



# Bankruptcy Amendment Regulations 2006 (No. 1)<sup>1</sup>

## Select Legislative Instrument 2006 No. 4

---

I, PHILIP MICHAEL JEFFERY, 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 15 February 2006

P. M. JEFFERY  
Governor-General

By His Excellency's Command

PHILIP RUDDOCK  
Attorney-General

---

**1 Name of Regulations**

These Regulations are the *Bankruptcy Amendment Regulations 2006 (No. 1)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Bankruptcy Regulations 1996***

Schedule 1 amends the *Bankruptcy Regulations 1996*.

**4 Application — debt agreements**

The amendment made by item [5] of Schedule 1 applies in relation to a debt agreement, the debt agreement proposal for which is given to the Official Receiver on or after 1 May 2006.

**5 Transitional — waiver and remission of fees**

- (1) Subregulations (2) to (7) apply despite the amendments made by items [10] and [11] of Schedule 1.
- (2) The Inspector-General may waive or remit the whole or part of any fee that became payable under Subdivision 2.2 of Part 16 of the *Bankruptcy Regulations 1996* before the commencement of these Regulations, if the Inspector-General is reasonably satisfied that:
  - (a) payment of the fee by the person liable to pay it has imposed, or would impose, undue hardship on the person; or
  - (b) because of other exceptional circumstances, it is proper and reasonable to do so.
- (3) For paragraph (2) (a), *undue hardship* means hardship that is unusual and exceptional in comparison to the hardship arising in the normal course of bankruptcy.

- (4) A decision under subregulation (2) must be notified in writing to:
- (a) the person concerned; and
  - (b) the Official Trustee.
- (5) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General under subregulation (2) to refuse to waive or remit the whole or part of any fee that became payable under Subdivision 2.2 of Part 16 of the *Bankruptcy Regulations 1996* before the commencement of these Regulations.
- (6) A person who is aggrieved by a decision under subregulation 16.13A (1) of the *Bankruptcy Regulations 1996* in relation to a fee payable under Subdivision 2.2 of Part 16 of those Regulations (being a decision made before the commencement of these Regulations) may apply to the Administrative Appeals Tribunal for review of the decision if the time within which that decision may be reviewed has not ended.

*Note 1* Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give any person whose interests are affected by the decision notice, in writing or otherwise, of the making of the decision and of the person's right to have the decision reviewed. In giving that notice, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act (*Gazette* No. S 432, 7 December 1994).

*Note 2* Section 29 of the *Administrative Appeals Tribunal Act 1975* prescribes the time within which application may be made to the Administrative Appeals Tribunal for review of a decision.

- (7) The Inspector-General is taken to have delegated the power to waive or remit the whole or part of a fee under subregulation (2) to any person to whom the Inspector-General delegated the power to waive or remit a fee under subregulation 16.13A (1) of the *Bankruptcy Regulations 1996*, under a delegation:
- (a) that was made under subsection 11 (4) of the *Bankruptcy Act 1966*; and
  - (b) that was in effect immediately before the commencement of these Regulations.

**6 Application – notice of first meeting of creditors**

The amendments made by items [12] and [14] of Schedule 1 apply in relation to a notice of the first meeting of creditors given on or after 3 April 2006.

---

## Schedule 1 Amendments

(regulation 3)

[1] **Subregulation 1.03 (1), after definition of *Criminal Code***

*insert*

*FC (Bankruptcy) Rules* means the *Federal Court (Bankruptcy) Rules 2005*.

*FMC (Bankruptcy) Rules* means the *Federal Magistrates Court (Bankruptcy) Rules 2006*.

[2] **Regulation 4.02A**

*substitute*

**4.02A Service of bankruptcy notices**

A bankruptcy notice must be served within:

- (a) the period of 6 months commencing on the date of issue of the bankruptcy notice; or
- (b) any further period that the Official Receiver allows (whether within or outside that period of 6 months).

[3] **Regulation 8.37**

*omit*

to act a controlling trustee

*insert*

to act as a controlling trustee

**[4] Paragraph 9.06 (1) (e)**

*omit*

agreement.

*insert*

agreement; and

**[5] After paragraph 9.06 (1) (e)**

*insert*

(f) if the administrator is to be remunerated under the debt agreement:

- (i) maintain a separate record, in relation to the debt agreement, of receipts and payments, and of the balance of money held by the administrator; and
- (ii) pay all money received on account of the debt agreement into a single interest-bearing bank account that holds money relating only to debt agreements; and
- (iii) at least once every 45 days, reconcile the balance held in that bank account with the corresponding record maintained under subparagraph (i).

*Note* Sections 185Z and 185ZD of the Act make provision in relation to the remuneration of an administrator (other than the Official Trustee) of a debt agreement.

**[6] Subregulation 10.03 (2), including the notes**

*substitute*

- (2) The registered trustee or solicitor must, within 2 working days of consenting, give a copy of the signed consent to the Official Receiver for the District in which the debtor resides.

*Note* Under subsection 188 (5) of the Act, a registered trustee or solicitor who consents to exercise the powers given by an authority must also give to the Official Receiver for the District in which the debtor resides, a copy of the authority and the debtor's statement of affairs.

---

**[7] Regulation 10.04**

*omit everything before paragraph (a), insert*

At least 10 days before the first meeting of creditors called under an authority under section 188 of the Act is held, the controlling trustee must give the Official Receiver for the District in which the debtor resides, the debtor and each creditor:

**[8] After paragraph 10.04 (a)**

*insert*

- (aa) a copy of the proposal, given by the debtor under subsection 188 (2C) of the Act, for dealing with the debtor's affairs under Part X of the Act; and

**[9] After subregulation 16.06 (2)**

*insert*

- (3) However, prior payment of a fee is not required if the Inspector-General has approved an alternative arrangement for payment of the fee.

*Example*

The Inspector-General may have approved an arrangement under which fees payable by a registered trustee may be paid monthly in arrears.

**[10] Subregulation 16.13A (5)**

*substitute*

- (5) In this regulation:

*fee* means a fee payable under a provision, other than regulation 16.04 or Subdivision 2.2, of this Division.

**[11] Regulation 16.13B**

*substitute*

**16.13B Review by AAT of decision of Inspector-General**

Application may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General under subregulation 16.13A (1) to refuse to waive or remit the whole or part of a fee that became payable under a provision, other than regulation 16.04 or Subdivision 2.2, of this Division.

*Note* Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give any person whose interests are affected by the decision notice, in writing or otherwise, of the making of the decision and of the person's right to have the decision reviewed. In giving that notice, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act (*Gazette* No. S 432, 7 December 1994).

**[12] Schedule 2, item 1A**

*substitute*

**1AA Subsection 64A (2)**

*substitute*

- (2) Notice of a meeting:
  - (a) for the first meeting of creditors — must be published in a manner approved by the Inspector-General; and
  - (b) for any other meeting of creditors — must be given in a manner specified in the regulations.

**1AB After subsection 64A (2)**

*insert*

- (3) The notice of the first meeting of creditors must include any matter approved by the Inspector-General.



- (4) For the purposes of paragraph (2) (a) and without limiting the power of the Inspector-General under that paragraph, the Inspector-General may:
- (a) approve, as the manner of publication of the notice of the first meeting of creditors, publication on a website; and
  - (b) specify in the approval:
    - (i) the website where the notice must be published; and
    - (ii) any conditions relating to the approval.

*Example*

The Inspector-General may specify:

- (a) the format in which the notice is to be made available; and
  - (b) the period of time for which the notice must remain on the website; and
  - (c) whether related documents are to be made available for downloading from the website or in hard copy.
- (5) An approval made by the Inspector-General for the purposes of paragraph (2) (a) or subsection (3) must be published on the Insolvency and Trustee Service Australia's website.

**1AC      After section 64A**

*insert*

**64AA      Immunity from civil actions and proceedings**

- (1) A civil action or proceeding does not lie against a person who operates a website, specified in an approval for the purposes of paragraph 64A (2) (a) or subsection 64A (3), in respect of a publication of a notice of the first meeting of creditors (or a notice that appears to be a notice of the first meeting of creditors) if the publication was made in good faith and without negligence.
- (2) Nothing in this section affects by implication any other ground of defence.

**[13] Schedule 2, item 11A**

*substitute*

**11A After subsection 64ZC (5)**

*insert*

- (5A) An instrument appointing a proxy must include the following statements:
- (a) a statement disclosing whether or not the proxy has received, or will receive, a financial incentive to vote in a particular way:
    - (i) on a particular matter or matters that may arise at a meeting to which the proxy relates; or
    - (ii) on a particular motion or motions that may be proposed at a meeting to which the proxy relates;
  - (b) a statement disclosing whether or not the creditor has received, or will receive, a financial incentive:
    - (i) to appoint the proxy; or
    - (ii) to direct the proxy as to the manner in which the proxy is to vote on a particular matter or matters that may arise, or on a particular motion or motions that may be proposed, at a meeting to which the proxy relates;
  - (c) if the proxy or creditor has received, or will receive, a financial incentive in relation to a matter mentioned in paragraph (a) or (b) — a statement specifying the amount of financial incentive paid or to be paid and the name of the person who paid, or is to pay, the financial incentive.

**[14]      Schedule 6, Part 2, item 3**

*substitute*

**3            Subsection 64A (2)**

*substitute*

- (2) Notice of a meeting:
- (a) for the first meeting of creditors — must be published in a manner approved by the Inspector-General; and
  - (b) for any other meeting of creditors — must be given in a manner specified in the regulations.

**3A          After subsection 64A (2)**

*insert*

- (3) The notice of the first meeting of creditors must include any matter approved by the Inspector-General.
- (4) For the purposes of paragraph (2) (a) and without limiting the power of the Inspector-General under that paragraph, the Inspector-General may:
- (a) approve, as the manner of publication of the notice of the first meeting of creditors, publication on a website; and
  - (b) specify in the approval:
    - (i) the website where the notice must be published; and
    - (ii) any conditions relating to the approval.

*Example*

The Inspector-General may specify:

- (a) the format in which the notice is to be made available; and
  - (b) the period of time for which the notice must remain on the website; and
  - (c) whether related documents are to be made available for downloading from the website or in hard copy.
- (5) An approval made by the Inspector-General for the purposes of paragraph (2) (a) or subsection (3) must be published on the Insolvency and Trustee Service Australia's website.

**3B After section 64A**

*insert*

**64AA Immunity from civil actions and proceedings**

- (1) A civil action or proceeding does not lie against a person who operates a website, specified in an approval for the purposes of paragraph 64A (2) (a) or subsection 64A (3), in respect of a publication of a notice of the first meeting of creditors (or a notice that appears to be a notice of the first meeting of creditors) if the publication was made in good faith and without negligence.
- (2) Nothing in this section affects by implication any other ground of defence.

**[15] Schedule 6, Part 2, item 15**

*substitute*

**15 After subsection 64ZC (5)**

*insert*

- (5A) An instrument appointing a proxy must include the following statements:
  - (a) a statement disclosing whether or not the proxy has received, or will receive, a financial incentive to vote in a particular way:
    - (i) on a particular matter or matters that may arise at a meeting to which the proxy relates; or
    - (ii) on a particular motion or motions that may be proposed at a meeting to which the proxy relates;
  - (b) a statement disclosing whether or not the creditor has received, or will receive, a financial incentive:
    - (i) to appoint the proxy; or

- (ii) to direct the proxy as to the manner in which the proxy is to vote on a particular matter or matters that may arise, or on a particular motion or motions that may be proposed, at a meeting to which the proxy relates;
- (c) if the proxy or creditor has received, or will receive, a financial incentive in relation to a matter mentioned in paragraph (a) or (b) — a statement specifying the amount of financial incentive paid or to be paid and the name of the person who paid, or is to pay, the financial incentive.

**[16]      Schedule 8, item 12**

*substitute*

12	Section 149N  Inspector-General’s review of decision to object (also: section 149Q-AAT review of decision)	if the Inspector-General cancels the objection — written notice that objection cancelled	trustee	as soon as practicable after objection cancelled	<ul style="list-style-type: none"> <li>• date the cancellation takes effect (subsection 149N (2))</li> </ul>
----	--	--	---------	--	--

**[17]      Schedule 8, item 15, columns 4 and 5**

*omit*

(Order 77, rule 45, Federal Court Rules)

*insert*

(Rule 7.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)

**[18]      Schedule 8, item 22, column 6**

*omit*

- date of end or termination of debt agreement (sections 185N to 185R, inclusive)

**[19] Schedule 8, after item 22**

*insert*

22A	Section 185N ending a debt agreement by discharging obligations	certificate given under subsection 185N (3)	not applicable	not applicable	• date of giving of certificate
22B	Section 185P terminating a debt agreement by proposal	Minutes of creditors meeting called under section 185A, or the record made by the Official Receiver of acceptance of proposal under subsection 185B (3)	not applicable	not applicable	• date of acceptance of proposal
22C	Section 185Q terminating a debt agreement by court order	court order	applicant (Rule 9.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	2 days after order made (Rule 9.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)	• date order made
22D	Section 185QA terminating a debt agreement by special resolution of creditors	Minutes of meeting called under section 185QA	not applicable	not applicable	• date of passing of special resolution

**[20]      Schedule 8, item 23, column 4**

*substitute*

applicant (Rule 9.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)

**[21]      Schedule 8, item 23, column 5**

*substitute*

2 days (Rule 9.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)

**[22]      Schedule 8, item 26, columns 4 and 5**

*omit*

(Order 77, rule 45, Federal Court Rules)

**[23]      Schedule 8, item 28C, column 5**

*substitute*

2 days (Rule 10.05 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)

**[24]      Schedule 8, after item 28C**

*insert*

28D	Section 232  certificate relating to discharge of obligations under personal insolvency agreement	certificate given to debtor under subsection 232 (1)	trustee	not applicable	• date when trustee signed certificate
-----	---	--	---------	----------------	--

**[25] Schedule 8, item 30, column 5**

*substitute*

2 days (Rule 11.04 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)

**[26] Schedule 8, item 32, column 4**

*omit*

(Order 77, rule 45, Federal Court Rules)

*insert*

(Rule 11.04 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)

**[27] Schedule 8, item 32, column 5**

*omit*

(Order 77, rule 61, Federal Court Rules)

*insert*

(Rule 11.04 of FC (Bankruptcy) Rules and of FMC (Bankruptcy) Rules)

**[28] Schedule 8, item 33, columns 4 and 5**

*omit*

(Order 77, rule 45, Federal Court Rules)

---

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).