HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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Form 27A—Appellant's submissions

IN THE HIGH COURT OF AUSTRALIA
ADELAIDE REGISTRY
ON APPEAL FROM THE FULL COURT
OF THE FEDERAL COURT OF AUSTRALIA

No. A36/2026

BETWEEN:

David Morton Bertram
Appellant

and

Robert William Naudi
Respondent

APPELLANT'S SUBMISSIONS

Part I: Form of submissions

1. These submissions are in a form suitable for publication on the internet.

Part II: Issues

2. Does s 90-15 of the *Insolvency Practice Schedule (Bankruptcy)* (**IPS**), being schedule 2 to the *Bankruptcy Act 1966* (Cth) (**Act**), enable a court to determine a challenge to the validity of an assessment of income and contribution made by a trustee in bankruptcy under Part VI div 4B of the Act? (**Appeal Ground 1)**.

3. What is the consequence of the overstatement of the amount of an assessment of income and contribution? (**Appeal Ground 2**).

Part III: Section 78B Notice

4. No notices under s 78B of the *Judiciary Act 1903* (Cth) are required.

Part IV: Citations of Decisions Below

5. The decision of the primary judge is *Bertram v Naudi (No 2)* [2024] FCA 1239 (O'Sullivan J) (**PJ**) (CAB 5).

6. The decision of the Full Court is *Bertram v Naudi* (2026) 315 FCR 238; [2026] FCAFC 40 (Perry, O'Callaghan and Goodman JJ) (**FCJ**) (CAB 94).

Part V: Narrative statement of relevant facts

7. The Appellant was declared bankrupt on 16 December 2017 and was discharged from bankruptcy on 23 December 2020. The Respondent was his trustee in bankruptcy.

8. In July 2018 the Appellant retained the law firm **CCK** Lawyers in relation to an examination summons issued out of the District Court of South Australia by judgment creditors who sought to enforce judgments against companies with which the Appellant had been involved. As a result of those instructions, CCK opened file no. 261894-1 in the Appellant's name.

9. On 13 June 2019, on the instructions of the Appellant's brother, CCK opened a separate file no. 262261- 2 in the brother's name.

10. Part VI div 4B of the Act provides for assessments of income and contribution to be made by trustees in bankruptcy. The object is to require a bankrupt who derives income during the bankruptcy to pay contributions to the estate.[1] The key operative provision is s 139W which provides for the trustee to make an assessment of the income that was likely to be derived, or was derived, by the bankrupt during a contribution assessment period, and of any contribution that the bankrupt is liable to pay in respect of the period.

11. In February 2021, the Respondent made assessments of the Appellant's income derived during each of the three contribution assessment periods in relation to the bankruptcy: (a) 16 December 2017 to 15 December 2018; (b) 16 December 2018 to 15 December 2019; and (c) 16 December 2019 to 15 December 2020.

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[1] Section 139J of the Act.

12. On 18 March 2021 the Respondent made revised assessments for the three periods, seeking contribution in the amounts of $23,804.75, $86,480.67 and $77,537.84 respectively (totalling $187,823.26).[2] The Respondent attached a certificate[3] of outstanding contribution in the sum $178,401.76,[4] and a spreadsheet which merely replicated the data set out in the work-in-progress records provided by CCK[5] in which a total amount for each respective period was set out.[6]

13. The Appellant applied to the Federal Court pursuant to s 90-15 of the IPS seeking orders relevantly that the assessments were "*invalid, void and of no effect*", as the Respondent had impermissibly aggregated all of the work-in-progress on both files without any elaboration or explanation as to how the '*value'* of the '*benefit'* to the Appellant had been '*worked out'*,[7] and without regard to the amounts invoiced and to whom invoices were addressed and whether payment had been made.

14. The Respondent cross-claimed for the unpaid contributions. The amended statement of cross-claim[8] sought $174,901.76[9] together with pre-judgment interest. However in closing submissions, the Respondent conceded that some of the amounts which he had taken into account in the assessments were not assessable properly as income for the purposes of s 139L,[10] and reduced the total contribution amount claimed in the cross-claim to $162,968.34 before interest.[11]

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2 AFM 59-61.
3 AFM 63-69.
4 By that time, the Appellant had paid $9,421.50.
5 With breaks referable to 22 November 2019, 20 December 2019 and 2 December 2020.
6 The trustee described these amounts as 'non-cash benefits i.e. legal services'.
7 As required by s 139L(1)(a)(v) of the Act.
8 AFM 51-4.
9 By that time, the Appellant had paid $12,951.50, thus reducing the total to $174,871.76, but the cross-claim erroneously stated $174,901.76.
10 PJ [361] (CAB 78): Although the Respondent did not include the costs received by the Appellant as a result of the costs order in the District Court proceedings totalling $23,866.84, nonetheless the Respondent did consider the work-in-progress time entries for doing work, at least in part, as part of his assessment of the applicant's income. That is an exempted benefit under s 136(1) (definition of fringe benefit) as varied by cl 23 of Schedule 2 to the *Bankruptcy Regulations 1996* (Cth), and therefore did not constitute income for the purposes of s 139L of the Act.
11 PJ [23] (CAB 13). The Respondent conceded that $11,933.42 (half of the overstated income of $23,866.84) should be deducted from the contribution claimed. PJ [23] (CAB 13) incorrectly

15. At first instance, the Respondent was awarded judgment in that sum on the cross-claim, plus pre-judgment interest.[12] The Appellant's challenges to the validity of the assessments were unsuccessful.

16. The Appellant's appeal to the Full Court was dismissed[13] on the basis that the Court lacked jurisdiction to determine the Appellant's challenges to the assessments. The Full Court did not address the merits of the Appellant's arguments.

Part VI: Appellant's argument

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Appeal Ground 1

17. Section 90-15(1) of the IPS provides:

> The Court may make such orders as it thinks fit in relation to the administration of a regulated debtor's estate.

18. Its counterpart in the corporations legislation, s 90-15(1) of the *Insolvency Practice Schedule (Corporations)*, being schedule 2 to the *Corporations Act 2001* (Cth), provides:

> The Court may make such orders as it thinks fit in relation to the external administration of a company.

20 19. Section 90-15, alongside the remainder of the respective *Insolvency Practice Schedules* in the legislation on both personal and corporate insolvency, was enacted by the *Insolvency Law Reform Act 2016* (Cth). Section 90-15 replaced previous specific sections which had provided for the Court, inter alia, to give judicial advice and directions to insolvency practitioners,[14] and to hear appeals

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describes the $11,933.42 as a concession about *assessable income amount*, but that figure was really a concession about *contribution amount*; the concession about assessable income amount was $23,866.84.

12 CAB 82.

13 CAB 118.

14 Sections 479(3) and 511 of the *Corporations Act*; the Act did not contain a specific 'directions' provision, but its predecessor did: s 105(i) of the *Bankruptcy Act 1924* (Cth).

against decisions of insolvency practitioners.[15] Rather than confer specific powers, the legislature conferred general powers on the '*Court*'.[16]

20. The jurisdiction conferred by s 90-15 is extraordinarily broad. Although this is the Court's first occasion to consider the scope of s 90-15, it has been described by intermediate appellate courts variously as a '*plenary power*',[17] '*very broad*',[18] and '*broad and flexible*'.[19]

21. The text of the section demonstrates its breadth:

(a) The Court is empowered to '*make such orders as it thinks fit*', with the only qualification being that the orders must be in relation to the administration of a regulated debtor's estate or the external administration of a company (as the case may be): s 90-15(1);

(b) The power to make orders may be exercised on an application, or of the Court's own initiative without any application: s 90-15(2);

(c) Standing to apply for orders under s 90-15 is conferred relevantly on a person with a financial interest in the administration, a creditor (on behalf of the committee of inspection, if it so resolves), or the Inspector-General (or ASIC, in the case of corporations): s 90-20(1).

(d) While s 90-15(3) gives a list of examples of orders that may be made, it is expressly non-exhaustive ('*Without limiting subsection (1)*').

22. The non-exhaustive list of examples relevantly includes '*an order determining any question arising in the administration of the estate*': s 90-15(3)(a). The expression '*any question arising in the administration of the estate*' is, in turn, very broad.

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15 Section 178 of the Act; s 1321 of the *Corporations Act*.

16 In bankruptcy, 'the Court' is defined in s 5(1) of the Act as a Court having jurisdiction in bankruptcy under the Act, ie the Federal Court or the Federal Circuit and Family Court (Division 2): s 27 of the Act. In the context of corporations, the 'Court' relevantly means the Federal Court, a State or Territory Supreme Court, or the Federal Circuit and Family Court (Division 1): s 58AA *Corporations Act*.

17 *Djordjevich v Rohrt* (2022) 67 VR 161, [35] (Kennedy and Whelan JJA).

18 *Sino Group International Ltd v Toddler Kindy Gymbaroo Pty Ltd (in liq) (Final Orders)* [2023] FCAFC 119, [67]-[68] (Farrell, Cheeseman and Feutrill JJ).

19 *Viscariello v Basedow* [2025] SASCA 34, [218] (S Doyle and David JJA with Kourakis CJ agreeing).

23. A further contextual matter which supports a wide construction is the equitable origin of the Court's long-standing supervisory jurisdiction over insolvency practitioners[20] as officers of the court,[21] giving courts '*the widest possible discretion as to the appropriate order which should be made in the particular case'*.[22] In *McIntosh v Shashoua* McTiernan J[23] had emphasised the breadth of jurisdiction of the then Court of Bankruptcy, which alone controlled the administration of bankruptcy.

24. Intermediate appellate courts have rejected reading-in qualifications or limitations to the power in s 90-15,[24] even in matters for which express provision is made elsewhere in the legislation.[25] This accords with the Court's statement that it '*is quite inappropriate to read provisions conferring jurisdiction or granting powers to a court by making implications or imposing limitations which are not found in the express words*'.[26] There is no indication in Part VI div 4B of the Act that the legislature had intended to exclude the operation of s 90-15 of the IPS or its predecessors (eg s 178 of the Act).

25. Properly construed, having regard to its text, context and purpose, s 90-15 confers power on the Court to determine challenges to the validity of a trustee's assessment of bankrupt's income and contribution. The assessment of income and contribution by a trustee is a matter in '*relation to the administration of a regulated debtor's estate'* about which the Court may

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20 The various statutory provisions for Court directions given to insolvency practitioners were a development from the practice of the Court of Chancery under the general law in giving directions to those entrusted with the administration of property under the control of the court: *Re GB Nathan & Co Pty Ltd* (1991) 24 NSWLR 675, 677 (McLelland J). The Court of Bankruptcy acquired the supervisory jurisdiction previously exercised by the Court of Chancery: Edelman, Meehan, and Cheung, 'The evolution of bankruptcy and insolvency laws and the case of the deed of company arrangement', [2019] LMCLQ 571, 575. See also T Bathurst, 'The historical development of insolvency law' (Conference Paper, Francis Forbes Society for Australian Legal History, 3 September 2014), [34], [50], [66].

21 *Re Griffiths* (2004) 139 FCR 185, [69] (Beaumont, Weinberg and Crennan JJ). .

22 *Re Tyndall; Ex parte Official Receiver* (1977) 17 ALR 182, 186 (Deane J); *Macchia v Nilant* (2001) 110 FCR 101, [36] (French J).

23 (1931) 46 CLR 494, 520 quoting *Re Thurlow; Ex parte Official Receiver* [1895] 1 QB 724, 729. See also *Re Griffiths* (2004) 139 FCR 185, [68]-[70] (Beaumont, Weinberg and Crennan JJ) which also cited and applied *Re Thurlow*.

24 *One T Development Pty Ltd v Peter Krejci in his capacity as liquidator of ENA Development Pty Ltd* [2023] NSWCA 120, at [33] (Ward P, Leeming and Mitchelmore JJA).

25 *ASIC v Jones* (2023) 61 WAR 164 at [306]-[313] (Buss P, Mitchell and Beech JJA) (on liquidator's remuneration).

26 *Owners of the Ship "Shin Kobe Maru" v Empire Shipping Company Inc* (1994) 181 CLR 404, 421 (the Court).

make such orders as it thinks fit under s 90-15(1). The validity or otherwise of the assessment is a '*question arising in the administration of the estate'*, which the Court may determine: s 90-15(3)(a).

26. The ability to challenge assessments of income and contribution under Subdiv G of Part VI div 4B of the Act (ss 139ZA to 139ZF), through '*internal review*' by the Inspector-General under s 139ZA and in turn (external) review by the Administrative Appeals Tribunal[27] under s 139ZF, does not deny the existence of the Court's power to determine the validity of assessments under s 90-15 of the IPS. The avenues of challenge in Subdiv G co-exist with the Court's power.

27. When a similar issue arose as to whether the Court retained power under a predecessor provision (s 178 of the Act) to determine challenges to bankruptcy trustees' decisions, French J (as his Honour then was) said in *Macchia v Nilant* (2001) 110 FCR 101 at [40]:

> Whatever may be the correct position in respect of challenges to decisions about proofs of debt, **the availability of an administrative mechanism to review the trustee's decision to file an objection should not be taken as manifesting, by implication, a legislative intention to preclude judicial challenge under s 178. There are enough examples of such parallel processes in Commonwealth statutes to prevent any argument being mounted that a multiplicity of remedies is so novel or unusual that it could not have been contemplated by the legislature even when provided in the one statute.** It is important to bear in mind however that relief under s 178 is discretionary and that the availability of a comparatively speedy and inexpensive means of administrative review in relation to an objection decision will be a factor of considerable importance in deciding whether the Court should entertain an application under s 178 or grant relief thereunder in relation to such a decision. *(emphasis added)*

28. The provisions considered in *Macchia* were ss 149K to 149Q which give a right to make application to the Inspector-General to review the objection decision – and which French J observed – are '*similar to that for review of the trustee's income and contribution assessments*'[28] in Subdiv G (ss 139ZA to 139ZF).

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27 Now the Administrative Review Tribunal.

28 *Macchia v Nilant* [2001] FCA 7; 110 FCR 101 at [28].

29. French J emphasised that '[g]*iven the nature and importance of the* [trustee] *office, the general supervisory function of the Court is not lightly to be excluded in respect of particular classes of decision notwithstanding that specific provision is made by other parts of the Act for their reversal or modification*'.[29] This accords with the principle of statutory construction that a statute is not to be interpreted as withdrawing or limiting a conferral of jurisdiction, unless the implication appears clearly and unmistakably.[30]

30. The Full Court below erred in holding that the review regime in Subdiv G constituted a code covering the field, which denied the Court jurisdiction under s 90-15 to determine challenges to assessments of income and contribution.

31. The decisions of this Court, which held that the conferral of a specific power on a decision-maker excludes the operation of a general power conferred on that decision-maker,[31] are inapposite. Here Subdiv G does not confer power on the Court.

32. The Full Court based its reasoning below, in part, on the elaborateness of the review regime in Subdiv G.[32] However in the absence of express exclusion of the Court's jurisdiction, the elaborateness of a review regime does not oust the Court's jurisdiction.

33. In the context of income tax, a notice of assessment '*shall be conclusive evidence of the due making of the assessments, and, except in proceedings [under the relevant legislation] on a review or appeal relating to the assessment, that amount and all the particulars of the assessment are correct*'.[33] Nonetheless, the Court retains its judicial review jurisdiction under

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29 *Macchia v Nilant* [2001] FCA 7; 110 FCR 101 at [39]. See also *Mango Boulevard Pty Ltd v Whitton* (2015) 242 FCR 331, [140]-[145] (Rangiah J).

30 *Shergold v Tanner* (2002) 209 CLR 126 at [34] (the Court).

31 *Anthony Hordern & Sons Ltd v Amalgamated Clothing and Allied Trades Union of Australia* (1932) 47 CLR 1, 7 (Duffy CJ and Dixon J); *R v Wallis* (1949) 78 CLR 529, 550 (Latham CJ); *Minister for Immigration and Multicultural and Indigenous Affairs v Nystrom* (2006) 228 CLR 566, 588-9 [57]-[59] (Gummow and Hayne JJ).

32 FCJ [55]-[61] (CAB 113-4) .

33 Item 2 of s 350-10(1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth); previously s 177 of the *Income Tax Assessment Act 1936* (Cth).

s 39B of the *Judiciary Act 1903* (Cth).[34] The Court's jurisdiction in respect of challenges to the validity of assessments is preserved *a fortiori* in the present context, where the '*prima facie* evidence' provisions (ss 139ZG(4), (5) of the Act) do not go as far as the 'conclusive evidence' provision in the tax legislation. Regardless of whether the '*prima facie*' effect of a trustee's certificate is to shift the legal or evidential onus from the trustee to the bankrupt, it must be open to a bankrupt to challenge the assessment in a Court, notwithstanding that it is supported by a certificate.[35]

34. The Full Court drew a distinction[36] with the regime in Subdiv HA of Part VI div 4B on supervised accounts – which expressly provides what the Inspector-General may or must do where a Court exercises powers in respect of a 'reviewable decision'. However, the Court has reiterated several times the dangers in applying the '*expressio unius*' maxim,[37] and it is inapt to apply it here. Those provisions (ss 139ZIO(2A) and (2B)) were inserted merely to clarify the interaction between the Inspector-General's power to review decisions and the Court's powers;[38] there is no suggestion that in the absence of those clarificatory provisions the Court's powers did not exist at all. Moreover, those provisions post-date Subdiv G.[39] While an act must be construed as a whole, the use of subsequent amendments in construing legislation is rare and arises only following careful consideration as to the inference properly drawn from the subsequent amendment.[40]

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34 *Deputy Commissioner of Taxation v Richard Walter Pty Ltd* (1995) 183 CLR 168, 186 (Mason CJ); 219 (Dawson J); 232 (Toohey J); 240 (McHugh J); *Commissioner of Taxation v Futuris Corporation Limited* (2008) (2008) 237 CLR 146, [69] (Gummow, Hayne, Heydon and Crennan JJ).

35 *Schiffer v Pattison* [2005] FCA 494; 143 FCR 328, [77] (Weinberg J).

36 FCJ [63] (CAB 114).

37 Eg *Houssein v Under Secretary, Department of Industrial Relations & Technology (NSW)* (1982) 148 CLR 88, 94 (the Court); *O'Sullivan v Farrer* (1989) 168 CLR 210, 215 (Mason CJ, Brennan, Dawson and Gaudron JJ); *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 575 (Mason CJ, Dawson, Toohey and Gaudron JJ); *Wentworth v New South Wales Bar Association* (1992) 176 CLR 239, 250 (Deane, Dawson, Toohey and Gaudron JJ).

38 Explanatory Memorandum to the Insolvency Law Reform Bill 2015 (Cth), [1.51]-[1.52].

39 Subdivision G was inserted into the Act by the *Bankruptcy Amendment Act 1991* (Cth). Subdivision HA was inserted into the Act by the *Bankruptcy and Family Law Legislation Amendment Act 2005* (Cth). The specific provisions within Subdiv HA referred to by the Full Court – ss 139ZIO(2A) and (2B) – were inserted by the *Insolvency Law Reform Act 2016* (Cth).

40 *Spall v Minister for Home Affairs* [2025] FCAFC 75, [56] (Button, McDonald and Bennett JJ), referring to *Grain Elevators Board (Vic) v Dunmunkle Corporation* (1946) 73 CLR 70 at 86

35. The remaining matters which formed part of the Full Court's reasoning below[41] – giving primacy to merits review, the deemed review by the Inspector-General, and the time limits for reviews under Subdiv G which play no role in court proceedings – go not to the existence of the Court's power under s 90-15, but to the exercise of its discretion.

36. Examples of cases where the Court may exercise its discretionary power under s 90-15 to determine challenges to income and contribution assessments include:

(a) Where there are related applications under the Act before the Court simultaneously, and it is more efficient that the Court address all of the issues, including the challenge to the assessment, eg where the bankrupt's challenge to an assessment intertwines with an application to replace the trustee, or for an inquiry into the trustee's conduct.

(b) Where the challenge to the assessment is complex, involves significant quantum, raises novel questions, or the trustee has acted clearly without authority.

37. The Court may also determine a challenge to an assessment in an action by the trustee to recover the amount assessed as compensation as a debt, where the bankrupt raises a challenge to the assessment defensively or collaterally.[42] In those circumstances – which include the present case – the bankrupt may *defensively* challenge in Court the validity of the assessment without applying for declaratory relief, as Weinberg J (as his Honour then was) explained in *Schiffer v Pattison*.[43] Accordingly, even if the Full Court were correct about the inapplicability of s 90-15 (which is denied), nonetheless the Court still would have jurisdiction to hear and determine the Appellant's challenge to the

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(Starke J)) and *AQO v Minister for Finance and Services* (2016) 93 NSWLR 46 at [143] (Basten JA, with whom Ward JA agreed).

41 FCJ [62], [64]-[66] (CAB 114-5).

42 Eg *Schiffer v Pattison* [2005] FCA 494; 143 FCR 328, [77] (Weinberg J).

43 *Schiffer v Pattison* [2005] FCA 494; 143 FCR 328, [71]-[72] (Weinberg J).

contribution assessments by way of defence to the Respondent's cross-claim for a debt.[44] The Full Court accordingly erred in its analysis on jurisdiction.[45]

38. In summary, the Full Court below erred in holding that the availability of the Subdiv G review process denies the Court power under s 90-15 to determine a challenge to assessments.

Appeal Ground 2

39. The amount of contribution is '*worked out in accordance with the formula'* set out at s 139S of the Act, under which the '*Actual income threshold amount'* is deducted from the '*Assessed income'*, and the difference is then halved. Each of those integers is defined as amounts '*assessed by the trustee'*.

40. Under s 139W(1) the trustee is empowered to make an assessment of income and contribution. Section 139W(2) provides that '*the trustee is to make a fresh assessment'* in certain circumstances, including relevantly where the trustee is satisfied that the bankrupt's income during the period was greater or less than the amount previously assessed in respect of that period.[46]

41. At first instance, the Respondent conceded at the conclusion of the trial that $11,933.42 had been improperly included in the assessments of contribution, and revised the amount of contribution claimed in the cross-claim to $162,968.34 (before interest).[47]

42. Despite the concession that the amount in the assessments was overstated and incorrect, the Respondent did not issue fresh assessments. Consequently, the Appellant was not obliged to pay the revised amount of contribution.

43. The bankrupt's obligation to pay contributions arises under ss 139P and 139Q, which draw a distinction between an '*original assessment'* (s 139P) and a '*subsequent assessment'* (s 139Q).

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44 The Appellant stated at [16] of his submissions dated 18 March 2026 filed in the Full Court of the Federal Court that '*these submissions are independent of the jurisdiction of the Court to entertain the Respondent's Cross-Claim and the Appellant's Defence thereto'* (AFM 140). The Appellant in his Defence to Cross-Claim filed on 16 November 2021 at [4] relied upon the matters raised in his Amended Statement of Claim (AFM 56). See also the Full Court transcript at T6.11-T7.2 (AFM 146-7).

45 FCJ [69] (CAB 115-6).

46 Section 139W(2)(a) of the Act.

47 PJ [23] (CAB 13); see also FCJ [70] (CAB 116).

44. Section 139Q(1) relevantly states that '*when the subsequent assessment is made, the bankrupt is liable to pay to the trustee a contribution in respect of that period'*. It will only be when the *'subsequent assessment is made'* that the liability is imposed. The corollary is that unless and until that time, there can be no liability for a contribution, because there is no amount '*assessed by the trustee'* for the purpose of calculating the contribution under s 139S. It is the making of the assessment by the trustee that gives rise to the liability on the part of the bankrupt to make the contribution from income earned during the bankruptcy period, and in the absence of an assessment, there is no requirement for the bankrupt to make a contribution.[48] As the trustee conceded that his initial assessment was incorrect, but failed to make a fresh (subsequent) assessment, the Appellant did not become liable to pay a contribution.

45. A trustee is not empowered to vary an initial assessment, only to issue a fresh assessment. The Inspector-General is also not empowered to vary an initial assessment, only to '*confirm the decision'* or *'set aside the decision and make a fresh assessment'*.[49] Nor is the Court empowered to vary the assessment. This may be contrasted with income tax assessments, where s 14ZZP of the *Taxation Administration Act 1953* (Cth) gives the Court the power to '*make such order in relation to the decision as it thinks fit, including an order confirming or varying the decision*'.

46. The Full Court erred[50] in upholding the Respondent's debt claim in circumstances where he conceded that the sum in the assessment was overstated, and no fresh assessment had been made. It was not, as the Full Court had put it, an issue about the expeditious conduct of court proceedings;[51] rather the foundation of the debt claim was absent.

47. The primary judge had erred also, in holding that the Respondent was entitled to judgment for the revised amount of $162,968.34 (before interest).[52] His Honour regarded the issue as determined by the Respondent's certificate as

48 *Field (Trustee) v Spencer (No 2)* [2026] FCA 801 at [11] (Colvin J).
49 Section 139ZD of the Act.
50 FCJ, [70]-[73] (CAB 116).
51 FCJ, [72] (CAB 116).
52 PJ [366] (CAB 78).

prima facie evidence, under ss 139ZG(5), of the *existence* of the debt (albeit not its *amount*).[53] However the existence of a debt and its amount cannot be separated from each other. A debt is a sum certain.[54] No debt could exist in circumstances where there was no assessment which founded it. The debt could not be based on the existing assessment, as it was in an overstated amount. And no fresh assessment had been issued by the Respondent in the revised amount.

PART VII: ORDERS SOUGHT

48. If Appeal ground 2 is successful, then (regardless of the outcome of appeal ground 1):

(a) The appeal be allowed.

(b) The orders of the Full Court of the Federal Court of Australia made on 19 March 2026, and 5 May 2026 be set aside.

(c) The orders of the Federal Court of Australia made by Justice O'Sullivan on 25 October 2024 and 13 December 2024 be set aside.

(d) The Respondent's assessment dated 18 March 2021 of the Appellant's income contribution be set aside.

(e) The Respondent's crossclaim be dismissed.

(f) The Respondent pay the Appellant's costs of the claim and crossclaim in the proceeding at first instance, of the appeal to the Full Court, and of the application for special leave to appeal and of the appeal to this Court.

(g) Such further or other orders as the Court considers appropriate.

49. If only Appeal ground 1 is successful then:

(a) The appeal be allowed.

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53 PJ [364] (CAB 78).

54 *Deputy Commissioner of Taxation v Executor Trustee & Agency Co of South Australia Ltd* (1938) 63 CLR 108, 127 (Latham CJ).

(b) The orders of the Full Court of the Federal Court of Australia made on 19 March 2026 and 5 May 2026 be set aside.

(c) The matter is remitted to the Full Court of the Federal Court of Australia to be determined in accordance with law.

(d) The Respondent pay the Appellant's costs of the application for special leave to appeal and of the appeal in this Court.

(e) Such further or other orders as the Court considers appropriate.

PART VIII: TIME REQUIRED FOR PRESENTATION OF ARGUMENT

50. The Appellant estimates that he requires 2 hours for the presentation of oral argument.

Dated: 29 October 2026

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ANNEXURE TO APPELLANT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
1	*Bankruptcy Act 1966* (Cth)	C86	Division 4B of Pt VI	Version applicable at the date of the Trustee's revised contribution assessments on 18 March 2021.	18 March 2021
2	*Bankruptcy Act 1966* (Cth)	C86	Section 90-15 of sch 2	Version applicable at the date of the commencement of the proceeding at first instance.	17 May 2021