



Bankruptcy and Family Law Legislation Amendment Act 2005

No. 20, 2005

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

Note: An electronic version of this Act is available in SCALEplus
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No. 20, 2005

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

[Assented to 18 March 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Bankruptcy and Family Law
Legislation Amendment Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	18 March 2005
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2	The day on which this Act receives the Royal Assent.	18 March 2005
4. Schedules 3, 4 and 5	The 28th day after the day on which this Act receives the Royal Assent.	15 April 2005

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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to the interaction between family law and bankruptcy law

Part 1—Amendments

Bankruptcy Act 1966

1 Section 27

Omit all the words after “all courts”, substitute:

other than:

- (a) the jurisdiction of the High Court under section 75 of the Constitution; or
- (b) the jurisdiction of the Family Court under section 35 or 35A of this Act.

2 After section 34A

Insert:

35 Family Court’s jurisdiction in bankruptcy where trustee is a party to property settlement or spousal maintenance proceedings etc.

- (1) If, at a particular time:
 - (a) a party to a marriage is a bankrupt; and
 - (b) the trustee of the bankrupt’s estate is:
 - (i) a party to property settlement proceedings in relation to either or both of the parties to the marriage; or
 - (ii) an applicant under section 79A of the *Family Law Act 1975* for the variation or setting aside of an order made under section 79 of that Act in property settlement proceedings in relation to either or both of the parties to the marriage; or
 - (iii) a party to spousal maintenance proceedings in relation to the maintenance of a party to the marriage;

then, at and after that time, the Family Court has jurisdiction in
bankruptcy in relation to any matter connected with, or arising out
of, the bankruptcy of the bankrupt.

- (2) Subsection (1) does not limit the Family Court's jurisdiction under
section 35A.
- (3) In this section:

property settlement proceedings has the same meaning as in the
Family Law Act 1975.

spousal maintenance proceedings means proceedings under the
Family Law Act 1975 with respect to the maintenance of a party to
a marriage.

3 After section 59

Insert:

59A Orders under Part VIII of the *Family Law Act 1975*

Sections 58 and 59 have effect subject to an order under Part VIII
of the *Family Law Act 1975*.

4 Paragraph 116(2)(n)

Omit "and".

5 Paragraph 116(2)(p)

Omit "(4).", substitute "(4);".

6 At the end of subsection 116(2)

Add:

- (q) any property that, under an order under Part VIII of the
Family Law Act 1975, the trustee is required to transfer to the
spouse of the bankrupt.

7 At the end of section 140

Add:

- (11) This section has effect subject to an order under section 114 of the
Family Law Act 1975 (which deals with interlocutory injunctions).
-

8 At the end of section 161

Add:

(3) This section applies to proceedings under the *Family Law Act 1975* in a corresponding way to the way in which it applies to a suit.

(4) If:

(a) a person (the *first trustee*) ceases to be the trustee of a bankrupt's estate; and

(b) proceedings to which the first trustee was a party were pending under the *Family Law Act 1975* immediately before the cessation; and

(c) another person (the *second trustee*) becomes the first trustee's successor in office;

the second trustee is, by force of this subsection, substituted for the first trustee as a party to the proceedings.

Family Law Act 1975

9 Subsection 4(1)

Insert:

bankruptcy trustee, in relation to a bankrupt, means the trustee of the bankrupt's estate.

10 Subsection 4(1)

Insert:

debtor subject to a personal insolvency agreement has the meaning given by section 5.

11 Subsection 4(1) (after paragraph (c) of the definition of *matrimonial cause*)

Insert:

(caa) proceedings between:

(i) a party to a marriage; and

(ii) the bankruptcy trustee of a bankrupt party to the marriage;

with respect to the maintenance of the first-mentioned party;

or

**12 Subsection 4(1) (after paragraph (ca) of the definition of
matrimonial cause)**

Insert:

(cb) proceedings between:

- (i) a party to a marriage; and
- (ii) the bankruptcy trustee of a bankrupt party to the marriage;

with respect to any vested bankruptcy property in relation to the bankrupt party, being proceedings:

- (iii) arising out of the marital relationship; or
- (iv) in relation to concurrent, pending or completed divorce or validity of marriage proceedings between the parties to the marriage; or
- (v) in relation to the divorce of the parties to the marriage, the annulment of the marriage or the legal separation of the parties to the marriage, being a divorce, annulment or legal separation effected in accordance with the law of an overseas jurisdiction, where that divorce, annulment or legal separation is recognised as valid in Australia under section 104; or

13 Subsection 4(1)

Insert:

personal insolvency agreement has the same meaning as in the
Bankruptcy Act 1966.

14 Subsection 4(1)

Insert:

property settlement proceedings means proceedings with respect to:

- (a) the property of the parties to a marriage or either of them; or
- (b) the vested bankruptcy property in relation to a bankrupt party to a marriage.

**15 Subsection 4(1) (after paragraph (a) of the definition of
*property settlement or spousal maintenance
proceedings*)**

Insert:

(aa) the vested bankruptcy property in relation to a bankrupt party to a marriage; or

16 Subsection 4(1)

Insert:

trustee, in relation to a personal insolvency agreement, has the same meaning as in the *Bankruptcy Act 1966*.

17 Subsection 4(1)

Insert:

vested bankruptcy property, in relation to a bankrupt, means property of the bankrupt that has vested in the bankruptcy trustee under the *Bankruptcy Act 1966*. For this purpose, *property* has the same meaning as in the *Bankruptcy Act 1966*.

18 After section 4A

Insert:

5 Debtor subject to a personal insolvency agreement

For the purposes of this Act, if:

- (a) a person who is a debtor (within the meaning of Part X of the *Bankruptcy Act 1966*) executes a personal insolvency agreement; and
- (b) the agreement has not ended (within the meaning of the *Bankruptcy Act 1966*);

the person is a debtor subject to the personal insolvency agreement.

19 Subsections 44(3), (3A) and (3B)

Omit “or (ca)”, substitute “, (caa), (ca) or (cb)”.

20 After subsection 45(1)

Insert:

- (1A) For the purposes of subsection (1), if the bankruptcy trustee of a bankrupt party to a marriage applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act, proceedings relating to that application are taken to be proceedings in relation to the marriage.

21 At the end of section 71A

Add:

- (2) Subsection (1) does not apply in relation to proceedings of a kind referred to in paragraph (caa) or (cb) of the definition of *matrimonial cause* in subsection 4(1).

22 At the end of section 72

Add:

- (2) The liability under subsection (1) of a bankrupt party to a marriage to maintain the other party may be satisfied, in whole or in part, by way of the transfer of vested bankruptcy property in relation to the bankrupt party if the court makes an order under this Part for the transfer.

23 At the end of section 74

Add:

- (2) If:
 - (a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the maintenance of a party to the marriage; and
 - (b) either of the following subparagraphs apply to a party to the marriage:
 - (i) when the application was made, the party was a bankrupt;
 - (ii) after the application was made but before the proceedings are finally determined, the party became a bankrupt; and
 - (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;the court must join the bankruptcy trustee as a party to the proceedings.
- (3) If a bankruptcy trustee is a party to proceedings with respect to the maintenance of a party to a marriage, then, except with the leave of the court, the bankrupt party to the marriage is not entitled to make

a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

- (4) The court must not grant leave under subsection (3) unless the court is satisfied that there are exceptional circumstances.
- (5) If:
- (a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the maintenance of a party to the marriage; and
 - (b) either of the following subparagraphs apply to a party to the marriage (the *debtor party*):
 - (i) when the application was made, the party was a debtor subject to a personal insolvency agreement; or
 - (ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and
 - (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;
- the court must join the trustee of the agreement as a party to the proceedings.
- (6) If the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a party to a marriage, then, except with the leave of the court, the party to the marriage who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (7) The court must not grant leave under subsection (6) unless the court is satisfied that there are exceptional circumstances.
- (8) For the purposes of subsections (2) and (5), an application for an order under this section is taken to be finally determined when:
- (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.

24 After paragraph 75(2)(h)

Insert:

- (ha) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and

25 At the end of paragraph 75(2)(n)

Omit all the words after "section 79", substitute:

in relation to:

- (i) the property of the parties; or
- (ii) vested bankruptcy property in relation to a bankrupt party;

26 At the end of section 75

Add:

- (4) In this section:

party means a party to the marriage concerned.

27 Subsection 79(1)

Repeal the subsection, substitute:

- (1) In property settlement proceedings, the court may make such order as it considers appropriate:
 - (a) in the case of proceedings with respect to the property of the parties to the marriage or either of them—altering the interests of the parties to the marriage in the property; or
 - (b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt party to the marriage—altering the interests of the bankruptcy trustee in the vested bankruptcy property;
- including:
- (c) an order for a settlement of property in substitution for any interest in the property; and
 - (d) an order requiring:
 - (i) either or both of the parties to the marriage; or
 - (ii) the relevant bankruptcy trustee (if any);to make, for the benefit of either or both of the parties to the marriage or a child of the marriage, such settlement or transfer of property as the court determines.

28 Subsection 79(1A)

Omit “proceedings with respect to the property of the parties to a marriage or either of them”, substitute “property settlement proceedings”.

29 Subsection 79(1A)

Omit “party to the proceedings”, substitute “party to the marriage”.

30 Subsection 79(1B)

Omit “proceedings with respect to the property of the parties to a marriage or either of them”, substitute “property settlement proceedings”.

31 Subsection 79(1B)

Omit “parties to the proceedings” (wherever occurring), substitute “parties to the marriage”.

32 Subsection 79(1C)

Omit “proceedings with respect to the property of the parties to a marriage or either of them”, substitute “property settlement proceedings”.

33 Paragraph 79(1C)(a)

Omit “those parties”, substitute “the parties to the marriage”.

34 Paragraph 79(1C)(c)

After “parties”, insert “to the marriage”.

35 Subsection 79(1C)

Omit “either party”, substitute “a party”.

36 Subsection 79(4)

Omit “proceedings with respect to any property of the parties to a marriage or either of them”, substitute “property settlement proceedings”.

37 At the end of paragraphs 79(4)(a), (b), (c), (d) and (e)

Add “and”.

38 Subsection 79(5)

Omit “proceedings with respect to the property of the parties to a marriage or either of them”, substitute “property settlement proceedings”.

39 Paragraph 79(5)(b)

Repeal the paragraph, substitute:

(b) that an order that the court could make with respect to:

(i) the property of the parties to the marriage or either of them; or

(ii) the vested bankruptcy property in relation to a bankrupt party to the marriage;

if that significant change in financial circumstances occurs is more likely to do justice as between the parties to the marriage than an order that the court could make immediately with respect to:

(iii) the property of the parties to the marriage or either of them; or

(iv) the vested bankruptcy property in relation to a bankrupt party to the marriage;

40 Subsection 79(5)

After “requested by either party to the marriage”, insert “or the relevant bankruptcy trustee (if any)”.

41 Subsection 79(5)

After “that party to the marriage”, insert “or the relevant bankruptcy trustee, as the case may be,”.

42 Subsection 79(6)

Omit all the words after “appropriate with”, substitute:

respect to:

(a) any of the property of the parties to the marriage or of either of them; or

(b) any of the vested bankruptcy property in relation to a bankrupt party to the marriage.

43 Subsection 79(8)

Omit “proceedings with respect to the property of the parties to a marriage or either of them”, substitute “property settlement proceedings”.

44 Subsection 79(8)

Omit “either party to the proceedings”, substitute “a party to the marriage”.

45 Paragraph 79(8)(b)

Omit all the words after “appropriate with”, substitute:

respect to:

- (iii) any of the property of the parties to the marriage or either of them; or
- (iv) any of the vested bankruptcy property in relation to a bankrupt party to the marriage; and

46 Subsection 79(9)

Omit “proceedings with respect to the property of the parties to a marriage or either of them”, substitute “property settlement proceedings”.

47 At the end of section 79

Add:

(11) If:

- (a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them; and
- (b) either of the following subparagraphs apply to a party to the marriage:
 - (i) when the application was made, the party was a bankrupt;
 - (ii) after the application was made but before it is finally determined, the party became a bankrupt; and
- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
- (d) the court is satisfied that the interests of the bankrupt’s creditors may be affected by the making of an order under this section in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

- (12) If a bankruptcy trustee is a party to property settlement proceedings, then, except with the leave of the court, the bankrupt party to the marriage is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.
- (13) The court must not grant leave under subsection (12) unless the court is satisfied that there are exceptional circumstances.
- (14) If:
- (a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them; and
 - (b) either of the following subparagraphs apply to a party to the marriage (the *debtor party*):
 - (i) when the application was made, the party was a debtor subject to a personal insolvency agreement; or
 - (ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and
 - (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;
- the court must join the trustee of the agreement as a party to the proceedings.
- (15) If the trustee of a personal insolvency agreement is a party to property settlement proceedings, then, except with the leave of the court, the party to the marriage who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (16) The court must not grant leave under subsection (15) unless the court is satisfied that there are exceptional circumstances.

-
- (17) For the purposes of subsections (11) and (14), an application for an order under this section is taken to be finally determined when:
- (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.

48 Subsections 79A(1) and (1A)

Omit “proceedings with respect to the property of the parties to a marriage or either of them”, substitute “property settlement proceedings”.

49 Subsection 79A(1B)

Omit “party to the proceedings”, substitute “party to the marriage”.

50 Subsection 79A(1C)

Omit “either party to the proceedings”, substitute “a party to the marriage”.

51 At the end of section 79A

Add:

- (5) For the purposes of this section, if:
- (a) an order is made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them; and
 - (b) either of the following subparagraphs apply to a party to the marriage:
 - (i) when the order was made, the party was a bankrupt;
 - (ii) after the order was made, the party became a bankrupt;the bankruptcy trustee is taken to be a person whose interests are affected by the order.
- (6) For the purposes of this section, if:
- (a) a party to a marriage is a bankrupt; and
 - (b) an order is made by a court under section 79 in proceedings with respect to the vested bankruptcy property in relation to the bankrupt party;
- the bankruptcy trustee is taken to be a person whose interests are affected by the order.

- (7) For the purposes of this section, if:
- (a) an order is made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them; and
 - (b) either of the following subparagraphs apply to a party to the marriage:
 - (i) when the order was made, the party was a debtor subject to a personal insolvency agreement;
 - (ii) after the order was made, the party became a debtor subject to a personal insolvency agreement;
- the trustee of the agreement is taken to be a person whose interests are affected by the order.

52 Before section 80

Insert:

79G Notifying bankruptcy trustee etc. about application under section 74, 78, 79 or 79A

- (1) The applicable Rules of Court may make provision for a bankrupt who becomes a party to a proceeding for an application under section 74, 78, 79 or 79A to give notice of the application to the bankruptcy trustee.
- (2) The applicable Rules of Court may make provision for a debtor subject to a personal insolvency agreement who becomes a party to a proceeding for an application under section 74, 78, 79 or 79A to give notice of the application to the trustee of the agreement.

79H Notifying court about bankruptcy etc.

Bankruptcy

- (1) The applicable Rules of Court may make provision for a person who:
 - (a) is a party to a marriage; and
 - (b) is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
 - (c) before that application is finally determined, becomes a bankrupt;

to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.

Debtor subject to a personal insolvency agreement

- (2) The applicable Rules of Court may make provision for a person who:
- (a) is a party to a marriage; and
 - (b) is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
 - (c) before that application is finally determined, becomes a debtor subject to a personal insolvency agreement;
- to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.

Institution of proceeding under the Bankruptcy Act 1966

- (3) The applicable Rules of Court may make provision for a person who:
- (a) is a party to a marriage; and
 - (b) is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
 - (c) before that application is finally determined, becomes a party to a proceeding before the Federal Court or the Federal Magistrates Court under the *Bankruptcy Act 1966* that relates to:
 - (i) the bankruptcy of the person; or
 - (ii) the person's capacity as a debtor subject to a personal insolvency agreement;
- to notify a court exercising jurisdiction under this Act of the institution of the proceeding under the *Bankruptcy Act 1966*.
- (4) The applicable Rules of Court may make provision for a person who:
- (a) is the bankruptcy trustee of a bankrupt party to a marriage; and
 - (b) applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act;
- to notify a court exercising jurisdiction under this Act of the making of the application.

When application finally determined

- (5) For the purposes of this section, an application for an order under section 74, 79 or 79A is taken to be finally determined when:
 - (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.

- (6) For the purposes of this section, an application for a declaration under section 78 is taken to be finally determined when:
 - (a) the application is withdrawn or dismissed; or
 - (b) a declaration is made as a result of the application.

79J Notifying non-bankrupt spouse about application under section 139A of the *Bankruptcy Act 1966*

The applicable Rules of Court may make provision for a person who:

- (a) is the bankruptcy trustee of a bankrupt party to a marriage; and
- (b) applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other party to the marriage);

to notify the other party to the marriage of the making of the application.

53 At the end of section 80

Add:

- (4) If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under paragraph (1)(d) directed to the bankrupt.

- (5) If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under paragraph (1)(d) directed to the debtor subject to the agreement.

- (6) Subsections (4) and (5) do not limit paragraph (1)(d).

54 Subsection 83(1)

Omit “In proceedings with respect to the maintenance of a party to a marriage, if there is in force an order (whether made before or after the commencement of this Act) with respect to the maintenance of that party by the other party to the marriage:”, substitute “If there is in force an order (whether made before or after the commencement of this Act) with respect to the maintenance of a party to a marriage:”.

55 After subsection 83(1)

Insert:

- (1A) The court’s jurisdiction under subsection (1) may be exercised:
- (a) in any case—in proceedings with respect to the maintenance of a party to the marriage; or
 - (b) if there is a bankrupt party to the marriage—on the application of the bankruptcy trustee; or
 - (c) if a party to the marriage is a debtor subject to a personal insolvency agreement—on the application of the trustee of the agreement.

56 Subsection 83(5A)

After “by a party to the marriage”, insert “, or by the bankruptcy trustee of a party to the marriage,”.

57 After subsection 106B(1)

Insert:

- (1A) If:
- (a) a party to a marriage is a bankrupt; and
 - (b) the bankruptcy trustee is a party to proceedings under this Act;
- the court may set aside or restrain the making of an instrument or disposition:
- (c) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the bankrupt; and
 - (d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.
- (1B) If:

- (a) a party to a marriage is a debtor subject to a personal insolvency agreement; and
 - (b) the trustee of the agreement is a party to proceedings under this Act;
- the court may set aside or restrain the making of an instrument or disposition:
- (c) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the debtor; and
 - (d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

58 Subsection 106B(2)

Omit “such instrument or disposition”, substitute “instrument or disposition referred to in subsection (1), (1A) or (1B)”.

59 At the end of section 114

Add:

- (4) If a party to a marriage is a bankrupt, a court may, on the application of the other party to the marriage, by interlocutory order, grant an injunction under subsection (3) restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt’s creditors.
- (5) Subsection (4) does not limit subsection (3).
- (6) If a party to a marriage is a debtor subject to a personal insolvency agreement, a court may, on the application of the other party to the marriage, by interlocutory order, grant an injunction under subsection (3) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.
- (7) Subsection (6) does not limit subsection (3).

Part 2—Application provisions

60 Application of amendments

- (1) Subject to subitems (2) and (3), the amendments of the *Family Law Act 1975* made by this Schedule, to the extent to which they relate to bankruptcies or personal insolvency agreements, apply in relation to:
 - (a) bankruptcies for which the date of the bankruptcy is after the commencement of this item; and
 - (b) personal insolvency agreements executed before, at or after the commencement of this item.

 - (2) The following provisions:
 - (a) subsections 74(2), (3) and (4) of the *Family Law Act 1975* as amended by this Schedule;
 - (b) subsection 74(8) of the *Family Law Act 1975* as amended by this Schedule, to the extent to which that subsection relates to subsection 74(2) of the *Family Law Act 1975* as amended by this Schedule;
 - (c) the definitions inserted in subsection 4(1) of the *Family Law Act 1975* by this Schedule, to the extent to which those definitions relate to subsections 74(2), (3) and (4) of the *Family Law Act 1975* as amended by this Schedule;apply to proceedings instituted after the commencement of this item, whether the date of the bankruptcy is before, on or after the date of commencement of this item.

 - (3) The following provisions:
 - (a) subsections 79(11), (12) and (13) of the *Family Law Act 1975* as amended by this Schedule;
 - (b) subsection 79(17) of the *Family Law Act 1975* as amended by this Schedule, to the extent to which that subsection relates to subsection 79(11) of the *Family Law Act 1975* as amended by this Schedule;
 - (c) the definitions inserted in subsection 4(1) of the *Family Law Act 1975* by this Schedule, to the extent to which those definitions relate to subsections 79(11), (12) and (13) of the *Family Law Act 1975* as amended by this Schedule;
-

TSchedule 1T Amendments relating to the interaction between family law and
bankruptcy lawT

TPart 2T Application provisionsT

apply to proceedings instituted after the commencement of this item,
whether the date of the bankruptcy is before, on or after the date of
commencement of this item.

Schedule 2—Amendments relating to income contributions

Bankruptcy Act 1966

1 After subsection 125(2)

Insert:

- (2A) This section does not apply in relation to an account held by a bankrupt if the account is a supervised account in relation to the bankrupt.

2 Subsection 125(3)

Insert:

supervised account has the meaning given by section 139ZIB.

3 At the end of section 139L

Add:

- (2) For the purposes of the application of the definition of *income* in subsection (1) to Subdivision HA, a reference in that definition to a *bankrupt* includes a reference to a person who has been discharged from bankruptcy.

Note: Subdivision HA deals with the supervised account regime.

4 After section 139ZI

Insert:

Subdivision HA—Supervised account regime

139ZIA Objects

The objects of this Subdivision are:

- (a) to improve the likelihood that a bankrupt will have sufficient money to pay contributions or instalments of contributions; and
(b) to ensure that all monetary income received by the bankrupt is deposited to a single account (the *supervised account*); and

- (c) to enable the trustee to supervise withdrawals from the account.

139ZIB Definitions

In this Subdivision:

bankrupt includes a person who has been discharged from bankruptcy.

bankrupt to whom the supervised account regime applies means a bankrupt in respect of whom a determination under subsection 139ZIC(1) is in force.

constructive income receipt arrangement means an arrangement the effect of which is that income derived by a bankrupt is not actually received by the bankrupt because it is:

- (a) reinvested, accumulated or capitalised; or
- (b) dealt with on behalf of the bankrupt or as the bankrupt directs.

contribution means a contribution that a bankrupt is liable to pay under subsection 139P(1) or 139Q(1).

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

non-monetary income receipt arrangement means an arrangement the effect of which is that income derived by a bankrupt is not actually received by the bankrupt in monetary form because it is derived in a non-monetary form.

reviewable decision means a decision of the trustee of a bankrupt's estate:

- (a) to make a subsection 139ZIC(1) determination; or
- (b) to refuse to revoke a subsection 139ZIC(1) determination; or
- (c) to specify a period in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ii); or
- (d) to refuse to specify a period in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ii); or
- (e) to specify requirements in a supervised account notice for the purposes of subparagraph 139ZIE(1)(a)(ix); or

- (f) to refuse to exercise the powers conferred by subsection 139ZIEA(1); or
- (g) to refuse to give a consent under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3); or
- (h) to vary a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3); or
- (i) to refuse to vary a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3); or
- (j) to revoke a consent given under subsection 139ZIG(3), 139ZIH(5), 139ZIHA(5) or 139ZII(3).

supervised account, in relation to a bankrupt to whom the supervised account regime applies, means an account maintained by the bankrupt in accordance with a supervised account notice that is in force in relation to the bankrupt.

supervised account notice has the meaning given by subsection 139ZIE(1).

withdraw, in relation to an account, includes:

- (a) transfer out of; and
- (b) draw a cheque on; and
- (c) do any other thing that results in a debit from.

working day, in relation to a bankrupt, means a day that is not a Saturday, Sunday or a public holiday in the place where the bankrupt resides.

139ZIC Trustee may determine that the supervised account regime applies to the bankrupt

- (1) The trustee of a bankrupt's estate may, by written notice given to the bankrupt, determine that the supervised account regime applies to the bankrupt.
- (2) The trustee must not make a determination under subsection (1) in relation to the bankrupt unless, at the time the determination is made:
 - (a) the bankrupt is liable to pay a contribution; and
 - (b) either:
 - (i) if the trustee has made a determination under section 139ZG permitting the contribution to be paid by

instalments—the bankrupt has not paid the whole of an instalment at or before the time when it became payable; or

- (ii) if the trustee has made a determination under section 139ZG requiring the bankrupt to pay the contribution at a specified time—the bankrupt has not paid the whole of the contribution at or before the time when it became payable.

(3) A notice under subsection (1) must be in the approved form.

(4) A notice under subsection (1) must be accompanied by:

- (a) a supervised account notice relating to the bankrupt concerned; and

- (b) a statement setting out:

- (i) the effect of sections 139ZIE to 139ZIT; and

- (ii) such other information (if any) as is specified in the regulations.

139ZID Revocation of determination

(1) If a determination is in force under subsection 139ZIC(1) in relation to a bankrupt, the trustee may, by written notice given to the bankrupt, revoke the determination.

(2) The trustee must not revoke the determination unless the trustee is satisfied, having regard to:

- (a) the past payment record of the bankrupt; and

- (b) any other relevant matters;

that the bankrupt will pay the whole of any current or future contributions or instalments of contributions at or before the time when they become payable.

(3) The power conferred on the trustee by subsection (1) may be exercised:

- (a) on his or her own initiative; or

- (b) on the application of the bankrupt.

(4) If, following the bankrupt's application, the trustee refuses to revoke the determination, the trustee must give the bankrupt written notice of the refusal.

- (5) A notice under subsection (1) must be in the approved form.

139ZIDA When determination ceases to be in force

Annulment

- (1) If:
- (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
 - (b) the bankruptcy is annulled;
- the determination ceases to be in force on the date of the annulment.

Discharge—no liability to pay contributions

- (2) If:
- (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
 - (b) the bankrupt is discharged from the bankruptcy; and
 - (c) at the time of the discharge, the bankrupt is not liable to pay a contribution;
- the determination ceases to be in force at the time of the discharge.

Discharge—continuing liability to pay contributions

- (3) If:
- (a) a determination is in force under subsection 139ZIC(1) in relation to a bankrupt; and
 - (b) the bankrupt is discharged from the bankruptcy; and
 - (c) at the time of the discharge, the bankrupt is liable to pay a contribution;
- the determination ceases to be in force when the bankrupt is no longer liable to pay a contribution.

139ZIE Bankrupt must open and maintain supervised account

Supervised account notice

- (1) For the purposes of this Subdivision, a *supervised account notice* is a written notice that is issued by the trustee of a bankrupt's estate and that:

- (a) requires the bankrupt, within:
 - (i) 10 working days after the notice is given to the bankrupt; or
 - (ii) such longer period (if any) as is specified in the notice; to open an account (a *supervised account*) that complies with the following requirements:
 - (iii) the account is kept with an ADI;
 - (iv) the account is kept in Australia;
 - (v) the account is denominated in Australian currency;
 - (vi) the account is held solely in the name of the bankrupt;
 - (vii) deposits may be made to, and withdrawals may be made from, the account;
 - (viii) the account is designed not to have a debit balance;
 - (ix) such other requirements (if any) as are specified in the notice; and
 - (b) requires the bankrupt to inform the ADI, when opening the account, that the account is a supervised account; and
 - (c) requires the bankrupt, after the account is opened, to maintain the account for so long as the notice is in force.
- (2) A supervised account notice must be in the approved form.

Compliance with supervised account notice

- (3) A bankrupt to whom the supervised account regime applies must comply with a supervised account notice in force in relation to the bankrupt.

When supervised account notice ceases to be in force

- (4) A supervised account notice relating to a bankrupt ceases to be in force if the bankrupt ceases to be a bankrupt to whom the supervised account regime applies.

Note: A supervised account notice may be revoked under subsection 139ZIEA(1).

Trustee to be notified of account details

- (5) A bankrupt to whom the supervised account regime applies must, within 2 working days after opening a supervised account, give a

written notice to the trustee setting out the following information about the supervised account:

- (a) the name of the ADI concerned;
- (b) the name in which the account is held;
- (c) the account number;
- (d) the BSB number concerned.

Offence

- (6) A person is guilty of an offence if:
 - (a) the person is subject to a requirement under subsection (3) or (5); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

139ZIEA New supervised account

- (1) If a bankrupt is a bankrupt to whom the supervised account regime applies, the trustee may:
 - (a) by written notice given to the bankrupt, revoke a supervised account notice relating to the bankrupt; and
 - (b) issue a fresh supervised account notice relating to the bankrupt, and give the fresh notice to the bankrupt; and
 - (c) by written notice given to the bankrupt, require the bankrupt, immediately after the account is opened in accordance with the fresh notice, to transfer:
 - (i) the balance (if any) of the account maintained in accordance with the revoked notice;to:
 - (ii) the account opened in accordance with the fresh notice.
- (2) The revocation under paragraph (1)(a) of the supervised account notice takes effect when the bankrupt opens the account in accordance with the fresh supervised account notice.
- (3) Notices under paragraphs (1)(a) and (c) may be set out in the same document.

- (4) The powers conferred on the trustee by subsection (1) may be exercised:
- (a) on his or her own initiative; or
 - (b) on the application of the bankrupt.
- (5) If, following the bankrupt's application, the trustee refuses to exercise the powers conferred by subsection (1), the trustee must give the bankrupt written notice of the refusal.

Offence

- (6) A person is guilty of an offence if:
- (a) the person is subject to a requirement under paragraph (1)(c); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

139ZIF Bankrupt's monetary income to be deposited to supervised account

- (1) A bankrupt to whom the supervised account regime applies must ensure that all monetary income actually received by the bankrupt after the opening of the supervised account is deposited to the account:
- (a) if the income is received in the form of cash or cheque—within 5 working days of its receipt; or
 - (b) in any other case—upon its receipt.

Cash refunds

- (2) For the purposes of subsection (1), if:
- (a) the bankrupt receives an amount of income in the form of cash; and
 - (b) before the paragraph (a) amount is deposited to the supervised account, the bankrupt uses a part of that amount to make a refund;
- the amount that the bankrupt must deposit to the supervised account is the paragraph (a) amount reduced by the part used as mentioned in paragraph (b).

- (3) For the purposes of subsection (1), if:
- (a) the bankrupt receives an amount of income in the form of cash; and
 - (b) before the paragraph (a) amount is deposited to the supervised account, the bankrupt uses the whole of that amount to make a refund;
- the bankrupt is taken not to have received the paragraph (a) amount.

Offence

- (4) A person is guilty of an offence if:
- (a) the person is subject to a requirement under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 12 months.

139ZIG Trustee to supervise withdrawals from supervised account

General prohibition on withdrawals

- (1) A bankrupt to whom the supervised account regime applies must not:
- (a) make a withdrawal from the supervised account; or
 - (b) authorise the making of a withdrawal from the supervised account.

Exceptions

- (2) Subsection (1) does not apply if the withdrawal is made:
- (a) in accordance with the consent of the trustee under subsection (3); or
 - (b) to pay a contribution or an instalment of a contribution; or
 - (c) to transfer an amount as required by a notice under paragraph 139ZIEA(1)(c); or
 - (d) to make a refund; or
 - (e) to reverse a credit previously made to the account where the credit arose from an error or the dishonour of a cheque; or

- (f) to discharge any of the bankrupt's tax liabilities (within the meaning of the *Taxation Administration Act 1953*); or
- (g) to discharge the bankrupt's liability to pay a tax (however described) imposed by or under a law of the Commonwealth, a State or a Territory; or
- (h) to recover from the bankrupt an amount equal to an amount of tax (however described) that the ADI concerned has paid or is liable to pay in connection with the operation of the account; or
- (i) to discharge a liability of the bankrupt to pay a fee or charge in connection with the operation of the account.

Trustee may consent to withdrawals

- (3) The trustee may, by written notice given to the bankrupt, consent to any of the following withdrawals from the supervised account:
 - (a) a specified withdrawal;
 - (b) withdrawals included in a specified class of withdrawals;
 - (c) withdrawals up to a daily, weekly, fortnightly or monthly limit ascertained in accordance with the notice.
- (4) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (5) The powers conferred on the trustee by subsections (3) and (4) may be exercised:
 - (a) on his or her own initiative; or
 - (b) on the application of the bankrupt.
- (6) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (3) or (4), the trustee must give the bankrupt written notice of the refusal.

Offence

- (7) A person is guilty of an offence if:
 - (a) the person is subject to a requirement under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 12 months.

Garnishee powers not affected

- (8) This section does not affect the exercise of powers conferred by:
- (a) section 139ZL of this Act; or
 - (b) section 260-5 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (c) a similar provision in:
 - (i) any other law of the Commonwealth; or
 - (ii) a law of a State or a Territory.

139ZIH Constructive income receipt arrangements

Bankrupt not to enter into new arrangements

- (1) A bankrupt to whom the supervised account regime applies must not enter into a constructive income receipt arrangement.
- (2) Subsection (1) does not apply if the bankrupt enters into the constructive income receipt arrangement in accordance with the consent of the trustee under subsection (5).

Bankrupt not to participate in existing arrangements

- (3) If a bankrupt was participating in a constructive income receipt arrangement immediately before becoming a bankrupt to whom the supervised account regime applies, the bankrupt must, as soon as practicable after becoming such a bankrupt, cease to participate in the arrangement.
- (4) Subsection (3) does not apply if the bankrupt continues to participate in the constructive income receipt arrangement in accordance with the consent of the trustee under subsection (5).

Consent

- (5) The trustee may, by written notice given to the bankrupt:
- (a) consent to the bankrupt entering into:
 - (i) a specified constructive income receipt arrangement; or
 - (ii) constructive income receipt arrangements included in a specified class of constructive income receipt arrangements; or
 - (b) consent to the bankrupt continuing to participate in:

- (i) a specified constructive income receipt arrangement; or
 - (ii) constructive income receipt arrangements included in a specified class of constructive income receipt arrangements.
- (6) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (7) The powers conferred on the trustee by subsections (5) and (6) may be exercised:
- (a) on his or her own initiative; or
 - (b) on the application of the bankrupt.
- (8) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (5) or (6), the trustee must give the bankrupt written notice of the refusal.

Offence

- (9) A person is guilty of an offence if:
- (a) the person is subject to a requirement under subsection (1) or (3); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 12 months.

139ZIHA Non-monetary income receipt arrangements

Bankrupt not to enter into new arrangements

- (1) A bankrupt to whom the supervised account regime applies must not enter into a non-monetary income receipt arrangement.
- (2) Subsection (1) does not apply if the bankrupt enters into the non-monetary income receipt arrangement in accordance with the consent of the trustee under subsection (5).

Bankrupt not to participate in existing arrangements

- (3) If a bankrupt was participating in a non-monetary income receipt arrangement immediately before becoming a bankrupt to whom the

supervised account regime applies, the bankrupt must, as soon as practicable after becoming such a bankrupt, cease to participate in the arrangement.

- (4) Subsection (3) does not apply if the bankrupt continues to participate in the non-monetary income receipt arrangement in accordance with the consent of the trustee under subsection (5).

Consent

- (5) The trustee may, by written notice given to the bankrupt:
- (a) consent to the bankrupt entering into:
 - (i) a specified non-monetary income receipt arrangement; or
 - (ii) non-monetary income receipt arrangements included in a specified class of non-monetary income receipt arrangements; or
 - (b) consent to the bankrupt continuing to participate in:
 - (i) a specified non-monetary income receipt arrangement; or
 - (ii) non-monetary income receipt arrangements included in a specified class of non-monetary income receipt arrangements.
- (6) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (7) The powers conferred on the trustee by subsections (5) and (6) may be exercised:
- (a) on his or her own initiative; or
 - (b) on the application of the bankrupt.
- (8) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (5) or (6), the trustee must give the bankrupt written notice of the refusal.

Offence

- (9) A person is guilty of an offence if:
- (a) the person is subject to a requirement under subsection (1) or (3); and
 - (b) the person engages in conduct; and
-

(c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 12 months.

139ZII Cash income

- (1) A bankrupt to whom the supervised account regime applies must not receive income in the form of cash.
- (2) Subsection (1) does not apply if the income was received in accordance with the consent of the trustee under subsection (3).

Consent

- (3) The trustee may, by written notice given to the bankrupt, consent to the bankrupt receiving in the form of cash:
 - (a) a specified item of income; or
 - (b) items of income included in a specified class of items of income.
- (4) The trustee may, by written notice given to the bankrupt, vary or revoke a consent.
- (5) The powers conferred on the trustee by subsections (3) and (4) may be exercised:
 - (a) on his or her own initiative; or
 - (b) on the application of the bankrupt.
- (6) If, following the bankrupt's application, the trustee refuses to exercise a power conferred by subsection (3) or (4), the trustee must give the bankrupt written notice of the refusal.

Offence

- (7) A person is guilty of an offence if:
 - (a) the person is subject to a requirement under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 12 months.

139ZIIA Keeping of books

If:

- (a) a person is a bankrupt to whom the supervised account regime applies; and
- (b) the person has been discharged from the bankruptcy; section 277A applies in relation to the person as if:
- (c) the person were a bankrupt within the meaning of that section; and
- (d) the person had been discharged from the bankruptcy when the person ceases to be a bankrupt to whom the supervised account regime applies.

139ZIJ Injunctions

Restraining injunctions

- (1) If a bankrupt has engaged, is engaging or is proposing to engage, in any conduct in contravention of this Subdivision, the Court may, on the application of the trustee, grant an injunction:
 - (a) restraining the bankrupt from engaging in the conduct; and
 - (b) if, in the Court's opinion, it is desirable to do so—requiring the bankrupt to do something.

Performance injunctions

- (2) If:
 - (a) a bankrupt has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of this Subdivision;the Court may, on the application of the trustee, grant an injunction requiring the bankrupt to do that act or thing.

139ZIK Interim injunctions

Grant of interim injunction

- (1) If an application is made to the Court for an injunction under section 139ZIJ, the Court may, before considering the application,

grant an interim injunction restraining a bankrupt from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

- (2) The Court is not to require an applicant for an injunction under section 139ZIJ, as a condition of granting an interim injunction, to give any undertakings as to damages.

139ZIL Discharge etc. of injunctions

The Court may discharge or vary an injunction granted under this Subdivision.

139ZIM Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of the Court under this Subdivision to grant an injunction restraining a bankrupt from engaging in conduct of a particular kind may be exercised:
 - (a) if the Court is satisfied that the bankrupt has engaged in conduct of that kind—whether or not it appears to the Court that the bankrupt intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the bankrupt will engage in conduct of that kind—whether or not the bankrupt has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the bankrupt engages in conduct of that kind.

Performance injunctions

- (2) The power of the Court to grant an injunction requiring a bankrupt to do an act or thing may be exercised:
 - (a) if the Court is satisfied that the bankrupt has refused or failed to do that act or thing—whether or not it appears to the Court that the bankrupt intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the bankrupt will refuse or fail to do that act or

thing—whether or not the bankrupt has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the bankrupt refuses or fails to do that act or thing.

139ZIN Other powers of the Court unaffected

The powers conferred on the Court under this Subdivision are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

139ZIO Inspector-General may review trustee's decision

Reviewable decisions

- (1) The Inspector-General may review a reviewable decision:
 - (a) on the Inspector-General's own initiative; or
 - (b) if requested to do so by the bankrupt for reasons that appear to the Inspector-General to be sufficient to justify doing so.
- (2) The Inspector-General must review a reviewable decision if requested to do so by the Ombudsman.

Request by bankrupt

- (3) A request by the bankrupt to the Inspector-General for the review of a reviewable decision must:
 - (a) be in writing and lodged with the Official Receiver's office not later than 60 days after the day on which the decision first came to the notice of the bankrupt; and
 - (b) be accompanied by:
 - (i) a copy of any relevant documents issued or given by the trustee under this Subdivision; and
 - (ii) any other documents on which the bankrupt relies in support of the request.
- (4) The Official Receiver must:
 - (a) endorse on the request the date when it was lodged; and
 - (b) send the request and the accompanying documents to the Inspector-General as soon as practicable after they are received.

Time limit for review

- (5) Within 60 days after the request is lodged, the Inspector-General must:
 - (a) decide whether to review the decision; and
 - (b) if the Inspector-General decides to review the decision—make his or her decision on the review.

139ZIP Inspector-General may request further information

- (1) For the purposes of the exercise of powers in relation to a review, or a request for a review, of a reviewable decision, the Inspector-General may:
 - (a) ask the bankrupt to provide such further relevant information, either orally or in writing, as the Inspector-General specifies; and
 - (b) ask the trustee to provide such information, either orally or in writing, about the decision and the reasons for the decision as the Inspector-General specifies.
- (2) If any information is provided orally, the Inspector-General must record it in writing.

139ZIR Inspector-General's decision on review

- (1) On a review of a reviewable decision, the Inspector-General has all the powers of the trustee and may:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision; or
 - (d) set aside the decision and make a decision in substitution for the decision so set aside.

Application of this Subdivision to Inspector-General's decision

- (2) This Subdivision (apart from sections 139ZIO to 139ZIT), applies to a decision made by the Inspector-General as if it had been made by the trustee under this Subdivision.

139ZIS Inspector-General to notify bankrupt and trustee of decision

- (1) If the Inspector-General:
-

- (a) reviews a reviewable decision; or
 - (b) refuses a request by a bankrupt for a review of a reviewable decision;
- the Inspector-General must give written notice to:
- (c) the bankrupt; and
 - (d) the trustee; and
 - (e) the Official Receiver;
- of the Inspector-General's decision on the review or on the request, as the case may be.
- (2) The notice must:
- (a) set out the decision; and
 - (b) give the reasons for the decision.

Notification of right of review by AAT

- (3) In the case of a decision on the review of a reviewable decision, the notice must also include a statement to the effect that, if the bankrupt or the trustee is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.
- (4) In the case of a decision refusing a request to review a reviewable decision, the notice to the bankrupt must also include a statement to the effect that, if the bankrupt is dissatisfied with the Inspector-General's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for a review of the decision.
- (5) A breach of subsection (3) or (4) in relation to a decision does not affect the validity of the decision.

Inspector-General taken to have reviewed and confirmed decision

- (6) If, within 60 days after lodgment of a request by a bankrupt for the review of a reviewable decision, the Inspector-General has not given written notice to the bankrupt of his or her decision in accordance with subsection (1), the Inspector-General is taken to have reviewed the trustee's decision and confirmed it under paragraph 139ZIR(1)(a).

139ZIT AAT review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision of the Inspector-General on the review of a reviewable decision; or
- (b) a decision by the Inspector-General refusing a request to review a reviewable decision.

5 Application

Paragraph 139ZIC(2)(a) of the *Bankruptcy Act 1966* as amended by this Schedule applies in relation to a bankrupt who is liable to pay a contribution, whether the liability arose before, at or after the commencement of this item.

Schedule 3—Amendment relating to maintenance agreements

Bankruptcy Act 1966

1 Subsection 5(1) (definition of *maintenance agreement*)

Repeal the definition, substitute:

maintenance agreement means:

- (a) a maintenance agreement (within the meaning of the *Family Law Act 1975*) that has been registered in, or approved by, a court in Australia or an external Territory; or
- (b) any other agreement with respect to the maintenance of a person that has been registered in, or approved by, a court in Australia or an external Territory;

but does not include a financial agreement within the meaning of the *Family Law Act 1975*.

2 Application of amendment

The amendment made by item 1 applies to all bankruptcies current on or after the commencement of this item.

Schedule 4—Amendments relating to financial agreements under the Family Law Act 1975

Bankruptcy Act 1966

1 At the end of subsection 40(1)

Add:

- ; (o) if the debtor becomes insolvent as a result of one or more transfers of property in accordance with a financial agreement (within the meaning of the *Family Law Act 1975*) to which the debtor is a party.

2 After subsection 40(7)

Insert:

- (7A) For the purposes of paragraph (1)(o):
 - (a) *transfer of property* includes a payment of money; and
 - (b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person.

3 Application of amendments

The amendments made by this Schedule apply in relation to financial agreements (within the meaning of the *Family Law Act 1975*) entered into after the commencement of this item.

Schedule 5—Additional amendments relating to the interaction between family law and bankruptcy law

Family Law Act 1975

1 At the end of section 79

Add:

- (10) The following are entitled to become a party to proceedings in which an application is made for an order under this section:
- (a) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the order were made;
 - (b) any other person whose interests would be affected by the making of the order.

2 At the end of section 79A

Add:

- (4) For the purposes of this section, a creditor of a party to the proceedings in which the order under section 79 was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover his or her debt because the order has been made.

3 After section 79E

Insert:

79F Notifying third parties about application

The applicable Rules of Court may specify the circumstances in which a person who:

- (a) applies for an order under this Part; or
- (b) is a party to proceedings for an order under this Part;

is to give notice of the application to a person who is not a party to the proceedings.

4 After section 90D

Insert:

90DA Need for separation declaration for certain provisions of financial agreement to take effect

- (1) A financial agreement between 2 people, to the extent to which it deals with:
 - (a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of them at the time when the agreement is made, or at a later time and before the termination of the marriage by divorce, is to be dealt with; or
 - (b) the maintenance of either of them after the termination of the marriage by divorce;is of no force or effect until a separation declaration is made.
- (2) A separation declaration is a written declaration that complies with subsections (3) and (4).
- (3) The declaration must be signed by at least one of the parties to the financial agreement.
- (4) The declaration must state that:
 - (a) the parties have separated and are living separately and apart at the declaration time; and
 - (b) in the opinion of the parties making the declaration, there is no reasonable likelihood of cohabitation being resumed.
- (5) In this section:

declaration time means the time when the declaration was signed by a party to the financial agreement (or last signed by a party to the agreement, if both parties to the agreement have signed).

separated has the same meaning as in section 48 (as affected by section 49).

5 After subsection 106B(4)

Insert:

(4AA) An application may be made to the court for an order under this section by:

- (a) a party to the proceedings; or
 - (b) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the instrument or disposition were made; or
 - (c) any other person whose interests would be affected by the making of the instrument or disposition.
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*[Minister's second reading speech made in—
Senate on 17 November 2004
House of Representatives on 17 February 2005]*

(182/04)
