





# **Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007**

**No. 57, 2007**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007**

**No. 57, 2007**

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

[Assented to 15 April 2007]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Bankruptcy Legislation Amendment  
(Superannuation Contributions) Act 2007*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	15 April 2007
2. Schedule 1, Part 1	28 July 2006.	28 July 2006
3. Schedule 1, Part 2	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.	
4. Schedule 2, item 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.	
5. Schedule 2, items 2 to 4	The day after this Act receives the Royal Assent.	16 April 2007
6. Schedule 2, items 5 to 7	At the same time as the provision(s) covered by table item 4.	
7. Schedule 2, item 8	Immediately after the commencement of item 12 of Schedule 1 to the <i>Bankruptcy Legislation Amendment (Anti-avoidance) Act 2006</i> .	31 May 2006
8. Schedule 2, item 9	Immediately after the commencement of item 208 of Schedule 1 to the <i>Bankruptcy Legislation Amendment Act 1996</i> .	16 December 1996

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
9. Schedule 2, item 10	Immediately after the commencement of section 10 of the <i>Superannuation Industry (Supervision) Consequential Amendments Act 1993</i> .	1 July 1994
10. Schedule 2, items 11 to 19	The day after this Act receives the Royal Assent.	16 April 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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 superannuation contributions**

### **Part 1—Amendments commencing on 28 July 2006**

#### *Bankruptcy Act 1966*

##### **1 Paragraph 59(1)(e)**

Omit “or 122”, substitute “, 122, 128B or 128C”.

##### **2 Before section 115**

Insert:

#### **Subdivision A—General**

##### **3 Paragraph 116(2)(d)**

After “(5)”, insert “of this section and sections 128B and 128C”.

##### **4 Subsection 123(1)**

After “(inclusive)”, insert “and sections 128B and 128C”.

##### **5 Subsection 123(6)**

Omit “section 121”, substitute “sections 121, 128B and 128C”.

##### **6 At the end of Division 3 of Part VI**

Add:

#### **Subdivision B—Superannuation contributions**

##### **128A Simplified outline**

The following is a simplified outline of this Subdivision:

- |  |
|--|
| <ul style="list-style-type: none"><li>• This Subdivision enables the recovery of superannuation contributions made to defeat the bankrupt’s creditors.</li><li>• There are 2 types of recoverable contributions:</li></ul> |
|--|

- |  |
|--|
| <ul style="list-style-type: none"><li>(a) contributions made by a person who later becomes a bankrupt (see section 128B);</li><li>(b) contributions made by a third party for the benefit of a person who later becomes a bankrupt (see section 128C).</li></ul> |
|--|

**128B Superannuation contributions made to defeat creditors—  
contributor is a person who later becomes a bankrupt**

*Transfers that are void*

- (1) A transfer of property by a person who later becomes a bankrupt (the *transferor*) to another person (the *transferee*) is void against the trustee in the transferor's bankruptcy if:
  - (a) the transfer is made by way of a contribution to an eligible superannuation plan; and
  - (b) the property would probably have become part of the transferor's estate or would probably have been available to creditors if the property had not been transferred; and
  - (c) the transferor's main purpose in making the transfer was:
    - (i) to prevent the transferred property from becoming divisible among the transferor's creditors; or
    - (ii) to hinder or delay the process of making property available for division among the transferor's creditors; and
  - (d) the transfer occurs on or after 28 July 2006.

*Showing the transferor's main purpose in making a transfer*

- (2) The transferor's main purpose in making the transfer is taken to be the purpose described in paragraph (1)(c) if it can reasonably be inferred from all the circumstances that, at the time of the transfer, the transferor was, or was about to become, insolvent.
- (3) In determining whether the transferor's main purpose in making the transfer was the purpose described in paragraph (1)(c), regard must be had to:
  - (a) whether, during any period ending before the transfer, the transferor had established a pattern of making contributions to one or more eligible superannuation plans; and

- (b) if so, whether the transfer, when considered in the light of that pattern, is out of character.

*Other ways of showing the transferor's main purpose in making a transfer*

- (4) Subsections (2) and (3) do not limit the ways of establishing the transferor's main purpose in making a transfer.

*Rebuttable presumption of insolvency*

- (5) For the purposes of this section, a rebuttable presumption arises that the transferor was, or was about to become, insolvent at the time of the transfer if it is established that the transferor:
- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the transferor and as sufficiently disclose the transferor's business transactions and financial position; or
  - (b) having kept such books, accounts and records, has not preserved them.

*Protection of successors in title*

- (6) This section does not affect the rights of a person who acquired property from the transferee in good faith and for at least the market value of the property.

*Meaning of transfer of property and market value*

- (7) For the purposes of this section:
- (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; and
  - (c) the **market value** of property transferred is its market value at the time of the transfer.

**128C Superannuation contributions made to defeat creditors—  
contributor is a third party**

*Transfers that are void*

- (1) If:
- (a) a person (the *transferor*) transfers property to another person, (the *transferee*); and
  - (b) the transfer is by way of a contribution to an eligible superannuation plan for the benefit of a person who later becomes a bankrupt (the *beneficiary*); and
  - (c) the transferor did so under a scheme to which the beneficiary was a party; and
  - (d) the property would probably have become part of the beneficiary's estate or would probably have been available to creditors if the property had not been transferred; and
  - (e) the beneficiary's main purpose in entering into the scheme was:
    - (i) to prevent the transferred property from becoming divisible among the beneficiary's creditors; or
    - (ii) to hinder or delay the process of making property available for division among the beneficiary's creditors; and
  - (f) the transfer occurred on or after 28 July 2006;
- the transfer is void against the trustee in the beneficiary's bankruptcy.
- (2) For the purposes of paragraph (1)(b), disregard a benefit that is payable in the event of the death of a person.

*Showing the beneficiary's main purpose in entering into the scheme*

- (3) The beneficiary's main purpose in entering into the scheme is taken to be the purpose described in paragraph (1)(e) if it can reasonably be inferred from all the circumstances that, at the time when the beneficiary entered into the scheme, the beneficiary was, or was about to become, insolvent.
- (4) In determining whether the beneficiary's main purpose in entering into the scheme was the purpose described in paragraph (1)(e), regard must be had to:
-

- (a) whether, during any period ending before the scheme was entered into, the transferor had established a pattern of making contributions to one or more eligible superannuation plans for the benefit of the beneficiary; and
  - (b) if so, whether the transfer, when considered in the light of that pattern, is out of character.
- (5) For the purposes of paragraph (4)(a), disregard a benefit that is payable in the event of the death of a person.

*Other ways of showing the beneficiary's main purpose in entering into a scheme*

- (6) Subsections (3) and (4) do not limit the ways of establishing the beneficiary's main purpose in entering into a scheme.

*Rebuttable presumption of insolvency*

- (7) For the purposes of this section, a rebuttable presumption arises that the beneficiary was, or was about to become, insolvent at the time the beneficiary entered into the scheme if it is established that the beneficiary:
- (a) had not, in respect of that time, kept such books, accounts and records as are usual and proper in relation to the business carried on by the beneficiary and as sufficiently disclose the beneficiary's business transactions and financial position; or
  - (b) having kept such books, accounts and records, has not preserved them.

*Protection of successors in title*

- (8) This section does not affect the rights of a person who acquired property from the transferee in good faith and for at least the market value of the property.

*Meaning of transfer of property and market value*

- (9) For the purposes of this section:
- (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; and
-

- (c) the *market value* of property transferred is its market value at the time of the transfer.

### **128D Time for making claims by trustee**

- (1) An action under section 128B or 128C with respect to a transaction may be commenced by the trustee of a bankrupt's estate at any time.
- (2) A section 139ZQ notice in relation to a transaction that, under section 128B or 128C, is void against the trustee of a bankrupt's estate must not be given before the commencement of Part 2 of Schedule 1 to the *Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007*.
- (3) A section 139ZQ notice in relation to a transaction that, under section 128B or 128C, is void against the trustee of a bankrupt's estate may be given even if the transaction occurred before the commencement of Part 2 of Schedule 1 to the *Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007*.

### **128N Definitions**

In this Subdivision:

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

*contribution*, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

*eligible superannuation plan* means any of the following:

- (a) a regulated superannuation fund;
- (b) an approved deposit fund;
- (c) an RSA;
- (d) a public sector superannuation scheme.

*public sector superannuation scheme* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*, but does not include a regulated superannuation fund.

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

*scheme* means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

**7 Subparagraph 149A(2)(a)(i)**

After “149D(1)(ab),”, insert “(ac), (ad),”.

**8 After paragraph 149D(1)(ab)**

Insert:

- (ac) any transfer is void against the trustee in the bankruptcy because of section 128B;
- (ad) any transfer is void against the trustee in the bankruptcy because of section 128C;

**9 Paragraph 250(1)(e)**

Omit “or 122”, substitute “, 122, 128B or 128C”.

**10 After subsection 302A(2)**

Insert:

- (2A) This section does not apply to a provision that facilitates compliance with:
  - (a) section 128B; or
  - (b) section 128C.

**11 At the end of section 302AB**

Add:

- (3) This section does not apply to a provision that facilitates compliance with:
  - (a) section 128B; or
  - (b) section 128C.

**12 Section 302B**

Before “A provision”, insert “(1)”.

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**13 At the end of section 302B**

Add:

- (2) This section does not apply to a provision that facilitates compliance with:
  - (a) section 128B; or
  - (b) section 128C.

***Payment Systems and Netting Act 1998***

**14 Section 5 (paragraph (e) of the definition of *specified provisions*)**

Omit “and 122”, substitute “, 122, 128B and 128C”.

## Part 2—Amendments commencing on Proclamation

### *Bankruptcy Act 1966*

#### **15 At the end of paragraphs 116(1)(a), (b) and (d)**

Add “and”.

#### **16 After paragraph 116(1)(d)**

Insert:

- (e) money that is paid to the trustee of the bankrupt’s estate under an order under paragraph 128K(1)(b); and
- (f) money that is paid to the trustee of the bankrupt’s estate under a section 139ZQ notice that relates to a transaction that is void against the trustee under section 128C; and
- (g) money that is paid to the trustee of the bankrupt’s estate under an order under section 139ZU;

#### **17 Paragraph 116(2)(d)**

Omit “and 128C”, substitute “, 128C and 139ZU”.

#### **18 At the end of section 128A**

Add:

- Superannuation accounts may be frozen for up to 180 days pending the taking of recovery action under section 139ZQ or 139ZU.

#### **19 After subsection 128B(5)**

Insert:

*Refund of contributions tax etc.*

(5A) If:

- (a) as a result of subsection (1), a transfer made by way of a contribution to an eligible superannuation plan is void against the trustee in the transferor’s bankruptcy; and

- (b) any of the following amounts was debited from the contribution:
  - (i) an amount in respect of tax in respect of the contribution;
  - (ii) a fee, or a charge, in respect of the contribution; and
- (c) in compliance with a section 139ZQ notice that relates to the transfer, the trustee of the eligible superannuation plan pays an amount to the trustee in the transferor's bankruptcy; and
- (d) the amount paid in compliance with the section 139ZQ notice exceeds the amount so debited;

the trustee in the transferor's bankruptcy must pay to the trustee of the eligible superannuation plan an amount equal to the amount so debited.

## **20 After subsection 128C(7)**

Insert:

*Refund of contributions tax etc.*

(7A) If:

- (a) as a result of subsection (1), a transfer made by way of a contribution to an eligible superannuation plan is void against the trustee in the beneficiary's bankruptcy; and
- (b) any of the following amounts was debited from the contribution:
  - (i) an amount in respect of tax in respect of the contribution;
  - (ii) a fee, or a charge, in respect of the contribution; and
- (c) in compliance with a section 139ZQ notice that relates to the transfer, the trustee of the eligible superannuation plan pays an amount to the trustee in the beneficiary's bankruptcy; and
- (d) the amount paid in compliance with the section 139ZQ notice exceeds the amount so debited;

the trustee in the beneficiary's bankruptcy must pay to the trustee of the eligible superannuation plan an amount equal to the amount so debited.

## **21 After section 128D**

Insert:

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## **128E Superannuation account-freezing notice**

### *Scope*

- (1) This section applies in relation to a member of an eligible superannuation plan if the Official Receiver has reasonable grounds to believe that:
  - (a) a transaction is void against the trustee of a bankrupt's estate under section 128B or 128C; and
  - (b) either:
    - (i) the whole or a part of the member's superannuation interest is attributable to the transaction; or
    - (ii) the trustee of the bankrupt's estate has made an application for a section 139ZU order that relates to the transaction and the member's superannuation interest.

### *Giving of freezing notice*

- (2) The Official Receiver may, by written notice (a ***superannuation account-freezing notice***) given to the trustee of the eligible superannuation plan, direct the trustee of the plan not to:
  - (a) cash or debit; or
  - (b) permit the cashing, debiting, roll-over, transfer or forfeiture of;  
the whole or any part of the superannuation interest except:
    - (c) for the purposes of complying with a notice under section 139ZQ; or
    - (d) for the purposes of complying with an order under section 139ZU; or
    - (e) for the purposes of charging costs against, or debiting costs from, the superannuation interest; or
    - (f) for the purposes of giving effect to a family law payment split; or
    - (g) in accordance with the written consent of the Official Receiver given under section 128H; or
    - (h) for the purposes of complying with an order under paragraph 128K(1)(b); or
    - (i) for the purposes of complying with an order under subsection 139ZT(2); or

- (j) in such circumstances (if any) as are specified in the regulations.
- (3) The superannuation account-freezing notice must set out the facts and circumstances because of which the Official Receiver considers that the Official Receiver has reasonable grounds to believe that:
  - (a) the transaction is void against the trustee of the bankrupt's estate under section 128B or 128C; and
  - (b) either:
    - (i) the whole or a part of the member's superannuation interest is attributable to the transaction; or
    - (ii) the trustee of the bankrupt's estate has made an application for a section 139ZU order that relates to the transaction and the member's superannuation interest.

*When Official Receiver may give freezing notice*

- (4) The Official Receiver may give the superannuation account-freezing notice:
  - (a) if the Official Trustee is the trustee of the bankrupt's estate—on the initiative of the Official Receiver; or
  - (b) if a registered trustee is the trustee of the bankrupt's estate—on application by the registered trustee.

*When freezing notice comes into force*

- (5) The superannuation account-freezing notice comes into force when the notice is given to the trustee of the eligible superannuation plan.

## **128F Revocation of superannuation account-freezing notice**

*Revocation of freezing notice by Official Receiver*

- (1) If a superannuation account-freezing notice is in force in relation to a member of an eligible superannuation plan, the Official Receiver may, by written notice given to the trustee of the plan, revoke the superannuation account-freezing notice.

**Schedule 1** Amendments relating to superannuation contributions  
**Part 2** Amendments commencing on Proclamation

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- (2) The Official Receiver may revoke a superannuation account-freezing notice that relates to a member of an eligible superannuation plan:
- (a) if the Official Trustee is the trustee of the bankrupt's estate—on the initiative of the Official Receiver; or
  - (b) if a registered trustee is the trustee of the bankrupt's estate—on application by the registered trustee; or
  - (c) in any case—on application by the member.

*Revocation of freezing notice when section 139ZQ notice complied with etc.*

- (3) If:
- (a) subparagraph 128E(1)(b)(i) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan; and
  - (b) during the 180-day period after the superannuation account-freezing notice comes into force, a section 139ZQ notice is given in relation to the transaction referred to in paragraph 128E(1)(a);
- the superannuation account-freezing notice is revoked:
- (c) when the trustee of the plan complies with the section 139ZQ notice; or
  - (d) when the section 139ZQ notice is revoked; or
  - (e) when the Court sets aside the section 139ZQ notice.

*Revocation of freezing notice if no section 139ZQ notice given after 180 days*

- (4) If subparagraph 128E(1)(b)(i) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan, the superannuation account-freezing notice is revoked if:
- (a) 180 days pass after the notice comes into force; and
  - (b) no section 139ZQ notice has been given in relation to the transaction referred to in paragraph 128E(1)(a).

*Revocation of freezing notice when section 139ZU order complied with etc.*

- (5) If:
-

- (a) subparagraph 128E(1)(b)(ii) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan; and
  - (b) during the 180-day period after the superannuation account-freezing notice comes into force, a section 139ZU order is made in relation to the transaction referred to in paragraph 128E(1)(a) and in relation to the member's superannuation interest;
- the superannuation account-freezing notice is revoked:
- (c) when the trustee of the plan complies with the section 139ZU order; or
  - (d) when the section 139ZU order is set aside on appeal.

*Revocation of freezing notice when application for section 139ZU order dismissed or withdrawn*

- (6) If:
  - (a) subparagraph 128E(1)(b)(ii) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan; and
  - (b) during the 180-day period after the superannuation account-freezing notice comes into force:
    - (i) the Court dismisses an application for a section 139ZU order in relation to the transaction referred to in paragraph 128E(1)(a) and in relation to the member's superannuation interest; or
    - (ii) an application for a section 139ZU order in relation to the transaction referred to in paragraph 128E(1)(a) and in relation to the member's superannuation interest is withdrawn;

the superannuation account-freezing notice is revoked.

*Revocation of freezing notice if no section 139ZU order made after 180 days*

- (7) If subparagraph 128E(1)(b)(ii) applied in relation to a superannuation account-freezing notice given in relation to a member of an eligible superannuation plan, the superannuation account-freezing notice is revoked if:
  - (a) 180 days pass after the notice comes into force; and

- (b) no section 139ZU order has been made in relation to the transaction referred to in paragraph 128E(1)(a) and in relation to the member's superannuation interest.

*Extension of 180-day period*

- (8) The Court may, on application by the Official Receiver, extend, or further extend, the 180-day period referred to in subsection (5), (6) or (7).
- (9) The Official Receiver may make an application under subsection (8):
  - (a) if the Official Trustee is the trustee of the bankrupt's estate—on the initiative of the Official Receiver; or
  - (b) if a registered trustee is the trustee of the bankrupt's estate—on application by the registered trustee.

**128G Copy of superannuation account-freezing notice to be given to trustee etc.**

- (1) If the Official Receiver gives or revokes a superannuation account-freezing notice that relates to a member of an eligible superannuation plan:
  - (a) the Official Receiver must give 2 copies of the superannuation account-freezing notice or the revocation notice, as the case may be, to the trustee of the bankrupt's estate; and
  - (b) the trustee must give one of those copies to the member.
- (2) A failure to comply with subsection (1) does not affect the validity of the superannuation account-freezing notice or the revocation notice, as the case may be.

**128H Consent of Official Receiver to the cashing etc. of a superannuation interest**

*Scope*

- (1) This section applies if a superannuation account-freezing notice is in force in relation to a member's superannuation interest.

*Consent*

- (2) The member may apply in writing to the Official Receiver for the Official Receiver to consent to the cashing, debiting, roll-over, transfer or forfeiture, in whole or in part, of the member's superannuation interest.
- (3) If an application is made under subsection (2), the Official Receiver may, by written notice given to the trustee of the eligible superannuation plan concerned, consent to the cashing, debiting, roll-over, transfer or forfeiture, in whole or in part, of the member's superannuation interest.
- (4) A consent under subsection (3) may be:
  - (a) unconditional; or
  - (b) subject to such conditions (if any) as are specified in the notice of consent.
- (5) If the Official Receiver gives a consent under subsection (3) in relation to a member's superannuation interest, the Official Receiver must give a copy of the consent to the member.

*Consultation*

- (6) Before giving a consent under subsection (3), the Official Receiver must consult the trustee of the bankrupt's estate.

*Review of decisions*

- (7) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Official Receiver refusing to give a consent under subsection (3).
- (8) The trustee of the bankrupt's estate may apply to the Administrative Appeals Tribunal for review of a decision of the Official Receiver giving a consent under subsection (3).

**128J Power of Court to set aside superannuation account-freezing notice**

- (1) If the Court, on application by:
  - (a) a person to whom a superannuation account-freezing notice has been given; or

- (b) the member whose superannuation interest is affected by a superannuation account-freezing notice; or
  - (c) any other interested person;
- is satisfied that the Official Receiver did not have reasonable grounds to believe that:
- (d) the relevant transaction is void against the trustee of a bankrupt's estate under section 128B or 128C; and
  - (e) either:
    - (i) the whole or a part of the relevant member's superannuation interest is attributable to the transaction; or
    - (ii) the trustee of the bankrupt's estate has made an application for a section 139ZU order that relates to the transaction and the relevant member's superannuation interest;
- the Court may make an order setting aside the notice.
- (2) A superannuation account-freezing notice that has been set aside is taken not to have been given.

**128K Judicial enforcement of superannuation account-freezing notices**

- (1) If the Court is satisfied that the trustee of an eligible superannuation plan has breached, or is proposing to breach, a superannuation account-freezing notice, the Court may, on application of the trustee of the relevant bankrupt's estate, make any or all of the following orders:
  - (a) an order directing the trustee of the plan to comply with that notice;
  - (b) an order directing the trustee of the plan to pay to the trustee of the relevant bankrupt's estate an amount not exceeding the money, or the value of the property, received as a result of the transaction referred to in paragraph 128E(1)(a);
  - (c) any other order that the Court thinks appropriate.
- (2) The Court may discharge or vary an order granted under this section.

- (3) An order by the Court under paragraph (1)(b) is enforceable as if it were an order for the payment of money made by the Court when exercising jurisdiction otherwise than under this Act.

### **128L Protection of trustee of eligible superannuation plan**

- (1) No criminal or civil proceedings lie against the trustee of an eligible superannuation plan because of anything done (or not done) by the trustee in good faith:
- (a) in compliance with a superannuation account-freezing notice; or
  - (b) in connection with, or incidental to, the trustee's compliance with a superannuation account-freezing notice; or
  - (c) in compliance with a section 139ZQ notice; or
  - (d) in connection with, or incidental to, the trustee's compliance with a section 139ZQ notice; or
  - (e) in compliance with a section 139ZU order; or
  - (f) in connection with, or incidental to, the trustee's compliance with a section 139ZU order; or
  - (g) in compliance with a subsection 139ZT(2) order; or
  - (h) in connection with, or incidental to, the trustee's compliance with a subsection 139ZT(2) order; or
  - (i) in compliance with a paragraph 128K(1)(b) order; or
  - (j) in connection with, or incidental to, the trustee's compliance with a paragraph 128K(1)(b) order.
- (2) Anything done (or not done) by the trustee of a regulated superannuation fund, or the trustee of an approved deposit fund, in good faith:
- (a) in compliance with a superannuation account-freezing notice; or
  - (b) in connection with, or incidental to, the trustee's compliance with a superannuation account-freezing notice; or
  - (c) in compliance with a section 139ZQ notice; or
  - (d) in connection with, or incidental to, the trustee's compliance with a section 139ZQ notice; or
  - (e) in compliance with a section 139ZU order; or
  - (f) in connection with, or incidental to, the trustee's compliance with a section 139ZU order; or
  - (g) in compliance with a subsection 139ZT(2) order; or
-

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- (h) in connection with, or incidental to, the trustee's compliance with a subsection 139ZT(2) order; or
  - (i) in compliance with a paragraph 128K(1)(b) order; or
  - (j) in connection with, or incidental to, the trustee's compliance with a paragraph 128K(1)(b) order;
- is taken not to be in breach of:
- (k) the *Superannuation Industry (Supervision) Act 1993*; or
  - (l) any standards prescribed under that Act.
- (3) Anything done (or not done) by an RSA provider in good faith:
- (a) in compliance with a superannuation account-freezing notice; or
  - (b) in connection with, or incidental to, the RSA provider's compliance with a superannuation account-freezing notice; or
  - (c) in compliance with a section 139ZQ notice; or
  - (d) in connection with, or incidental to, the RSA provider's compliance with a section 139ZQ notice; or
  - (e) in compliance with a section 139ZU order; or
  - (f) in connection with, or incidental to, the trustee's compliance with a section 139ZU order; or
  - (g) in compliance with a subsection 139ZT(2) order; or
  - (h) in connection with, or incidental to, the trustee's compliance with a subsection 139ZT(2) order; or
  - (i) in compliance with a paragraph 128K(1)(b) order; or
  - (j) in connection with, or incidental to, the trustee's compliance with a paragraph 128K(1)(b) order;
- is taken not to be in breach of:
- (k) the *Retirement Savings Accounts Act 1997*; or
  - (l) any standards prescribed under that Act.

**128M References to a member of an eligible superannuation plan**

References in a provision of this Subdivision to:

- (a) a member of an eligible superannuation plan; and
- (b) a bankrupt;

do not imply that the bankrupt may not be the member.

**22 Section 128N**

Insert:

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*cached*, in relation to a superannuation interest, includes applied towards the provision of a pension.

### **23 Section 128N**

Insert:

*costs*:

- (a) in relation to a regulated superannuation fund, an approved deposit fund or an RSA—includes:
  - (i) transaction costs; and
  - (ii) government charges; and
  - (iii) taxes and duties; and
  - (iv) charges relating to the management or investment of fund assets or RSA assets, as the case may be; or
- (b) in any other case—includes anything that, under the regulations, is taken to be costs for the purposes of this paragraph.

### **24 Section 128N**

Insert:

*family law payment split* means a payment split under Part VIIIIB of the *Family Law Act 1975*.

### **25 Section 128N**

Insert:

*member*:

- (a) in relation to a regulated superannuation fund—means a member of the fund; or
- (b) in relation to an approved deposit fund—means a depositor in the fund; or
- (c) in relation to an RSA—means the RSA holder; or
- (d) in relation to a public sector superannuation scheme—has the meaning given by the regulations.

### **26 Section 128N**

Insert:

*pension* includes:

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- (a) a benefit provided by a fund, if the benefit is taken, under regulations made for the purposes of the definition of ***pension*** in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*, to be a pension for the purposes of that Act; and
- (b) a benefit provided by a public sector superannuation scheme, if the benefit is taken, under the regulations, to be a pension for the purposes of this definition.

**27 Section 128N**

Insert:

***RSA provider*** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**28 Section 128N**

Insert:

***superannuation account-freezing notice*** means a notice under section 128E.

**29 Section 128N**

Insert:

***superannuation interest*** means an interest in an eligible superannuation plan, but does not include a reversionary interest.

**30 Section 128N**

Insert:

***trustee***, in relation to an eligible superannuation plan, means:

- (a) if the plan is a fund that has a trustee (within the ordinary meaning of that word)—the trustee of the plan; or
- (b) if the plan is an RSA—the RSA provider; or
- (c) if:
  - (i) none of the preceding paragraphs apply; and
  - (ii) a person is identified in accordance with the regulations as the trustee of the plan for the purposes of this definition;the person identified in accordance with the regulations; or
- (d) in any other case—the person who manages the plan.

If a person who is not the trustee of an eligible superannuation plan nevertheless has the power to make payments to members of the plan, then references in this Subdivision to the trustee of the plan include references to that person.

### **31 Section 128N**

Insert:

***withdrawal benefit:***

- (a) in relation to a regulated superannuation fund or an approved deposit fund—has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*; or
- (b) in relation to an RSA—has the same meaning as in the *Retirement Savings Accounts Regulations 1997*; or
- (c) in relation to a public sector superannuation scheme—has the meaning given by the regulations.

### **32 Subsection 139ZQ(1)**

Omit “the money or the value of the property received.”, substitute:  
whichever of the following is applicable:

- (c) if:
  - (i) the transaction is void against the trustee under section 128B or 128C; and
  - (ii) the transaction is by way of a contribution to an eligible superannuation plan for the benefit of a person (the ***beneficiary***) who may or may not be the bankrupt; and
  - (iii) the beneficiary is a member of the eligible superannuation plan;whichever is the lesser of the following:
  - (iv) the money or the value of the property received;
  - (v) the beneficiary’s withdrawal benefit in relation to the eligible superannuation plan;
- (d) in any other case—the money or the value of the property received.

### **33 At the end of section 139ZQ**

Add:

- (9) For the purposes of subparagraph (1)(c)(ii), disregard a benefit that is payable in the event of the death of a person.
-

(10) In this section:

*contribution* has the same meaning as in Subdivision B of Division 3.

*eligible superannuation plan* has the same meaning as in Subdivision B of Division 3.

*member* of an eligible superannuation plan has the same meaning as in Subdivision B of Division 3.

*withdrawal benefit* has the same meaning as in Subdivision B of Division 3.

### **34 At the end of Division 4B of Part VI**

Add:

#### **Subdivision K—Rolled-over superannuation interests etc.**

#### **139ZU Order relating to rolled-over superannuation interests etc.**

- (1) If, on application by the trustee of a bankrupt's estate, the Court is satisfied that:
- (a) a transaction is void against the trustee of the bankrupt's estate under section 128B or 128C; and
  - (b) the transaction was by way of a contribution to an eligible superannuation plan (the *first plan*) for the benefit of a person (the *beneficiary*) who may or may not be the bankrupt; and
  - (c) the beneficiary's withdrawal benefit in relation to the first plan falls short of the amount of the money, or the value of the property, received as a result of the transaction; and
  - (d) the beneficiary has a superannuation interest in another eligible superannuation plan; and
  - (e) the superannuation interest referred to in paragraph (d) is attributable, in whole or in part, to the roll-over or transfer, after the transaction referred to in paragraph (a) happened, of the whole or a part of the beneficiary's superannuation interest in the first plan;
- the Court may, by order, direct the trustee of the other eligible superannuation plan to pay to the trustee of the bankrupt's estate a

specified amount not exceeding whichever is the lesser of the following:

- (f) the amount of the shortfall referred to in paragraph (c);
  - (g) the beneficiary's withdrawal benefit in relation to the other eligible superannuation plan.
- (2) The Court must not make an order under subsection (1) unless it is satisfied that it is in the interests of the creditors of the bankrupt to do so.
- (3) For the purposes of paragraph (1)(a), it is immaterial whether the transaction occurred before, at or after the commencement of this section.
- (4) For the purposes of paragraph (1)(b), disregard a benefit that is payable in the event of the death of a person.
- (5) For the purposes of paragraph (1)(c), if the beneficiary does not have a superannuation interest in an eligible superannuation plan, the beneficiary is taken to have a nil withdrawal benefit in relation to the plan.
- (6) For the purposes of paragraph (1)(e), it is immaterial whether the roll-over or transfer occurred directly or indirectly through one or more interposed eligible superannuation plans.
- (7) An applicant under subsection (1) must give a copy of the application to:
- (a) the trustee of the other eligible superannuation plan; and
  - (b) the beneficiary.
- (8) At the hearing of an application under subsection (1):
- (a) the trustee of the other eligible superannuation plan; and
  - (b) the beneficiary.
- may appear, adduce evidence and make submissions.
- (9) For the purposes of sections 128E, 128F and 128J, an order under this section is taken to relate to:
- (a) the transaction referred to in paragraph (1)(a) of this section; and
  - (b) the beneficiary's superannuation interest referred to in paragraph (1)(d) of this section.

### **139ZV Enforcement of order**

An order by the Court under section 139ZU is enforceable as if it were an order for the payment of money made by the Court when exercising jurisdiction otherwise than under this Act.

### **139ZW Definitions**

In this Subdivision:

*contribution* has the same meaning as in Subdivision B of Division 3.

*eligible superannuation plan* has the same meaning as in Subdivision B of Division 3.

*superannuation interest* has the same meaning as in Subdivision B of Division 3.

*trustee* of an eligible superannuation plan has the same meaning as in Subdivision B of Division 3.

*withdrawal benefit* has the same meaning as in Subdivision B of Division 3.

### **35 At the end of subsection 302A(2A)**

Add:

- ; or (c) a notice under section 128E; or
- (d) an order under paragraph 128K(1)(b); or
- (e) a notice under section 139ZQ; or
- (f) an order under subsection 139ZT(2); or
- (g) an order under section 139ZU.

### **36 At the end of subsection 302AB(3)**

Add:

- ; or (c) a notice under section 128E; or
- (d) an order under paragraph 128K(1)(b); or
- (e) a notice under section 139ZQ; or
- (f) an order under subsection 139ZT(2); or
- (g) an order under section 139ZU.

**37 At the end of subsection 302B(2)**

Add:

- ; or (c) a notice under section 128E; or
- (d) an order under paragraph 128K(1)(b); or
- (e) a notice under section 139ZQ; or
- (f) an order under subsection 139ZT(2); or
- (g) an order under section 139ZU.

## Schedule 2—Other amendments

### *Bankruptcy Act 1966*

#### 1 Subsection 5(1)

Insert:

*rural support scheme* means a program or scheme that:

- (a) is administered by or on behalf of the Commonwealth, a State or a Territory; and
- (b) relates to:
  - (i) agriculture or the cultivation of land; or
  - (ii) the maintenance of animals for commercial purposes; or
  - (iii) horticulture; or
  - (iv) any other primary industry activity.

#### 2 Subsection 20H(5)

Omit “Official Trustee” (wherever occurring), substitute “Inspector-General”.

#### 3 Subsection 20H(5)

Omit “it” (wherever occurring), substitute “the Inspector-General”.

#### 4 Transitional—subsection 20H(5) of the *Bankruptcy Act 1966*

- (1) This item applies to anything done by the Official Trustee under subsection 20H(5) of the *Bankruptcy Act 1966* before the commencement of this item.
- (2) The thing has effect, after the commencement of this item, as if it had been done under that subsection by the Inspector-General.

#### 5 Paragraphs 116(2)(k) to (md)

Repeal the paragraphs, substitute:

- (k) amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph;

- (l) amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph, where the amounts are paid in circumstances prescribed for the purposes of this paragraph;
- (m) prescribed amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph;
- (ma) prescribed amounts paid to the bankrupt under a rural support scheme prescribed for the purposes of this paragraph, where the amounts are paid in circumstances prescribed for the purposes of this paragraph;
- (mb) amounts paid to the bankrupt by the Commonwealth as compensation in relation to the loss of:
  - (i) an amount covered by paragraph (k), (l), (m) or (ma); or
  - (ii) property purchased or acquired wholly or partly with such an amount;

**6 Subsection 116(2D) (paragraph (c) of the definition of exempt money)**

Repeal the paragraph, substitute:

- (c) amounts covered by paragraph (2)(k), (l), (m), (ma) or (mb).

**7 After subsection 116(2D)**

Insert:

- (2E) Nothing in this Act or the *Legislative Instruments Act 2003* prevents regulations made for the purposes of paragraph (2)(k), (l), (m) or (ma) from applying to amounts paid before the regulations take effect.
- (2F) Regulations made for the purposes of paragraph (2)(k), (l), (m) or (ma) may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

**8 Paragraph 121(4)(b)**

Omit “or”, substitute “and”.

**9 Paragraph 121(9)(a)**

Omit “or”, substitute “of”.

**10 Subsection 302A(3)**

Omit “applies”, substitute “extends”.

***Proceeds of Crime Act 2002***

**11 Subsections 299(1) and (2)**

Omit “\*Official Trustee”, substitute “Inspector-General in Bankruptcy”.

Note: The heading to section 299 is altered by omitting “**Official Trustee**” and substituting “**Inspector-General in Bankruptcy**”.

**12 Subsection 299(2)**

Omit “Official Trustee”, substitute “Inspector-General in Bankruptcy”.

**13 Subsection 299(4)**

Omit “\*Official Trustee”, substitute “Inspector-General in Bankruptcy”.

**14 Subsection 299(4)**

Omit “Official Trustee”, substitute “Inspector-General in Bankruptcy”.

**15 Subsection 299(6)**

Omit “\*Official Trustee”, substitute “Inspector-General in Bankruptcy”.

**16 Subsection 299(6)**

Omit “it”, substitute “the Inspector-General in Bankruptcy”.

**17 Paragraph 299(7)(a)**

Omit “\*Official Trustee”, substitute “Inspector-General in Bankruptcy”.

**18 Paragraph 299(7)(b)**

Omit “Official Trustee”, substitute “Inspector-General in Bankruptcy”.

**19 Transitional—section 299 of the *Proceeds of Crime Act 2002***

- (1) This item applies to anything done by the Official Trustee under section 299 of the *Proceeds of Crime Act 2002* before the commencement of this item.

- (2) The thing has effect, after the commencement of this item, as if it had been done under that section by the Inspector-General in Bankruptcy.
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*[Minister's second reading speech made in—  
Senate on 6 December 2006  
House of Representatives on 28 March 2007]*

(184/06)

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