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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BANKRUPTCY AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Honourable Michael Lavarch MP)

## BANKRUPTCY AMENDMENT BILL 1993

### INTRODUCTION AND OUTLINE

The Bankruptcy Amendment Bill 1993 (hereafter referred to as 'the Bill') will substitute subsections 139ZG(3), (4) and (5) of the *Bankruptcy Act 1966* (the Act) with new provisions.

2. Certain bankrupts who have an income exceeding a statutory threshold are liable under the Act to make contributions to their estate. Where a bankrupt who is liable to make contributions fails to do so, the trustee of the estate may file a certificate in a court of competent jurisdiction under subsections 139ZG(3), (4) and (5) of the Act in relation to unpaid contributions. A certificate so filed has effect as if it were a final judgment of the court in which it is filed.

3. There currently are proceedings on foot in the High Court of Australia to have subsections 139ZG(3), (4) and (5) of the Act declared invalid, as trespassing upon the judicial power of the Commonwealth under Chapter III of the Constitution. The Government has been advised that there is a significant likelihood of the challenge to the Constitutional validity of these provisions being upheld by the High Court. Accordingly the Bill proposes amendment to the Act so that the trustee's certificate will be prima facie evidence of the nature and amount of a debt due by a bankrupt to his or her estate in respect of income contributions, in proceedings to recover that debt. The amendments will preserve the effective operation of enforcement provisions associated with the compulsory income contribution regime provided for by the Act.

4. The Bill has no resource implications.

## NOTES ON CLAUSES

### Clause 1 - Short title

1.1 The Bill, when enacted will be known as the *Bankruptcy Amendment Act 1993*. It amends the *Bankruptcy Act 1966*, which is referred to in the Bill as the 'Principal Act'.

### Clause 2 - Commencement

2.1 Clause 2 provides that the amendments made by the Bill will commence from the date of Royal Assent.

### Clause 3 - Payment of contribution

3.1 Subsection 139ZG(3) of the Act provides that where an amount or amounts payable by a bankrupt to the trustee of his or her estate have not been paid, the trustee may sign a certificate stating the amount or amounts payable by the person that have not been paid and file that certificate in a court having jurisdiction to the extent of the amount owed. Subsection 139ZG(4) enables the trustee to file the certificate for a period of up to 3 years after the bankrupt is discharged from bankruptcy. Subsection 139ZG(5) provides that a certificate filed by the trustee has effect and may be enforced as a final judgment of the court in which it is filed.

3.2 Clause 3 of the Bill proposes the repeal of subsections 139ZG(3), (4) and (5), which are subject to a challenge as to their Constitutional validity in the High Court of Australia. The Government has been advised that the High Court is likely to declare the 3 subsections invalid as infringing the judicial power of the Commonwealth.

3.3 Clause 3 proposes the insertion of 3 new subsections. Proposed subsection 139ZG(3) provides that the total of any contributions or instalments that are not paid by a bankrupt who has been assessed as liable to make payments is recoverable by the trustee as a debt due to the bankrupt estate. The provision creates a right of action in a trustee against a bankrupt who has refused or failed to make payments as assessed.

3.4 Proposed subsection 139ZG(4) provides that in proceedings to recover a debt in respect of unpaid contribution from a bankrupt, the trustee may file a certificate setting out the nature and the amount of the debt owed.

3.5 Proposed subsection 139ZG(5) provides that a certificate filed by the trustee in proceedings to recover a debt owed by a bankrupt is prima facie evidence of the existence and the amount of the debt.



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