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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

BANKRUPTCY AMENDMENT (ENTERPRISE INCENTIVES) BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General, the Hon George Brandis QC)

BANKRUPTCY AMENDMENT (ENTERPRISE INCENTIVES) BILL 2017

GENERAL OUTLINE

1. This Bill amends the *Bankruptcy Act 1966*.
2. The Bill contains measures to implement significant reforms to Australia's bankruptcy laws by reducing the default period of bankruptcy from three years to one year. Other time periods associated with bankruptcy will also be reduced to one year. These include disclosure of bankrupt status when applying for credit, seeking permission for overseas travel and the attainment of certain licences and entering into certain professions.
3. The Bill contains measures that extend income contribution obligations for discharged bankrupts for a minimum period of two years following discharge or, in the event that a bankruptcy is extended due to non-compliance, for five to eight years. The measures in the Bill are also designed to:
 - ensure personal insolvency practitioners are able to adequately and appropriately administer a bankruptcy by ensuring that persons who are under an obligation to notify change in contact details continue to do so
 - ensure credit providers continue to have sufficient personal insolvency information to accurately assess an individual's creditworthiness, and
 - maintain the integrity of the regulatory and enforcement frameworks under which the Australian Financial Security Authority operates.
4. As part of the National Innovation and Science Agenda these reforms aim to foster entrepreneurial behaviour and to reduce the stigma associated with bankruptcy. Reducing the automatic discharge to one year will reduce stigma, encourage entrepreneurs to re-engage in business sooner and encourage people, who have previously been deterred by the punitive bankruptcy laws, to pursue their own business ventures.

DATE OF EFFECT

5. The commencement of these amendments would occur six months after Royal Assent to allow trustees, debtors and creditors time to adjust to the new arrangements. In particular, this will give trustees time to prepare any objections to discharge, and will enable relevant agencies time to consider whether a one-year licensing or professional restriction is appropriate for their purposes.

PROPOSAL ANNOUNCED

6. The bankruptcy reforms were announced on 7 December 2015. Public consultation on the proposals occurred between 29 April 2016 to 27 May 2016 as part of the National Innovation and Science Agenda 'Improving bankruptcy and insolvency laws' proposals paper.

FINANCIAL IMPACT

7. The Bill is deregulatory in nature and will result in savings of approximately \$4 million per annum from commencement.

GLOSSARY

8. The following abbreviations are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Amending Act	<i>Bankruptcy Amendment (Enterprise Incentives) Act 2017</i>
Bankruptcy Act	<i>Bankruptcy Act 1966</i>
Bill	<i>Bankruptcy Amendment (Enterprise Incentives) Bill 2017</i>

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Bankruptcy Amendment (Enterprise Incentives) Bill 2017

9. The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

10. The Bill will amend the Bankruptcy Act to reduce the default period of bankruptcy from three years to one year. The aim of the Bill is to foster entrepreneurial behaviour and reduce the stigma associated with bankruptcy whilst maintaining the integrity of the regulatory and enforcement frameworks for the personal insolvency regime.

Human rights implications

11. The amendments would have no impact on specific provisions of any human rights instruments.

Conclusion

12. The Bill is compatible with human rights.

NOTES ON CLAUSES

Preliminary

Clause 1 – Short title

13. Clause 1 provides for the short title of the Act to be the *Bankruptcy Amendment (Enterprise Incentives) Act 2017*.

Clause 2 – Commencement

14. Clause 2 provides for the commencement of each provision in the Bill, as set out in the table.

15. Item 1 in the table provides that sections 1 to 3 of the Amending Act will commence on the day the Amending Act receives Royal Assent.

16. Item 2 in the table provides that Schedule 1 of the Amending Act will commence six months after Royal Assent.

Clause 3 – Schedules

17. Clause 3 provides that the legislation specified in a Schedule to the Amending Act is amended or repealed as set out in the Schedule.

Schedule 1 – Amendments to the *Bankruptcy Act 1966*

GENERAL OUTLINE

18. A single schedule (Schedule 1) is included with the Bill. The amendments in Schedule 1 will modify various sections of the Bankruptcy Act so that the default period of bankruptcy can be reduced from three years to one year.

19. Part 1 of Schedule 1 reduces the default period of bankruptcy to one year. As part of the reduction in this default period, other time periods associated with bankruptcy are also reduced to one year. These include disclosure of bankrupt status when applying for credit, seeking permission for overseas travel and the attainment of certain licences and entering into certain professions.

20. The amendments clarify that income contribution obligations for discharged bankrupts extend for a minimum period of two years following discharge or, in the event that a bankruptcy is extended due to non-compliance, for a period of five to eight years. The amendments ensure that persons who are under an obligation to notify change in contact details continue to do so.

21. Part 2 of Schedule 1 clarifies how the amendments, once introduced, apply to persons who are currently undischarged bankrupts.

Part 1 — Amendments

Item 1 – At the end of subsection 59(1)

22. Section 59 of the Bankruptcy Act deals with the effect of second and subsequent bankruptcies which occur when the bankrupt is not yet discharged from an earlier bankruptcy. Section 59 currently provides that property of the bankrupt that was acquired or transferred to the bankrupt on or after the date of the earlier bankruptcy, and which has not been distributed amongst creditors in the earlier bankruptcy before the date on which the person became a bankrupt on the later occasion, vests in the trustee in the later bankruptcy.

23. Under paragraph 59(1)(c) the trustee of the first or earlier bankruptcy is deemed to be a creditor in the later bankruptcy in respect of the unpaid balance of expenses or remuneration and the liabilities incurred in respect of administration and the debts proved in the earlier bankruptcy. In these circumstances, a trustee in the earlier bankruptcy ranks equally with the ordinary unsecured creditors in the later bankruptcy.

24. Bankrupts are obligated to pay income contributions until discharge where their income exceeds the prescribed threshold (currently \$55,446.30 for bankrupts without any dependants) under sections 139P and 139Q of the Bankruptcy Act.

25. Item 1 of Schedule 1 extends the application of section 59(1) to apply to income contributions by inserting new subsection (f). This amendment provides that where a person who is a bankrupt becomes a bankrupt again, the income contribution obligations arising out of a first bankruptcy will cease and the contribution assessment period for the first bankruptcy will come to an end. This amendment ensures consistency with the administration of existing debts that have not been met in a bankruptcy where there is a subsequent bankruptcy.

Item 2 – At the end of section 59

26. Item 2 of Schedule 1 inserts subsection 59(7) which ensures that ceasing income contributions to a trustee in an earlier bankruptcy in the event of a second bankruptcy, as referred to in new paragraph 59(1)(f), does not limit the ability of the trustee in the later bankruptcy to exercise the powers that would have been available to the trustee in the earlier bankruptcy with respect to contribution assessment periods.

Item 3 – Section 80 (heading)

27. Item 3 of Schedule 1 repeals the current heading of section 80 and replaces it with “Notification of change in contact details”. This wording is more accurate and succinct than the existing heading ‘Notification of change in name, address or day-time telephone number’.

Item 4 – Subsection 80(1)

28. Subsection 80(1) currently requires bankrupts to immediately notify the trustee of a change to their name or principle place of residence. Failure to do so involves a penalty of imprisonment for 6 months.

29. Item 4 of Schedule 1 repeals subsection 80(1) and replaces it with the requirement for the bankrupt to notify the trustee within 10 business days of changes to their name, address and phone number during the ‘prescribed period’. Failure to do so will still involve a penalty of imprisonment for 6 months. Item 5 of Schedule 1 inserts a definition of the ‘prescribed period’ to capture any circumstance when a bankrupt is required to make income contribution payments.

30. This amendment will support the administration of income contribution payments by ensuring the trustee remains informed of changes in contact details for the entire period a bankrupt is obligated by Division 4, and provides a clear and realistic timeline for the bankrupt to notify the trustee.

Item 5 – At the end of section 80

31. Item 5 of Schedule 1 inserts a new definition of bankrupt (to apply to section 80 only) to include people who have been discharged from bankruptcy. This amendment will extend the requirement to notify the trustee of changes to name, address and phone number during the ‘prescribed period’ to include people who have been discharged from bankruptcy.

32. Item 5 of Schedule 1 also provides a definition for the ‘prescribed period’ (to apply to section 80 only) to capture any circumstance when a bankrupt is required to make income contributions payments.

Item 6 – Paragraph 139J(a)

33. Section 139J provides the objects of Part VI Division 4B. The Division’s object in paragraph 139J(a) currently requires income contribution payments from bankrupts who derive income during the bankruptcy.

34. Item 6 of Schedule 1 replaces the phrase ‘during the bankruptcy’ with ‘during a period after becoming bankrupt’. This will ensure that the object accurately reflects the aims of the new provisions in Part VI Division 4B which will require discharged bankrupts, who are assessed as eligible to make payments during a contribution assessment period, to continue to make income contribution payments to the bankrupt estate. This will ensure that high income earners do not abuse bankruptcy laws by reducing their income for a year, hiding their assets, accruing excessive debt and only being subject to contributions for a one year period.

35. Reforms to the Bankruptcy Act in 1992 included the introduction of income contributions in Part VI Division 4B of the Bankruptcy Act. These provisions were aimed at addressing situations where bankrupts earned large incomes after bankruptcy but were not required to make any repayment to creditors from that income.

36. Under Part VI Division 4B, a trustee in bankruptcy can make an assessment of the income likely to be derived by the bankrupt during a contribution assessment period. A contribution assessment period is an annual period beginning from the commencement of bankruptcy and on each anniversary of that commencement before the bankrupt is discharged or the debts of the bankrupt are paid in full. Where the debts are paid in full, the bankruptcy is annulled by operation of law.

37. In making an assessment of the bankrupt’s likely income, or income derived during a period, the trustee can have regard to any information about the bankrupt’s employment or income, whether provided by the bankrupt or some other person. Persons whose assessed income is below the proposed threshold are not liable to make compulsory contributions, but may do so voluntarily.

Item 7 – Section 139K

38. Section 139K provides definitions for Part VI Division 4B. Division 4B requires bankrupts, who are assessed as eligible to make payments during a contribution assessment period, to make income contribution payments to the bankrupt estate.

39. Item 7 of Schedule 1 inserts a new definition of bankrupt (to apply to Part VI Division 4B only) to include people who have been discharged from bankruptcy. This amendment will extend the requirement to make income contribution payments under Part VI Division 4B to capture persons who are eligible to make these payments, but have been automatically discharged after one year.

Item 8 – Section 139K (definition of *contribution assessment period*)

40. Item 8 of Schedule 1 repeals the existing definition of ‘contribution assessment period’ and inserts a new definition to ensure that a bankrupt, or discharged bankrupt, will, ordinarily, be liable for income contributions for at least three contribution assessment periods. There will be one contribution assessment period during the period of bankruptcy and at least two contribution assessment periods after the discharge from bankruptcy. Even if a bankrupt does not earn income over the threshold during their one year bankruptcy, this person will be subject to income contributions if their income rises above the threshold in the two years following discharge.

41. Under the current definition the contribution assessment periods cease when a bankrupt is discharged or the bankruptcy is annulled. The new definition provides that all contribution assessment periods will come to an end after three years or when the bankruptcy is discharged, whichever occurs later. This enables contribution assessment periods to extend beyond three years in circumstances where the bankruptcy has been extended through a trustee or Official Receiver's objection pursuant to section 149B.

42. This amendment to section 139K will prevent high income earners from abusing bankruptcy laws by reducing their income for a year, hiding their assets, accruing excessive debt and only being subject to contributions for a one year period.

Items 9 and 10 – Section 139L

43. Section 139K provides definitions for Part VI Division 4B. Division 4B requires bankrupts, who are assessed as eligible to make payments during a contribution assessment period, to make income contribution payments to the bankrupt estate.

44. Item 7 of Schedule 1 inserts a new definition of bankrupt (to apply to Part VI Division 4B only) to include people who have been discharged from bankruptcy. This amendment will extend the requirement to make income contribution payments under Part VI Division 4B to capture persons who are eligible to make these payments, but have been automatically discharged after one year.

45. Section 139L provides the definition of income for the purposes of determining income contribution payments under Part VI Division 4B. Subsection 139L(2) currently provides a definition of bankrupt to be used when interpreting the definition of income contained at subsection 139L(1).

46. The amendments contained in item 7 of Schedule 1 will result in subsection 139L(2) being redundant, as subsection 139L(2) sits within Part VI Division 4B and contains the same definition as the amended new section 139K. To avoid replication, item 10 will repeal subsection 139L(2) (including the note), and item 9 will omit the reference to subsection (1) as section 139L will no longer require separate subsections.

Item 11 – Section 139R

47. Part VI Division 4B requires bankrupts, who are assessed as eligible, to make income contribution payments to the bankrupt estate during the contribution assessment periods. Section 139P sets out the liability of bankrupts to make those payments. Section 139Q provides adjustment for the liability of the bankrupt in circumstances where the actual income derived is greater or less than the amount predicted by the trustee under the initial assessment.

48. Section 139R ensures that any liability to pay contributions pursuant to section 139P or 139Q is not affected by discharge. Therefore, if a bankrupt currently has an outstanding income contribution liability under section 139P or 139Q, this continues to be an outstanding liability even in the event of discharge.

49. Provisions contained in the Bill will extend the contribution assessment period, in most cases, past the point of discharge. Accordingly, item 11 substitutes a new section 139R

to ensure that any liability of a bankrupt to pay income contributions under section 139P or 139Q is not affected by discharge or the expiration of any contribution assessment period.

Item 12 and 13 – Subsection 139WA(2)

50. Section 139K provides definitions for Part VI Division 4B. Division 4B requires bankrupts, who are assessed as eligible to make payments during a contribution assessment period, to make income contribution payments to the bankrupt estate.

51. Item 7 of Schedule 1 inserts a new definition of bankrupt (to apply to Part VI Division 4B only) to include people who have been discharged from bankruptcy. This amendment will extend the requirement to make income contribution payments under Part VI Division 4B to capture persons who are eligible to make these payments, but have been automatically discharged after one year.

52. Section 139WA provides for circumstances when an assessment of a bankrupt's income and contribution under section 139W can be made. Subsection 139WA(2) currently provides a definition of bankrupt to be used when applying section 139WA.

53. The amendments contained in item 7 of Schedule 1 will result in subsection 139WA(2) being redundant, as subsection 139WA(2) sits within Part VI Division 4B and contains the same definition as the new section 139K. To avoid replication, item 13 will repeal subsection 139WA(2). Item 12 will omit the reference to subsection (1) as section 139WA will no longer require separate subsections.

Item 14 – Section 139ZIB (definition of bankrupt)

54. Section 139K provides definitions for Part VI Division 4B. Division 4B requires bankrupts, who are assessed as eligible to make payments during a contribution assessment period, to make income contribution payments to the bankrupt estate.

55. Item 7 of Schedule 1 inserts a new definition of bankrupt (to apply to Part VI Division 4B only) to include people who have been discharged from bankruptcy. This amendment will extend the requirement to make income contribution payments under Part VI Division 4B to capture persons who are eligible to make these payments, but have been automatically discharged after one year.

56. Section 139ZIB provides the definitions for the purposes of the supervised account regime in Subdivision HA, Part VI Division 4B. Section 139ZIB currently includes the definition of bankrupt to be used when interpreting the definition of bankruptcy contained within Subdivision HA, Part VI Division 4B.

57. The amendments contained in item 7 of Schedule 1 will result in the definition of bankrupt in section 139ZIB being redundant, as section 139ZIB sits within Part VI Division 4B and contains the same definition as the new section 139K. To avoid replication, item 14 will repeal section 139ZIB.

Item 15 – Subsections 139ZIDA(2) and (3)

58. Pursuant to subsection 139ZIC(1) a trustee may determine, by notice, that a supervised account regime applies to a bankrupt. The effect of the notice is that the bankrupt

will be required to open a bank account into which all of the bankrupt's income is deposited and withdrawals can only be made from the account with the trustee's permission. The supervised account regime is a compliance mechanism that may be used when the bankrupt is not meeting contribution assessment payments.

59. Currently, subsections 139ZIDA(2) and 139ZIDA(3) respectively provide that a determination regarding the supervised account regime ceases upon discharge if no liability payments are outstanding, or if payments are outstanding when the discharged bankrupt is no longer liable to pay a contribution.

60. Item 15 of Schedule 1 will repeal subsections 139ZIDA(2) and 139ZIDA(3) and insert new subsections 139ZIDA(2) and 139ZIDA(3). These amendments will ensure that determinations regarding supervised account regimes apply post discharge and throughout the contribution assessment periods, and only cease when the bankrupt is no longer liable to pay a contribution. This enables the supervised account regime to continue to be used as a compliance mechanism to collect outstanding payments regardless of whether the person has been discharged from bankruptcy or any contribution assessment periods have come to an end.

Item 16 – Section 139ZIIA

61. Section 277A imposes obligations and duties on the bankrupt to keep and produce books that record income derived by the bankrupt, details of the bankrupt's employment and financial transactions or dealings conducted by the bankrupt.

62. Items 24-29 of Schedule 1 extend the obligations under section 277A to oblige bankrupts discharged automatically after one year to keep and produce books during the 'prescribed period'. The definition of 'prescribed period' in new subsection 277A(5) captures any circumstance when a bankrupt is required to make income contribution payments.

63. Section 139ZIIA extends the obligations contained in section 277A in relation to a discharged bankrupt who is subject to the supervised account regime.

64. Item 16 of Schedule 1 substitutes a new section 139ZIIA to ensure that where a person is subject to the supervised account regime, the obligation imposed by section 277A will continue until that regime ceases to apply, regardless of whether the prescribed period has come to an end.

Item 17 – Section 139ZJ

65. Section 139K provides definitions for Part VI Division 4B. Division 4B requires bankrupts, who are assessed as eligible to make payments during a contribution assessment period, to make income contribution payments to the bankrupt estate.

66. Item 7 of Schedule 1 inserts a new definition of bankrupt (to apply to Part VI Division 4B only) to include people who have been discharged from bankruptcy. This amendment will extend the requirement to make income contribution payments under Part VI Division 4B to capture persons who are eligible to make these payments, but have been automatically discharged after one year.

67. Section 139ZJ provides the definition of bankrupt for the purposes of the collection of money or property by the Official Receiver from a person other than the bankrupt in Subdivision I, Part VI Division 4B. Section 139ZJ provides for the definition of a bankrupt to be used when interpreting Subdivision I, Part VI Division 4B.

68. The amendments contained in item 7 of Schedule 1 will result in the definition of bankrupt in section 139ZJ being redundant, as section 139ZJ sits within Part VI Division 4B and contains the same definition as the new section 139K. To avoid replication, item 17 will repeal the definition of bankrupt in section 139ZJ.

Item 18 – Subsection 149(4)

69. Section 149 provides for the amount of time that must pass before an automatic discharge from bankruptcy will occur.

70. Item 18 of Schedule 1 amends subsection 149(4) to apply an automatic discharge after three years from the date on which the bankrupt filed his or her statement of affairs if the bankruptcy occurs after the commencement of section 27 of the *Bankruptcy Amendment Act 1991* and before the commencement of new subsection 149(5).

71. Notwithstanding the text of new subsection 149(4), all bankruptcies on foot at the commencement of the Amending Act will be discharged if they are over a year old pursuant to the transitional provisions at item 30 of Schedule 1. The amendment to subsection 149(4) merely provides for the ‘closing off’ of the rule under that subsection that the period of bankruptcy, since the commencement of section 27 of the *Bankruptcy Amendment Act 1991*, will be three years.

Item 19 – Section 149

72. Section 149 provides for the amount of time that must pass before an automatic discharge from bankruptcy will occur.

73. Item 19 of Schedule 1 inserts a new subsection (5) that will provide for an automatic discharge after one year of bankruptcy to apply to persons who become bankrupt after the commencement of subsection 149(5).

74. After discharge certain restrictions such as overseas travel, obtaining credit and company board eligibility will be lifted. Reducing the automatic discharge to one year will reduce stigma, encourage entrepreneurs to re-engage in business sooner and encourage people, who have previously been deterred by the punitive bankruptcy laws, to pursue their own business ventures.

Items 20-22 – Section 149A

75. Section 149B provides the trustee or Official Receiver an opportunity to object to the section 149 automatic discharge from bankruptcy on grounds provided in section 149D. The ability to object to an automatic discharge ensures the bankrupt cooperates during the bankruptcy and is aimed to provide a safeguard against bankrupts who may continue to act in financially irresponsible ways after discharge.

76. Section 149A extends the period of bankruptcy if an objection to the discharge of a bankrupt has taken effect in accordance with section 149G. Items 20 to 22 of Schedule 1 insert references to new subsection 149(5) and ensure that section 149A applies to the one year automatic discharge. These amendments will provide safeguards to extend a bankruptcy, if appropriate, despite the reduced default period of bankruptcy.

Item 23 – At the end of section 265

77. Section 265 imposes obligations and duties on a bankrupt in respect of disclosing property and other information. Item 23 of Schedule 1 inserts provisions that extend the duties and penalties contained in section 265 to a person who has been discharged from bankruptcy for ‘the prescribed period’. The new definition of ‘prescribed period’ captures any circumstance when a bankrupt is required to make income contributions payments.

78. Accordingly, a bankrupt discharged automatically after one year must continue to comply with obligations in section 265 throughout the period they are obliged to make income contribution payments in order for the trustee to gain important information relevant to the contribution assessment period.

Items 24-29 – Section 277A

79. Section 277A imposes obligations and duties on the bankrupt to keep and produce books that record income derived by the bankrupt, details of the bankrupt’s employment and financial transactions or dealings conducted by the bankrupt.

80. Items 24-29 of Schedule 1 extend the obligations under section 277A to oblige bankrupts discharged automatically after one year to keep and produce books during the ‘prescribed period’. The definition of ‘prescribed period’ in new section 277A captures any circumstance when a bankrupt is required to make income contribution payments.

81. These amendments will ensure that all bankrupts are obligated to keep books and other records in an accessible manner and allow the trustee or the Official Receiver to request the production of books. This ensures the trustee or Official Receiver will have access to appropriate information to administer the bankruptcy and determine if the bankrupt is complying with obligations under the Bankruptcy Act.

Part 2 — Application and transitional provisions

Item 30 – Application and transitional arrangements

82. The introduction of an automatic discharge after one year will require transitional arrangements to ensure that all current and future bankrupts benefit from the introduction as soon as possible. Item 30 of Schedule 1 will introduce the default one year bankruptcy period on the commencement day (the day the Schedule comes into operation).

83. All bankruptcies on foot at the commencement date, except those subject to a section 149B objection, will be discharged if one year has expired since the bankrupt filed a statement of affairs with the Official Receiver. Remaining bankruptcies will discharge on the day after the first anniversary of the filing of the statement of affairs with the Official Receiver. This approach will avoid the unfairness of a bankruptcy on foot under the old laws being discharged years after a bankruptcy that starts under the new provisions contained in

the Bill. It will also remove any incentives for individuals to delay petitioning for bankruptcy as all bankruptcies filed after the commencement date will only run for one year.

84. Bankruptcies that have been extended to five or eight years before commencement of Schedule 1 through a section 149B objection to discharge will remain unchanged. The ability of the trustee or Official Receiver to lodge an objection under section 149B after the commencement of Schedule 1 will not be affected. This is necessary a safeguard to address bankrupts who may continue to act in financially irresponsible ways.

85. If an objection is withdrawn or cancelled pursuant to section 149N the bankrupt will only be discharged if at least one year has expired since the filing of the statement of affairs with the Official Receiver and the cancellation has taken effect subject to section 149N(2). Section 149N(2) stipulates that cancellation of an objection cannot take effect until the end of the period within which an application may be made to the Administrative Appeals Tribunal (AAT) for the review of the decision, or if an application is made – the decision of the AAT is given. Accordingly, despite a bankruptcy being over one year old and the Inspector-General making a decision to cancel the objection under section 149N(1), a bankrupt in these circumstances will not be discharged until the end of the period stipulated in section 149N(2).

Item 31 – Transitional Rules

86. The introduction of an automatic discharge from bankruptcy after one year will require transitional arrangements. New transitional matters, other than the provisions contained at item 30 of Schedule 1, may arise on application of the default one year bankruptcy period. Item 31 will allow the Minister, by legislative instrument, the power to make rules prescribing matters of a transitional nature relating the amendments or repeals made by the Bankruptcy Act. Item 31 of Schedule 1 is a standard provision contained in transitional schemes and will allow for additional transitional rules to assist in giving effect to the Bill, including dealing with transitional matters that were not foreseen when the Bill was being drafted.

87. Item 31 of Schedule 1 inserts provisions which appropriately restrict the subject matter the rules can prescribe, given the decreased scrutiny they are subject to when made. The rules may not create an offence or civil penalty, provide powers of arrest or detention or entry, search or seizure, impose a tax, set an amount to be appropriated from the Consolidated Revenue Fund, or directly amend the text of the Bankruptcy Act.