(4): see item [16].

Item [18] omits the penalty following subregulation 10.13(3). The penalty is recreated after new subregulation 10.13(4): see item [19].

Item [19] inserts subregulation 10.13 (4), which provides that an offence against subregulation 10.13(3) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 10.13(4). This amendment is necessary to ensure that the offence in subregulation 10.13(3) continues to be interpreted as an offence of strict liability following application of

Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations. This item also recreates the penalty that previously followed subregulation 10.13(3): see item [18].

Item [20] consequentially amends regulation 10.15.

Item [21] inserts subregulation 10.15 (2), which provides that an offence against subregulation 10.15(1) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 10.15(2). This amendment is necessary to ensure that the offence in subregulation 10.15(1) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.

Item [22] consequentially amends regulation 10.17.

Item [23] inserts subregulation 10.17(2), which provides that an offence against subregulation 10.17(1) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 10.17(2). This amendment is necessary to ensure that the offence in subregulation 10.17(1) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.

Item [24] consequentially amends regulation 10.18.

Item [25] omits the note following subregulation 10.18(2). The note refers to the definition of penalty units in the *Crimes Act 1914*. The dollar amount per penalty unit has changed since the making of subregulation 10.18(2) and is now \$110.

Item [26] inserts subregulation 10.18(3), which provides that an offence against subregulation 10.18(1) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 10.18(3). This amendment is necessary to ensure that the offence in subregulation 10.18 (1) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.

Item [27] omits the note and penalty following subregulation 12.01(4). The note refers to the definition of penalty units in the *Crimes Act 1914*. The dollar amount per penalty unit has changed since the making of regulation 12.01(4) and is now \$110. The penalty is recreated after new subregulation 12.01(5): see item [28].

Item [28] inserts subregulation 12.01(5), which provides that an offence against subregulation 12.01(4) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 12.01(5). This amendment is necessary to ensure that the offence in subregulation 12.01(4) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Bankruptcy Regulations.