



Bankruptcy Amendment Regulations 2006 (No. 2)

Select Legislative Instrument 2006 No. 137

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 22 June 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. 2)*.

2 Commencement

These Regulations commence on 1 July 2006.

3 Amendment of *Bankruptcy Regulations 1996*

Schedule 1 amends the *Bankruptcy Regulations 1996*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 1.03 (1), before definition of Act

insert

2006 Fees Determination means the *Bankruptcy (Fees and Remuneration) Determination 2006* made under subsection 316 (1) of the Act.

[2] Regulation 4.02A, at the foot

insert

Note If paragraph (b) applies to a bankruptcy notice, a fee is payable under the 2006 Fees Determination.

[3] Regulation 4.17, note

omit

a fee is payable in accordance with item 6 of Schedule 9.

insert

a fee is payable under the 2006 Fees Determination.

[4] Regulation 13.06

substitute

13.06 Inspection of the Index

- (1) A person may, by application in writing, ask an Official Receiver to inspect material in the Index and give an extract of material specified in the application.
- (2) On receipt of an application, the Official Receiver:
 - (a) if the fee determined under the 2006 Fees Determination is paid — must inspect the Index and, within 14 days of receiving the application:
 - (i) give the requested extract to the applicant; or
 - (ii) tell the applicant, in writing, that the requested extract is not entered in the Index; or
 - (b) may give the applicant a list of Index search agents who may be able to inspect material entered in the Index for the applicant.
- (3) A person who has been granted access to the Index by the Inspector-General may, after paying the fee determined under the 2006 Fees Determination:
 - (a) inspect material entered in the Index; or
 - (b) obtain an extract of material entered in the Index.

Example for paragraph (b)

Making notes of information shown on a computer screen, or obtaining a print-out of information stored electronically.

- (4) However, prior payment is not required under subregulation (3) if the person has an alternative arrangement with the Inspector-General about the method of payment.

Example

An arrangement for payment by bulk billing.

- (5) The Inspector-General may specify conditions that apply to:
 - (a) the use of information entered in the Index; and
 - (b) the use of an extract of material entered in the Index.

Note Under regulation 13.09, the Inspector-General has control of access to the Index.

[5] Regulations 13.11 and 15A.06

omit

[6] Part 16, Division 2, heading

substitute

Division 2 Matters relevant to fees

Note Divisions 2 and 3 of Part 16 of the Regulations formerly provided for the fees in relation to the Act (including remuneration of the Official Trustee). As a result of the amendment of the Act by the *Bankruptcy Legislation Amendment (Fees and Charges) Act 2006*, the remuneration of the Official Trustee and fees in relation to the Act are now set out in the 2006 Fees Determination.

[7] Part 16, Subdivisions 2.1, 2.2 and 2.3

substitute

16.06 Payment of fees

- (1) If a fee is payable in respect of:
 - (a) the making of a request or an application to an Official Receiver; or
 - (b) the presentation or lodgment of a document with an Official Receiver;the request, application or document must not be dealt with unless the fee has been paid.
- (2) If a fee is payable in respect of the doing of a matter or thing by an Official Receiver, the matter or thing must not be done unless the fee has been paid.
- (3) However, prior payment of a fee is not required under subregulation (1) or (2) if the person has an alternative arrangement with the Inspector-General about the method of payment.

Example

An arrangement under which fees payable by a registered trustee are paid monthly in arrears.

16.07 Official Trustee's entitlement to interim remuneration

- (1) The Official Trustee's entitlement to remuneration under the 2006 Fees Determination arises when the Official Trustee:
 - (a) performs work or first acts in accordance with clause 3.03, 3.04, 3.07 or 3.08 of the 2006 Fees Determination; or
 - (b) is appointed as described in clause 3.06 of the 2006 Fees Determination; or
 - (c) first acts in accordance with subclause 3.09 (1) of the 2006 Fees Determination; or
 - (d) performs work as described in subclause 3.09 (2) or clause 3.10 of the 2006 Fees Determination.
- (2) For paragraph (1) (a), (b) or (d), remuneration is payable to the Official Trustee in respect of an amount received by the Official Trustee:
 - (a) when the amount is received; and
 - (b) at the rate applicable when the amount is received.
- (3) For paragraph (1) (c), remuneration is payable to the Official Trustee:
 - (a) from time to time as the funds are realised; and
 - (b) at the rate applicable when the funds are realised.

16.08 Reimbursement of Official Trustee for expenses

- (1) An amount equal to the amount of expenses incurred by the Official Trustee, in performing work of a kind mentioned in clause 3.03, 3.04, 3.08 or 3.09 of the 2006 Fees Determination in relation to an estate or debtor, is payable to the Official Trustee:
 - (a) for work under clause 3.03, 3.08 or 3.09 — out of the estate; or
 - (b) for work under clause 3.04 — out of the composition or scheme of arrangement.
- (2) In this regulation:

amount realised has the meaning given by clause 3.01 of the 2006 Fees Determination.

16.09 Fees — notes and transcript of evidence

For paragraph 81 (17) (b) of the Act, the prescribed fee is \$20.

[8] Part 16, Subdivision 2.4, heading

omit

[9] Regulation 16.13A

renumber as regulation 16.11

[10] Subregulation 16.13A (5)

substitute

(5) In this regulation:

fee means a fee payable under:

- (a) regulation 16.09; or
- (b) item 1, 2, 3, 4, 9, 11, 12 or 13 of the table following subclause 2.01 (1) of the 2006 Fees Determination; or
- (c) subclause 2.01 (2) for making copies of, or taking extracts from, a document mentioned in column 3 of item 1, 2, 3, 4, 11 or 13 of the table following subclause 2.01 (1) of the 2006 Fees Determination; or
- (d) clause 2.02, 2.07 or 2.08 of the 2006 Fees Determination.

[11] Regulation 16.13B, except the note

substitute

16.12 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 16.11 (1) to refuse to waive or remit the whole or part of a fee that became payable under a provision or item mentioned in the definition of fee in regulation 16.11.

[12] Part 16, Division 3

omit

[13] Schedule 2, item 11A

substitute

11A After subsection 64ZC (5)

insert

(5A) An instrument appointing a proxy must include:

- (a) 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; and
- (b) if the proxy or creditor has received, or will receive, a financial incentive in relation to a matter mentioned in paragraph (a) — 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 3, clause 1

omit

under an Act, and fees payable under regulation 16.14

insert

under the *Bankruptcy (Estate Charges) Act 1997*

[15] Schedule 3, clause 1A

substitute

- 1A. If the Official Trustee transfers the administration of the bankruptcy to a registered trustee:
- (a) the remuneration set out in Division 3.2 of the 2006 Fees Determination that is payable to the Official Trustee; and
 - (b) the reimbursement set out in regulation 16.08 that is payable to the Official Trustee.

[16] Schedule 6, Part 2, item 15

substitute

15 After subsection 64ZC (5)

insert

- (5A) An instrument appointing a proxy must include:
- (a) 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; and
 - (b) if the proxy or creditor has received, or will receive, a financial incentive in relation to a matter mentioned in paragraph (a) — 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.

[17] Schedule 9

omit

