



## Australian Government

**Insolvency and Trustee Service Australia**  
Chief Executive & Inspector-General  
in Bankruptcy

### **Amendments to the Bankruptcy Regulations**

The [Bankruptcy Amendment Regulations 2010 \(No. 1\)](#) came into effect on 1 August 2010, making several changes to the Bankruptcy Regulations (the Regulations) which are summarised below.

#### **Bankruptcy Notices**

There is a new bankruptcy notice form in Schedule 1 to the Regulations – this has been previously advised to relevant stakeholders and the new form is available on ITSA's website.

The amendments also provide that an application for a bankruptcy notice must now be in the 'approved form', which requires the applicant to complete a one-page checklist and attach a completed bankruptcy notice and other relevant documents, such as judgments or orders. The checklist does not have to be completed if the applicant has made an alternative payment arrangement with the Inspector-General in Bankruptcy.

An amendment to subregulation 4.01(1) provides that a copy of a judgment or order that has been sealed or certified by a court or tribunal may accompany an application for a bankruptcy notice (i.e. it is not necessary to provide an 'original' of the sealed or certified judgment or order).

It is also clarified, by a note to subregulation 4.02A, that a bankruptcy notice may be served by any of the methods mentioned in regulation 16.01.

Essentially, the process of applying for a bankruptcy notice is not greatly changed. However, the use of an approved form for applications will provide flexibility as ITSA moves towards greater acceptance and processing of applications on-line.

#### **Creditor's Petitions - notifying the Official Receiver**

The time within which a petitioning creditor must give the Official Receiver a copy of the petition endorsed by the Court has been reduced from 3 working days to 2 working days. The period runs from the date the Court endorses the petition. This is part of the standardisation of time frames for the lodgment of documents with the Official Receiver and Inspector-General (further amendments to time frames are contained in the *Bankruptcy Legislation Amendment Act 2010* and are expected to come into effect on 1 October 2010).

A new requirement has also been introduced for petitioning creditors to give the Official Receiver a copy of any order, endorsed by the Court, dismissing, staying or extending the petition, or adjourning the hearing of the petition, within 2 working days after the Court has endorsed the order. This is to ensure that the National Personal Insolvency Index is kept up to date.

- Where an adjournment or other order is not entered by the Court, it will be considered sufficient compliance to provide the Official Receiver with a print out from the 'Courts Events & Orders' relating to the particular matter on the Federal Law Search page of the Commonwealth Courts Portal, showing that the matter is adjourned or other order has been made.

## **Estates of deceased bankrupts – giving petitions/orders to the Official Receiver**

New regulation 11.01A has been introduced specifying requirements for giving petitions and orders to the Official Receiver under Part XI of the *Bankruptcy Act 1966* (the Act). Creditors, or persons administering deceased estates, who present a petition to the Court under sections 244 or 247 of the Act are now required to give the Official Receiver a copy of the petition within 2 working days after the Court endorses it. Any Court order that an estate be administered under Part XI must also be given to the Official Receiver, within 2 working days of the Court endorsing the order.

This brings the requirements for notifying the Official Receiver of matters pertaining to the administration of deceased bankrupt estates into line with those applying in respect of living bankrupts.

## **Declaration of intention to present a debtor's petition – prescribed information**

Subsection 54D(1) of the Act requires the Official Receiver to give prescribed information to a debtor lodging a declaration of intent. Subregulation 4.11(3) has been amended to require the Official Receiver to obtain a signed acknowledgement that the debtor has received and read the prescribed information when accepting a declaration of intent. This brings the requirement into line with that applying to the acceptance of a debtor's petition.

## **Physically incapacitated debtors**

Amendments to the Regulations have been made to allow for a debtor's petition, debt agreement proposal or controlling trustee authority in relation to a personal insolvency agreement, as well as the prescribed information acknowledgment that must be filed with such documents, to be signed on behalf of a debtor who is unable to sign due to physical incapacity.

The person signing on behalf of a physically incapacitated debtor will be required to declare that he or she believes the debtor has read and understood the debtor's petition, debt agreement proposal or controlling trustee authority (as the case may be) and the prescribed information.

Following the changes, the categories of debtor on whose behalf documents may be signed now includes those who are:

- blind
- partially sighted
- illiterate or partially literate
- insufficiently familiar with the English language, or
- physically incapacitated.

## **Registered Trustees – notifying changes in particulars**

Subregulation 8.04A(1) requires a registered trustee to notify changes in particulars such as their name and address. This has been amended to require notification be made to the Inspector-General rather than the Official Receiver.

### **Controlling Trustee Solicitors - qualifications**

Paragraph 8.35(1)(f) of the Regulations has been amended to clarify the time at which a solicitor must have obtained relevant qualifications to act as the controlling trustee of a personal insolvency agreement. The previous wording suggested qualifications had to be obtained by 1 December 2006, whereas in fact the requirement to obtain qualifications commenced on this date. Thus, solicitors who obtained the qualifications after 1 December 2006 were inadvertently precluded from being a controlling trustee. The new requirement clarifies that solicitors may obtain the relevant qualifications after that time.

### **Registered Debt Agreement Administrators - qualifications**

Paragraph 9.02(b) of the Regulations has been replaced to clarify that a person seeking registration as a debt agreement administrator must either hold a Certificate IV in Financial Services (Accounting) or a degree, diploma or similar qualification of an equivalent or higher level *that contains the same or similar subject matter to the certificate*. The previous wording of this provision was open to the interpretation that the alternative degree, diploma or similar qualification could be in any discipline.

### **Personal Insolvency Agreement proposals – lodging with the Official Receiver**

Subregulation 10.03(2) has been replaced and now requires a controlling trustee to lodge with the Official Receiver a Personal Insolvency Agreement (PIA) proposal at the same time as the controlling trustee lodges his/her consent to act. Previously a debtor's PIA proposal was not required to be lodged until 10 days before the creditors' meet to decide whether to accept the PIA. It is important for the Official Receiver to see the PIA proposal in sufficient time to identify any significant problems and inform the controlling trustee and/or debtor. Earlier lodgement by the controlling trustee will facilitate this.

### **Proof of statement of affairs**

New regulation 11.01B provides for the Inspector-General to issue evidentiary certificates in relation to the approved form of a statement of affairs. The certificate will make court proceedings relating to the proof of the form more efficient, and does not prevent evidence to the contrary being adduced.

### **References to industrial agreements**

Subregulation 6.12B(2) has been replaced with a new subregulation which removes the former reference to an "industrial agreement made solely between the employer and the person" and replaces it with reference to an "individual industrial agreement". A new definition of "individual industrial agreement" has been inserted to include an AWA, or an ITEA, within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

### **Same-sex relationships legislation**

New regulation 16.13 provides transitional arrangements for the amendments to the Act made by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008*.

## **References to the Fees and Remuneration Determination**

References in the Regulations to the Bankruptcy (Fees and Remuneration) Determination have been updated.

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