



Bankruptcy Amendment Regulations 2003 (No. 1)¹

Statutory Rules 2003 No. 76²

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Bankruptcy Act 1966*.

Dated 1 May 2003

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

DARYL WILLIAMS
Attorney-General

1 Name of Regulations

These Regulations are the *Bankruptcy Amendment Regulations 2003 (No. 1)*.

2 Commencement

These Regulations commence on 5 May 2003.

3 Amendment of *Bankruptcy Regulations 1996*

Schedule 1 amends the *Bankruptcy Regulations 1996*.

Schedule 1 Amendments

(regulation 3)

[1] After regulation 6.03

insert

6.03A Personal property

- (1) For subparagraph 116 (2) (ba) (ii) of the Act, sporting, cultural, military or academic awards made to the bankrupt in recognition of his or her performance are personal property to which subsection 116 (1) of the Act does not extend.
- (2) Subregulation (1) does not apply to a monetary award.

[2] After regulation 6.12B

insert

6.12C Family assistance and social security payments

- (1) For subparagraph (b) (v) of the definition of *income* in section 139L of the Act, the following payments or amounts are not income of a bankrupt:
 - (a) a payment or amount of family tax benefit paid under the family assistance law;
 - (b) an amount that is not income for the purposes of the *Social Security Act 1991* because of subsection 8 (8) of that Act, except for a payment or amount mentioned in paragraph (a), (h), (ha), (k), (ka), (m), (z), (za) or (zb) of that subsection.
- (2) For this regulation, *family assistance law* has the same meaning as in the *A New Tax System (Family Assistance) (Administration) Act 1999*.

[3] After regulation 6.15

insert

6.15A Contribution assessment — income of dependant

- (1) For paragraph (c) of the definition of *dependant* in section 139K of the Act, the amount is \$2 500.
- (2) Section 304A of the Act applies to this regulation as if the amount mentioned in subregulation (1) were an amount also mentioned in the definition of *indexable amount* in subsection 304A (1) of the Act.

[4] Paragraph 8.01 (1) (b)

omit

referees,

insert

referees, who are familiar with relevant work undertaken by the applicant within the 12 months before the application,

[5] Subparagraph 8.01 (3) (d) (iii)

omit

[6] Paragraph 8.02 (1) (c)

omit

trustee.

insert

trustee immediately after registration.

[7] After regulation 8.11A

insert

8.12 Remuneration of trustees — notices

For subsection 162 (6A) of the Act, a trustee must give the following notices to the bankrupt and creditors:

- (a) a notice that includes the basis and the method on which the trustee seeks to be remunerated, and, if appropriate, an estimate of the expected level of the trustee's remuneration;
- (b) if the trustee claims remuneration calculated by reference to an hourly rate — a notice that includes:
 - (i) the type of work undertaken by the trustee and the trustee's staff; and
 - (ii) the number of hours charged by each person; and
 - (iii) the hourly rate charged for each person; and
 - (iv) the total remuneration claimed;

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- (c) a notice advising the bankrupt and creditors of their right, within 28 days of receiving notice of a trustee's claim for remuneration, to request the claim be taxed.

[8] Part 8, Division 6, after Subdivision 4

insert

Subdivision 5 Controlling trustees other than Official Trustee or registered trustees

8.35 Eligibility of controlling trustees, other than Official Trustee or registered trustees

- (1) For subsection 188 (2A) of the Act, a person (other than the Official Trustee or a registered trustee) is not eligible to act as a controlling trustee if the person:
- (a) is convicted of a criminal offence involving fraud or dishonesty, or was so convicted within the 10 years before the proposed authorisation; or
 - (b) is not insured against the liabilities the trustee may become subject to as a controlling trustee; or
 - (c) is a solicitor who no longer holds a practising certificate; or
 - (d) is an undischarged bankrupt or insolvent under administration, or became a party (as debtor) to a debt agreement or a Part X administration within the 10 years before the proposed authorisation; or
 - (e) is a person who the Inspector-General decides under subregulation (2) has failed to properly exercise powers or carry out duties or to cooperate with an inquiry or investigation, or in relation to whom such a decision was made within the 3 years before the proposed authorisation.

- (2) In addition to subregulation (1), a person who is, or has been, a controlling trustee is not eligible to act as a controlling trustee if the Inspector-General determines that the person:
 - (a) has failed to properly:
 - (i) exercise the powers of a controlling trustee; or
 - (ii) carry out the duties or obligations of a controlling trustee; or
 - (b) has refused, or failed to cooperate with the Inspector-General in an inquiry or investigation under paragraph 12 (1) (b) of the Act.
- (3) If the Inspector-General forms an opinion of the kind mentioned in paragraph (2) (a) or (b), the Inspector-General must:
 - (a) by written notice, tell the person; and
 - (b) invite the person to respond within 28 days or such longer time as is specified in the notice.
- (4) After the expiry of the time mentioned in paragraph (3) (b), the Inspector-General may, having regard to the response (if any) of the person, make a determination under subregulation (2).
- (5) If the Inspector-General makes a determination under subregulation (2), the Inspector-General must give the person a written notice of the determination, setting out the reasons.

8.36 Review by Tribunal of determination under subregulation 8.35 (2)

Application may be made to the Administrative Appeals Tribunal for a review of a determination of the Inspector-General under subregulation 8.35 (2).

8.37 Official Trustee to perform duties

If a controlling trustee becomes ineligible to act a controlling trustee then, unless and until the debtor appoints a controlling trustee who is eligible to so act, the Official Trustee must perform the duties of the controlling trustee.

[9] After regulation 9.01

insert

9.02 Information to be included in debt agreement proposal

A debt agreement proposal must:

- (a) mention the costs and fees that are to be charged for the administration of the debt agreement; and
- (b) include a schedule setting out when the costs and fees are to be taken.

9.03 Administrator's fee to be paid according to work done

- (1) Payments of costs and fees for the administration of a debt agreement may be taken in accordance with the schedule mentioned in regulation 9.02 as administration of the debt agreement is progressively performed.
- (2) Costs and fees must not be taken in advance of work actually performed.

9.04 Persons ineligible to be debt agreement administrator

- (1) A person is ineligible to act as an administrator if the person:
 - (a) is an undischarged bankrupt or insolvent under administration, or became a party (as debtor) to a debt agreement or a Part X administration within the 3 years before the proposed appointment; or
 - (b) is a person whose registration ceases, under section 155I of the Act, for a reason mentioned in paragraph 155H(1)(a), (b), (e) or (f) of the Act, or whose registration has ceased for any of those reasons within 10 years before the proposed appointment; or
 - (c) is a person who is prohibited, under the Corporations Act, from taking part in the management of a corporation; or
 - (d) is a person who is deregistered under the Corporations Act as a liquidator; or

- (e) is a person who is convicted of a criminal offence involving fraud or dishonesty, or was so convicted within 10 years before the proposed appointment; or
 - (f) is a person who the Inspector-General determines under subregulation 9.06 (3) has failed to properly carry out duties or cooperate with an inquiry or investigation, or in relation to whom such a decision was made within 3 years before the proposed appointment.
- (2) If a person is ineligible to act as an administrator, any company of which the person is a director is also ineligible to act as an administrator.
 - (3) Paragraph (1) (a) does not apply to a person nominated as administrator of a debt agreement proposal in respect of which that person is the sole debtor.

9.05 Official Trustee to administer agreement

If an administrator of a debt agreement becomes ineligible to administer the agreement then, unless and until the debtor appoints an administrator who is eligible to so act, the Official Trustee must administer the agreement.

9.06 Duties of administrator

- (1) In addition to other duties imposed by the Act, an administrator of a debt agreement must:
 - (a) keep accounts, books and records that are necessary to give a full and correct account of the administration of the debt agreement; and
 - (b) make those accounts, books and records available, on request, for inspection by the Inspector-General; and
 - (c) if ordered to do so by the Inspector-General, answer any inquiries about a debt agreement; and
 - (d) cooperate with any inquiry or investigation by the Inspector-General under paragraph 12 (1) (bb) of the Act; and
 - (e) deal with property in the manner specified in the debt agreement.

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- (2) If the Inspector-General forms an opinion that an administrator may have failed to properly carry out duties or cooperate with an inquiry or investigation mentioned in subregulation (1), the Inspector-General must:
 - (a) by written notice, tell the administrator; and
 - (b) invite the administrator to respond within 28 days, or such longer time as is specified in the notice.
 - (3) After the expiry of the time mentioned in paragraph (2) (b), the Inspector-General may, having regard to the response of the administrator (if any), determine whether or not the administrator has failed to properly carry out duties or cooperate with an inquiry or investigation.
 - (4) If the Inspector-General determines that the administrator has failed to properly carry out duties or cooperate with an inquiry or investigation, the Inspector-General must give the administrator a written notice of the determination, setting out the reasons.

9.07 Review by Tribunal of decisions under subregulation 9.06 (3)

Application may be made to the Administrative Appeals Tribunal for a review of a determination of the Inspector-General under subregulation 9.06 (3).

[10] After subregulation 13.03 (1)

insert

- (1A) In relation to a matter mentioned in paragraph (1) (a), a document described in an item in Schedule 8 must be given to the Official Receiver by the person mentioned in column 4 of the item within the period mentioned in column 5 of the item.
- (1B) Item 13 of Schedule 8 applies in relation only to a bankruptcy dated 4 May 2003 or earlier.

[11] Schedule 6, Part 3, after item 9

insert

10 Section 181A (Streamlined method for replacing trustee)

10.1 Subsection 181A (1):

substitute

‘(1) The current controlling trustee or the trustee of a deed of assignment, deed of arrangement or composition (***the nominating trustee***) may, with the written consent of another trustee (either a registered trustee or the Official Trustee), nominate the other trustee as the new trustee.’.

10.2 Subsection 181A (4):

substitute

‘(4) If no creditor lodges a written notice of objection with the nominating trustee at least 2 days before the specified date, then the new trustee replaces the current trustee, on the date specified in the notice.’.

[12] Schedule 6, Part 5, item 4

omit

[13] Schedule 7, item 22

substitute

22 Section 104 (Appeal against decision of trustee in respect of proof)

22.1 Subsection 104 (1):

omit

bankrupt

insert

legal personal representative of the bankrupt

22.2 After subsection 104 (1):

insert

‘(1A) An application may be made under subsection (1) on the grounds that the proof was wrongly admitted.’.

22.2 After subsection 104 (3):

insert

‘(4) In this section:

legal personal representative, for a deceased person, means:

- (a) the executor under the deceased person’s will; or
- (b) the administrator under letters of administration or court order;

of the deceased person’s estate, or a part of that estate.’.

[14] Schedule 7, item 39, heading

substitute

39 Section 134 (Powers exercisable at discretion of trustee)

[15] Schedule 7, subitem 39.1

omit

135

insert

134

[16] Schedule 7, subitem 39.2

omit

135 (1) (j):

insert

134 (1) (ma):

[17] Schedule 7, subitem 39.3

substitute

39.3 Section 134:

Add at the end:

‘(5) In this section:

legal personal representative, for a deceased person, means:

- (a) the executor under the deceased person’s will; or
- (b) the administrator under letters of administration or court order;

of the deceased person’s estate, or a part of that estate.’.

[18] Schedule 8, items 3, 4, 5 and 6, column 6

insert at the end

- date of filing of Statement of Affairs

[19] Schedule 8, item 9, columns 4 and 6

omit

or Official Receiver

[20] Schedule 8, item 10, columns 2 and 6

omit

or Official Receiver

[21] Schedule 8, item 10, columns 3 and 5

omit

(subsections 149H (1) and (2))

insert

(subsection 149H (1))

[22] Schedule 8, item 10, column 4*omit*

(see also subsection 149H (2) for Official Receiver)

[23] Schedule 8, item 24*substitute*

24	Section 188 and subsection 189 (1B) authority to be controlling trustee (Part X arrangements); notice of event causing end of control by trustee	authority (subsection 188 (1)); notice (subsection 189 (1B))	registered trustee or solicitor (subsection 188 (5); subsection 189 (1B))	authority: 14 days of consent to act; notice: 7 days after becoming aware that control has ended	<ul style="list-style-type: none"> • date of authority • name of controlling trustee • particulars of debtor • date of termination of control • date of filing of Statement of Affairs
24A	Section 192 authority to be controlling trustee passing to Official Trustee	Evidence of event mentioned in subsection 192 (1) (death, cessation, incapacity written request)	Official Trustee	14 days of control passing	<ul style="list-style-type: none"> • particulars of debtor • date of passing of control

[24] Schedule 8, items 25 and 26, column 6*insert at the end*

- date of filing of Statement of Affairs

[25] Schedule 8, after item 27

insert

27A	Subsections 234B (2) and 240B (2) terminating deed of arrangement by trustee; terminating composition by trustee	trustee's signed certificate relating to termination (subsections 234B (6) and 240B (6))	trustee (subsection 234B (1); 240B (1))	7 days	• date of termination
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[26] Schedule 8, items 29, 31 and 32, column 6

insert at the end

- date of filing of Statement of Affairs

[27] Schedule 8, item 33, column 4

omit

(Order 72A, Federal Court Rules)

insert

(Order 77, rule 45, Federal Court Rules)

[28] Further amendments — authorised employee

The following provisions are amended by omitting 'officer of the Department' and inserting 'authorised employee':

- regulation 8.05L
- regulation 8.28
- subregulation 8.30 (1).

[29] Further amendments — trustee

The following provisions are amended by omitting ‘applicant’ and inserting ‘trustee’:

- subregulation 8.30 (2)
- subregulation 8.30 (5).

[30] Further amendments — judgments or orders

The following provisions are amended by omitting ‘judgment or order’ and inserting ‘judgments or orders’:

- Schedule 1, Form 1, paragraph 2 (2 occurrences)
- Schedule 1, Form 1, paragraph 6 (a)
- Schedule 1, Form 1, paragraph 7 (b)
- Schedule 1, Form 1, Schedule, table, items 1, 2, 3 and 5.

[31] Further amendments — references to Federal Court Rules

The following provisions are amended by omitting ‘(Order 72A, Federal Court Rules)’ and inserting ‘(Order 77, rule 45, Federal Court Rules)’:

- Schedule 8, item 26, column 4
- Schedule 8, item 26, column 5
- Schedule 8, item 28, column 5
- Schedule 8, item 30, column 5
- Schedule 8, item 32, column 4
- Schedule 8, item 32, column 5
- Schedule 8, item 33, column 5.

Notes

1. These Regulations amend Statutory Rules 1996 No. 263, as amended by 1996 No. 278; 1997 Nos. 76 and 325; 2000 Nos. 140 and 220; 2001 No. 262; 2002 No. 255.
2. Notified in the *Commonwealth of Australia Gazette* on 2 May 2003.