



Bankruptcy Amendment Regulations 2010 (No. 1)¹

Select Legislative Instrument 2010 No. 195

I, QUENTIN BRYCE, 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* and the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) Act 2008*.

Dated 8 July 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

Attorney-General

1 Name of Regulations

These Regulations are the *Bankruptcy Amendment Regulations 2010 (No. 1)*.

2 Commencement

These Regulations commence on 1 August 2010.

3 Amendment of *Bankruptcy Regulations 1996*

Schedule 1 amends the *Bankruptcy Regulations 1996*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 1.03 (1), definition of *2006 Fees Determination*

omit

[2] Subregulation 1.03 (1), after definition of *FC (Bankruptcy) Rules*

insert

Fees and Remuneration Determination means each determination made under subsection 316 (1) of the Act, as in force from time to time.

[3] Regulation 4.01

substitute

4.01 Application for bankruptcy notice

- (1) Subject to subregulation (2), to apply for the issue of a bankruptcy notice, a person must lodge with the Official Receiver:
 - (a) an application in the approved form; and

- (b) 1 of the following documents in relation to the final judgment or final order specified by the person on the approved form:
 - (i) a copy of the sealed or certified judgment or order;
 - (ii) a certificate of the judgment or order sealed by the court or signed by an officer of the court;
 - (iii) a copy of the entry of the judgment or order certified as a true copy of that entry and sealed by the court or signed by an officer of the court.
- (2) If the final judgment or final order specified by the person on the approved form is an award mentioned in paragraph 40 (3) (a) of the Act, the person must lodge with the Official Receiver:
 - (a) an application in the approved form; and
 - (b) a copy of the award certified as a true copy by the arbitrator who made the award or, failing the arbitrator, by an officer of the Court after having compared the copy with the original award; and
 - (c) a sealed or certified copy of the order giving leave to enforce the award.

Note 1 For bankruptcy notices, see regulation 4.02 and Form 1.

Note 2 A fee is payable to the Official Registrar for an application under this regulation — see Fees and Remuneration Determination.

[4] Regulation 4.02A, note

substitute

Note 1 If paragraph (b) applies to a bankruptcy notice, a fee is payable under the Fees and Remuneration Determination.

Note 2 A bankruptcy notice may be served by any of the methods mentioned in regulation 16.01.

[5] Subregulation 4.04 (3)*substitute*

(3) For paragraph (2) (b), the conversion of an amount of foreign currency into an equivalent amount of Australian currency must be done in accordance with the telegraphic rate of exchange prevailing on the second day before the day when the application to which the conversion applies is lodged under subregulation 4.01 (1).

[6] Subregulation 4.05 (1)*substitute*

(1) A creditor who presents a petition under Division 2 of Part IV of the Act must, within 2 working days after the petition is endorsed by the Court, give an endorsed copy of the petition to the Official Receiver.

[7] After subregulation 4.05 (2)*insert*

(3) A creditor who presents a petition under Division 2 of Part IV of the Act must give a copy of any order, endorsed by the Court, dismissing, staying or extending the petition, or adjourning the hearing of the petition, to the Official Receiver within 2 working days after the Court has endorsed the order.

[8] Subregulation 4.11 (3)*substitute*

(3) The Official Receiver must not accept a declaration of intention to present a debtor's petition under section 54A of the Act or a debtor's petition under section 55, 56B or 57 of the Act unless the debtor has given to the Official Receiver a signed acknowledgement (which may be included in or appended to the petition) that the debtor has received and read the prescribed information.

[9] Subregulation 4.11 (5)*substitute*

(5) Subregulation (6) applies if a person (the *intending petitioner*) intends to present a petition under Division 2 of Part IV of the Act and the intending petitioner is:

- (a) unable to read the relevant material, because he or she is:
 - (i) blind, partially sighted, illiterate or partially literate; or
 - (ii) insufficiently familiar with the English language; or
- (b) unable to sign the petition or the acknowledgment, because of a physical incapacity.

(6) The petition and the acknowledgement may be signed by another person, who must sign a statement:

- (a) if subparagraph (5) (a) (i) applies — that he or she has read the relevant material to the intending petitioner; or
- (b) if subparagraph (5) (a) (ii) applies — that he or she has interpreted the relevant material to the intending petitioner in a language with which both persons are familiar; or
- (c) if paragraph (5) (b) applies — that he or she believes that the intending petitioner has read and understood the relevant material.

(7) In this regulation:

relevant material means the petition, the prescribed information and the acknowledgment.

[10] Regulation 4.17, note*omit*

2006 Fees Determination.

insert

Fees and Remuneration Determination.

[11] Subregulation 6.12B (2)*substitute*

- (2) Contributions for a year are taken to be income of a person if:
 - (a) the contributions exceed 9% of the employee's ordinary time earnings for the year; and
 - (b) the employer has an obligation to make the contributions that arise under an individual industrial agreement; and
 - (c) the contributions are not contributions of the kind mentioned in subparagraph (1) (b) (iii).

[12] Subregulation 6.12B (3), definition of *industrial agreement made solely between the employer and the person**substitute*

individual industrial agreement means an industrial agreement made solely between the employer and the person, including the following:

- (a) an AWA, or an ITEA, to which the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* applies;
- (b) a similar agreement under the law of a State or Territory.

[13] Subregulation 8.04A (1)*omit*

Official Receiver

insert

Inspector-General

[14] Paragraph 8.35 (1) (f)*substitute*

(f) either:

- (i) is not a full member of the Insolvency Practitioners Association of Australia; or
- (ii) has not satisfactorily completed a course in insolvency approved by the Inspector-General.

[15] Subregulations 9.01 (5) and (6)*substitute*

- (5) Subregulation (6) applies if a debtor intends to present a debt agreement proposal and the debtor is:
 - (a) unable to read the relevant material, because he or she is:
 - (i) blind, partially sighted, illiterate or partially literate; or
 - (ii) insufficiently familiar with the English language; or
 - (b) unable to sign the debt agreement proposal or the acknowledgement, because of a physical incapacity.
- (6) The debt agreement proposal and the acknowledgement may be signed by another person, who must sign a statement:
 - (a) if subparagraph (5) (a) (i) applies — that he or she has read the relevant material to the debtor; or
 - (b) if subparagraph (5) (a) (ii) applies — that he or she has interpreted the relevant material to the debtor in a language with which both persons are familiar; or
 - (c) if paragraph (5) (b) applies — that he or she believes that the debtor has read and understood the relevant material.
- (7) In this regulation:
relevant material means the debt agreement proposal, the prescribed information and the acknowledgment.

[16] Paragraph 9.02 (b)*substitute*

- (b) a degree, diploma or similar qualification from an Australian university, college of advanced education or other Australian tertiary institution that is of an equivalent or higher level to, and contains the same or similar subject matter as, the qualification mentioned in paragraph (a).

[17] Subregulations 10.02 (4) and (5)*substitute*

- (4) Subregulation (5) applies if a debtor intends to sign an authority and the debtor is:
 - (a) unable to read the relevant material, because he or she is:
 - (i) blind, partially sighted, illiterate or partially literate; or
 - (ii) insufficiently familiar with the English language; or
 - (b) unable to sign the authority or the acknowledgment, because of a physical incapacity.
- (5) The authority and the acknowledgement may be signed by another person, who must sign a statement:
 - (a) if subparagraph (5) (a) (i) applies — that he or she has read the relevant material to the debtor; or
 - (b) if subparagraph (5) (a) (ii) applies — that he or she has interpreted the relevant material to the debtor in a language with which both persons are familiar; or
 - (c) if paragraph (5) (b) applies — that he or she believes that the debtor has read and understood the relevant material.
- (6) In this regulation:
relevant material means the authority, the prescribed information and the acknowledgment.

[18] Subregulation 10.03 (2)*substitute*

- (2) The registered trustee or solicitor must, within 2 working days after consenting, give to the Official Receiver for the District where the debtor resides a copy of the signed consent.
- (3) The registered trustee or solicitor must, within 2 working days after a proposal for dealing with the debtor's affairs under Part X of the Act is finalised, give a copy of the proposal to:
 - (a) the Official Receiver for the District where the debtor resides; and
 - (b) each creditor of the bankrupt of whom the registered trustee or solicitor is aware.

[19] Paragraph 10.04 (aa)*omit***[20] After regulation 11.01***insert***11.01A Copy of petition etc to be given to Official Receiver**

- (1) A person who presents a petition under section 244 or 247 of the Act must, within 2 working days after the petition is endorsed by the Court, give a copy of the petition to the Official Receiver.
- (2) The time within which, under subsection 244 (14) of the Act, a creditor must give to the Official Receiver a copy of an order under subsection 244 (11) of the Act is 2 working days after the order is endorsed by the Court.

11.01B Proof of statement of affairs

- (1) Subregulation (2) applies in any proceedings to a document or copy of a document that purports to be a certificate signed by the Inspector-General stating that, at a particular point in time, the form of statement of affairs that is attached to the certificate was the approved form for section 6A of the Act.
- (2) The document or copy:
 - (a) is proof, in the absence of evidence to the contrary, of information that is stated in it; and
 - (b) may be tendered in evidence without further proof.

[21] Paragraph 13.06 (2) (a)*omit*

2006 Fees Determination

insert

Fees and Remuneration Determination

[22] Subregulation 13.06 (3)*omit*

2006 Fees Determination

insert

Fees and Remuneration Determination

[23] Part 16, Division 2, note*omit*

2006 Fees Determination.

insert

Fees and Remuneration Determination.

[24] Subregulation 16.07 (1)*omit each mention of*

2006 Fees Determination

insert

Fees and Remuneration Determination

[25] Subregulations 16.08 (1) and (2)*omit*

2006 Fees Determination

insert

Fees and Remuneration Determination

[26] Paragraphs 16.11 (5) (b), (c) and (d)*substitute*

- (b) item 1, 2, 3, 4, 9, 13, 14 or 15 of the table following clause 2.01 of the Fees and Remuneration Determination; or
- (c) clause 2.02, 2.08 or 2.09 of the Fees and Remuneration Determination.

[27] Schedule 3, paragraph 1A. (a)

omit

2006 Fees Determination

insert

Fees and Remuneration Determination

[28] After regulation 16.12

insert

Division 3 Transitional

16.13 Application of Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) Act 2008

- (1) The amendments made by items 20, 21, 22, 23, 29, 30 and 31 of Schedule 2 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* apply to a bankruptcy the date of which is on or after the commencement of those amendments.
- (2) The amendments made by items 25 to 28 of Schedule 2 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* apply to a transfer of property that is made on or after the commencement of those amendments.
- (3) The amendment made by item 16 of Schedule 2 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) Act 2008* applies to an examinable period, within the meaning of section 139CA of the Act, that begins on or after the commencement of that amendment.
- (4) For sections 265 and 268 of the Act, the amendments made by items 11, 13, 18 and 19 of Schedule 2 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) Act 2008* applies to a disposition of property that is made on or after the commencement of those amendments.

[29] Schedule 1, Form 1*substitute***Bankruptcy Notice**

Bankruptcy Act 1966 Subsection 41(2)
Bankruptcy Regulations 1996 Regulation 4.02

To	Title	Given Name/s	Surname
of		Address Postcode	
and*	Title	Given Name/s	Surname
of		Address Postcode	
* if more than one debtor			
You are notified that:			
Creditor's name and ABN/ ACN if applicable (if more than one creditor, include all creditors)			
Address			
Address (line 2)		Postcode	
claim/s that you owe the following debt			
1. Amount as per the attached final judgment/s or final order/s (note A)		<input type="text"/>	
2. <u>Add</u> legal costs (note B)		<input type="text"/>	
3. <u>Add</u> interest accrued since date of judgment/s or order/s (note C)		<input type="text"/>	
4. Sub total (1 + 2 + 3)		<input type="text"/>	
5. <u>Less</u> payments made and/or credit allowed since judgment/s or order/s		<input type="text"/>	
6. TOTAL DEBT AMOUNT (4 - 5)		<input type="text"/>	
Notes			
A. If an attached final judgment or final order is expressed in an amount of foreign currency, you may pay the amount in that foreign currency or pay an equivalent amount in Australian dollars that has been calculated using the opening telegraphic transfer rate of [name of institution] <input type="text"/> as at [date] <input type="text"/>			
Foreign currency amount <input type="text"/> X [telegraphic transfer rate] <input type="text"/> = AUD \$ <input type="text"/>			
B. Where legal costs are being claimed (and a specific amount was not included in the judgment/s or order/s), a certificate of taxed or assessed costs in support of the amount claimed is attached.			
C. Where interest is being claimed, the provisions under which it is claimed and the basis of its calculation are shown in the attached interest schedule. If no interest is claimed the creditor need not attach the schedule to this notice.			

1. You are required, within days after service on you of the Bankruptcy Notice, to either:
 - (a) pay to the creditor the amount of the debt claimed; or
 - (b) make arrangements to the creditor's satisfaction for settlement of the debt.

* A Bankruptcy Notice served in Australia must be complied with within 21 days after service. The Court may fix a different time for compliance where it gives leave to serve a Bankruptcy Notice outside of Australia.
2. Payment of the debt can be made to (name and address, including telephone, fax and email address if appropriate):
3. Bankruptcy proceedings may be taken against you if, within the time stated in paragraph 1 above, you do not comply with either paragraph 1(a) or 1(b), and the Court (that is, the Federal Court of Australia or the Federal Magistrates Court of Australia) does not extend the time for compliance with this Bankruptcy Notice (see paragraph 4 below).
4. Applying to extend the time for compliance: You may apply to the Court, within the time stated in paragraph 1 above, for an extension of time for compliance with this Bankruptcy Notice on the grounds that:
 - (a) you have instituted proceedings to set aside the judgment/s or order/s in respect of which this Bankruptcy Notice has been issued; and/or
 - (b) you have filed with the Court an application to set aside this Bankruptcy Notice (on grounds other than those set out in paragraph 5 below).
5. Applying to set aside the Bankruptcy Notice: You may apply to the Court, within the time stated in paragraph 1 above, for an order that this Bankruptcy Notice be set aside on the grounds that you have a counter-claim, set-off or cross demand, equal to or exceeding the amount claimed in this Bankruptcy Notice, and you could not have set up that counter-claim, set-off or cross demand in the action or proceeding in which the judgment or order in respect of which this Bankruptcy Notice has been issued was obtained.
6. You should note the following points carefully:
 - (a) if you apply to the Court for an extension of time to comply with this Bankruptcy Notice (see paragraph 4 above), and the Court has not granted any extension before the expiration of the time stated in paragraph 1 above, you must still comply with this Bankruptcy Notice within the time stated;
 - (b) however, if you have applied to the Court to set aside this Bankruptcy Notice on the grounds set out in paragraph 5 above, you need not comply with this Bankruptcy Notice before the Court decides on your application. Whether you have to comply with the Bankruptcy Notice after this time will depend on the Court's decision.
7. If you make an application to the Court, the creditor will accept service of legal documents at (name and address, including telephone, fax and email address if appropriate):

WARNING

THIS BANKRUPTCY NOTICE IS AN IMPORTANT DOCUMENT. THE INFORMATION IT CONTAINS IS BASED ON PROVISIONS OF THE BANKRUPTCY ACT 1966 (THE ACT). THE INFORMATION IS A SUMMARY ONLY AND NOT A COMPLETE STATEMENT OF THE LAW. IF YOU REQUIRE A MORE DETAILED EXPLANATION, OR ARE UNSURE WHAT TO DO AFTER READING THE NOTICE, YOU SHOULD SEEK LEGAL ADVICE.

Note to creditor about use of information

The information you provide on this Bankruptcy Notice may be included on a public record. It may also be disclosed to government agencies and departments, or other persons or bodies for purposes authorised by the Act.

Issued by the Official Receiver when endorsed below

Office use only

Schedule of Post-Judgment Interest Calculation

Interest calculations in relation to the judgment/s or order/s attached to this notice					
Interest claim period		Statutory provision under which the post-judgment interest is being claimed	Principal amount on which interest is claimed	Rate of interest (%)	Interest amount claimed
Date from	Date to				
Judgment/ order number:					
Judgment/ order number:					
Judgment/ order number:					
Total amount of interest claimed					

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frl.gov.au>.