

## **EXPANATORY MEMORANDUM MISCELLANEOUS AMENDMENTS (BANKRUPTCY) BILL 2008**

### **Background**

In 2004 the Commonwealth enacted the *Bankruptcy Legislation Amendment Act 2004* which made significant amendments to Part X of the *Bankruptcy Act 1966*. The *Bankruptcy Legislation Amendment Act 2004* repealed the three types of agreements that a debtor and creditor can enter into: a “deed of assignment”, a “deed of arrangement” and a “composition”. These agreements were replaced with the term “personal insolvency agreement”.

The *Miscellaneous Amendments (Bankruptcy) Bill 2008* will bring the relevant State laws into line with the Commonwealth *Bankruptcy Act*. The Bill amends 90 State Acts by removing any reference to a “deed of assignment”, a “deed of arrangement” and a “composition” and replacing them with “personal insolvency agreement”.

To effect the change of terminology in all 90 Acts, the Bill inserts into the *Interpretation Act 1984* (WA) a definition of ““bankrupt” and “bankrupt or a person whose affairs are under insolvency laws””. This definition has been referenced in the relating Acts where the terms “deed of arrangement”, “deed of assignment” and “composition” were previously cited.

### **Part 1 — Preliminary**

#### **1. Short title**

Provides that the short title of the Bill is the *Miscellaneous Amendments (Bankruptcy) Bill 2008*.

#### **2. Commencement**

Provides that Part 1 of the Bill comes into effect on the day that the Bill receives royal assent. The remainder of the Bill comes into effect on the day after that.

### **Part 2 — *Interpretation Act 1984* Amended**

#### **3. *Interpretation Act 1984* amended**

Section 5 of the *Interpretation Act* is amended by providing that the terms “bankrupt” and “bankrupt or a person whose affairs are under insolvency laws” have the meanings given to those terms in section 13D.

A new section 13D is inserted into the *Interpretation Act* to provide for the meaning of bankrupt and the related expression.

It provides that a reference in a written law to a person being a bankrupt means that the person is a bankrupt as defined in the Commonwealth *Bankruptcy Act 1966* or has a substantially similar status under a law applicable in a place where that Act does not apply.

Further, the new section 13D provides that a reference to “a person being a bankrupt or a person whose affairs are under insolvency laws” means that:

- A person is bankrupt as described above, that is, the person is bankrupt as defined in the Commonwealth *Bankruptcy Act 1966* or has a substantially similar status under a law applicable in a place where that Act does not apply; or
- The person is a party, as a debtor, to a debt agreement under the Commonwealth *Bankruptcy Act 1966*; or
- The person has, as a debtor, entered into a personal insolvency agreement under Part X of the Commonwealth *Bankruptcy Act 1966* and obligations created remain to be discharged; or
- The person has not yet entered a personal insolvency agreement under Part X of the Commonwealth *Bankruptcy Act 1966* and obligations created by the agreement remain to be discharged; or
- The person has not yet entered a personal insolvency agreement under Part X of the Commonwealth *Bankruptcy Act 1966* but has authorised a controlling trustee to perform functions under that Part, or that the person has a substantially similar status under a law applicable in a place where the Commonwealth *Bankruptcy Act 1966* does not apply.

### **Part 3 — Other Acts amended**

Part 3 of the Bill amends 90 State Acts by deleting references to the old bankruptcy terminology of “deed of assignment”, “deed of arrangement” and “composition” and instead, inserts references to the definition in section 13D of the *Interpretation Act* or to the relevant terminology which is a “personal insolvency agreement.” These amendments ensure that State laws are consistent with the current Commonwealth bankruptcy legislation.