

ACTS AMENDMENT (BANKRUPTCY) BILL 2008

EXPLANATORY MEMORANDUM

Overview of Bill

The Bill makes machinery amendments to bring over 90 State Acts into line with amendments made to Part X of the *Bankruptcy Act 1966* (Cth). In 2004 the Commonwealth enacted the *Bankruptcy Legislation Amendment Act 2004* (Cth) which made technical amendments to the agreement process between a debtor and a creditor regarding bankruptcy. The *Bankruptcy Legislation Amendment Act 2004* (Cth) repealed the three types of agreements that a debtor and a creditor can enter into: a “deed of assignment”, a “deed of arrangement” and a “composition”. These agreements were replaced with the single term “personal insolvency agreement”. Subsequently, the State Acts which also use these terms, often in relation to the ability to occupy an office or position, need to be amended to reflect the terminology of the *Bankruptcy Act 1966* (Cth). The amendments do not alter the policy of the Western Australian Acts that are amended.

CLAUSE NOTES

Part 1 - Preliminary

Clause 1. Short Title

Clause 1 cites the short title of the Act as the *Acts Amendment (Bankruptcy) Act 2008*.

Clause 2. Commencement

Clause 2 provides that this Part of the Act comes into operation on Assent and that the balance of the Act commences the following day.

Part 2 – *Interpretation Act 1984* amended

Clauses 3, 4 and 5 - *Interpretation Act 1984* amended

These clauses make two amendments to the *Interpretation Act 1984* (WA). The first amendment is the insertion of the term “**bankrupt**” and “**bankrupt or a person whose affairs are insolvency laws**” in section 5 of the *Interpretation Act 1984* (WA) and the second amendment is the insertion of a new section 13D dealing with the meaning of “bankrupt” and related expressions.

Section 5 of the *Interpretation Act 1984* (WA) inserts: “**bankrupt**” and “**bankrupt or a person whose affairs are under insolvency laws**” which have the meaning given to those terms in section 13D. Section 13D provides the meaning that is to be given to the term “bankrupt” and related expressions.

The reference to “bankrupt” and related expression has been inserted in the *Interpretation Act 1984* (WA) for two main reasons. First, as this Bill amends 91 Acts it was far simpler to insert a definition in the *Interpretation Act 1984* (WA) and then refer all affected Acts to the one Act for the definition. Second, if future amendments occur to the definition of “bankrupt” under the *Bankruptcy Act 1966* (Cth) it would only require one amendment to the *Interpretation Act 1984* (WA) instead of making amendments to each affected Act containing the definition.

Part 3 – Other Acts amended

The State Acts that are affected by the terminology change of “deed of assignment”, a “deed of arrangement” and a “composition” are amended by deleting these terms and inserting a reference to the new terminology by way of section 13D of the *Interpretation Act 1984* (WA). There are 85 Acts that have been amended in this way as follows:

- Clause 6 *Aboriginal Affairs Planning Authority Act 1972*
- Clause 7 *Agricultural Produce Commission Act 1988*
- Clause 8 *Alcohol and Drug Authority Act 1974*
- Clause 9 *Animal Resources Authority Act 1981*
- Clause 10 *Anzac Day Act 1960*
- Clause 11 *Betting Control Act 1954*
- Clause 13 *Builders’ Registration Act 1939*
- Clause 14 *Cemeteries Act 1986*
- Clause 15 *Coal Industry Tribunal of Western Australia Act 1992*
- Clause 16 *Coal Miners’ Welfare Act 1947*
- Clause 17 *Commissioner for Children and Young People Act 2006*
- Clause 18 *Companies (Co-operative) Act 1943*
- Clause 19 *Conservation and Land Management Act 1984*
- Clause 21 *Construction Industry Portable Paid Long Service Leave Act 1985*
- Clause 22 *Control of Vehicles (Off-road Areas) Act 1978*
- Clause 23 *Corruption and Crime Commission Act 2003*
- Clause 24 *Country High School Hostels Authority Act 1960*
- Clause 25 *Credit (Administration) Act 1984*
- Clause 27 *Criminal Property Confiscation Act 2000*
- Clause 28 *Curtin University of Technology Act 1966*
- Clause 29 *Dental Act 1939*

Clause 30 *Dental Prosthetists Act 1985*
Clause 31 *Director of Public Prosecutions Act 1991*
Clause 32 *East Perth Redevelopment Act 1991*
Clause 33 *Edith Cowan University Act 1984*
Clause 34 *Electoral Act 1907*
Clause 35 *Environmental Protection Act 1986*
Clause 36 *Equal Opportunity Act 1984*
Clause 37 *Fisheries Adjustment Schemes Act 1987*
Clause 38 *Guardianship and Administration Act 1990*
Clause 39 *Hairdressers Registration Act 1946*
Clause 40 *Health Services (Conciliation and Review) Act 1995*
Clause 41 *Heritage of Western Australia Act 1990*
Clause 42 *Hire-Purchase Act 1959*
Clause 43 *Hospitals and Health Services Act 1927*
Clause 44 *Human Reproductive Technology Act 1991*
Clause 45 *Industrial Relations Act 1979*
Clause 46 *Inspector of Custodial Services Act 2003*
Clause 47 *Insurance Commission of Western Australia Act 1986*
Clause 49 *Land Valuers Licensing Act 1978*
Clause 50 *Legal Aid Commission Act 1976*
Clause 51 *Liquor Control Act 1988*
Clause 52 *Litter Act 1979*
Clause 53 *Local Government Grants Act 1978*
Clause 54 *Lotteries Commission Act 1990*
Clause 55 *Magistrates Court Act 2004*
Clause 56 *Midland Redevelopment Act 1999*
Clause 57 *Motor Vehicle Dealers Act 1973*
Clause 58 *Murdoch University Act 1973*
Clause 59 *National Environment Protection Council (Western Australia) Act 1996*
Clause 60 *Occupational Safety and Health Act 1984*
Clause 61 *Painters' Registration Act 1961*
Clause 62 *Parliamentary Commissioner Act 1971*
Clause 64 *Perth Market Act 1926*
Clause 65 *Perth Theatre Trust Act 1979*
Clause 66 *Petroleum Products Pricing Act 1983*
Clause 67 *Poisons Act 1964*
Clause 68 *Police Act 1892*
Clause 69 *Professional Combat Sports Act 1987*
Clause 70 *Professional Standards Act 1997*
Clause 71 *Public Sector Management Act 1994*
Clause 72 *Racing Penalties (Appeals) Act 1990*
Clause 73 *Radiation Safety Act 1975*
Clause 74 *Real Estate and Business Agents Act 1978*
Clause 75 *Retail Trading Hours Act 1987*
Clause 76 *Road Safety Council Act 2002*

Clause 77 *Rottnest Island Authority Act 1987*
Clause 78 *Salaries and Allowances Act 1975*
Clause 79 *Securities Industry Act 1975*
Clause 80 *Settlement Agents Act 1981*
Clause 81 *Small Business Development Corporation Act 1983*
Clause 82 *Solicitor-General Act 1969*
Clause 83 *Subiaco Redevelopment Act 1994*
Clause 84 *Swan Valley Planning Act 1995*
Clause 85 *Uniting Church in Australia Act 1976*
Clause 86 *University of Western Australia Act 1911*
Clause 87 *Veterinary Surgeons Act 1960*
Clause 88 *Vocational Education and Training Act 1996*
Clause 89 *Water Boards Act 1904*
Clause 90 *Western Australian Coastal Shipping Commission Act 1965*
Clause 91 *Western Australian Greyhound Racing Association Act 1981*
Clause 92 *Western Australian Sports Centre Trust Act 1986*
Clause 93 *Western Australian Tourism Commission Act 1983*
Clause 94 *Workers' Compensation and Injury Management Act 1981*
Clause 95 *Zoological Parks Authority Act 2001*

There are 5 State Acts that use the terms “scheme of arrangement”, “makes an assignment or arrangement for the benefit of creditors”, or “compounds with creditors”. As these terms are technical procedures, the amendments have been drafted by deleting the term and inserting the reference, “a personal insolvency agreement”. The below clauses amend the relevant Acts:

Clause 12 *Bills of Sale Act 1899*
Clause 20 *Constitution Acts Amendment Act 1899*
Clause 26 *The Criminal Code*
Clause 48 *Land Administration Act 1997*
Clause 63 *Partnership Act 1895*