






PERSONAL INSOLVENCY REGULATOR

Volume 8


Issue 2


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This client newsletter by ITSA's independent Regulation and Enforcement branch will be issued each quarter to registered trustees, registered debt agreement administrators and controlling trustees. In keeping with one of Regulation and Enforcement branch's main purposes it is aimed at informing practitioners of changes to personal insolvency law, both legislative and case law, and discussing areas of practice and Inspector-General requirements. **ARTICLES ARE WELCOME** and can be forwarded by email to tim.cole@itsa.gov.au or registrations.officer@itsa.gov.au.


-  **Recommended reading for all practitioners**
-  **Particular interest for registered debt agreement administrators (RDAAs)**
-  **Particular interest for trustees**


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1. Inspector-General's Column

a. Year in review

2009-10 has been a pivotal year with many achievements worth noting.

ITSA started the year with a new structure and with the effects still being felt of the global financial crisis. We ended the year with the announcement of significant ITSA Budget initiatives and the passing of the Bankruptcy Legislation Amendment Bill through Parliament.

Numerous key achievements across the organisation were recorded over the past year. Each of these achievements underlines our commitment to innovation and excellence in service delivery – several examples are listed below.

- **ITSA Vision** – We defined and published our new vision –

'ITSA is a dynamic organisation that facilitates improved and equitable financial outcomes for consumers, business and the community through excellence in service delivery.'

- **Finalisations** - There was a 66% increase in estate finalisations due to improved practices and procedures; primarily through a national approach to initial assessment with a focus on outcomes achievable within 3 months.
- **Transferred work** – on several occasions Debt Agreement Administrators (DAAs) and Registered Trustees (RTs) transferred matters to the Official Trustee. One instance involved a large number of administrations that needed to be reconciled against the DAA's bank accounts.
- **Personal Property Security Register (PPSR) rollout – due to commence May 2011** - PPSR rollout schedule was agreed with the Attorney General's Department (AGD) and commenced. The complex schedule covers all aspects of ITSA's involvement from fit out of the new Adelaide premises (situated at 400 King William Street, Adelaide) to recruitment, IT system interfaces and increased staffing requirements. .
- **AGD debt agreement review** - ITSA provided significant input to the AGD Debt Agreement Review.
- **IGPDs and IGPSs** – ITSA released additional Inspector-General Practice Directions and Practice Statements that were well received by the insolvency community with complimentary remarks received from both practitioners and the Insolvency Practitioners Association.
- **ITSA's Regulatory Framework** was commended by KPMG and has been adopted by several other agencies as “best practice”.
- **Advertising creditors meetings** - Significant groundwork undertaken to enable ITSA to advertise creditor's meetings on our website in 2010-11. This will commence as at 1 September 2010 and will be preceded by significant advertising.
- **Disciplining practitioners** - Several practitioners (both RTs & RDAAs) were disciplined during 2009-10, a number of whom were deregistered for inappropriate practices and conduct bolstering practitioner and public confidence in ITSA's regulatory abilities and benefiting the profession by removing several practitioners who risked bringing the insolvency profession into disrepute. ITSA fully appreciates that Practitioners want to learn about each and every sanction as soon as possible, however Practitioners need to remember that details of such disciplinary outcomes / sanctions **can only** be publicized once the matter is in the public domain and only once Privacy Act considerations no longer prevent publication.

- **Training and information sessions** - 44 national training/information sessions to RTs, RDAs, financial services and policing agencies were conducted.
- **Offence referrals** - A record number of offence referrals (1,169) were received and processed and 341 prosecution briefs submitted to the Commonwealth Director of Public Prosecutions (CDPP), which equates to an 11% increase over 2008-09.
- **Courts handing down stiffer penalties for serious offenders** - a significant increase in the number of people imprisoned for serious misconduct was noted this year.
- **Online Services** – Trustees have benefited from the roll-out of Online Services. The combined effect of the releases has enabled trustees to generate certificates of appointments, finalise administrations, complete online remittances for realisations and interest charges, and submit their Annual Estate Returns online.
- **AFCCRA & Site liaison** – Three peak liaison meetings were held throughout the year between the AFCCRA Council and ITSA resulting in improved and effective stakeholder relations.
- **Declaration of Intention (DoI) Forums** - To ensure that the legislative policy framework for the amendments to the DoI were understood by our key stakeholders, financial counsellors, creditors and DAAs, various meetings and a forum were held to discuss the proposed amendments and obtain feedback to improve the DoI form and the accompanying short form Statement of Affairs. These meetings and the forum were very successful with strong support for ITSA's work in this area.
- **New Bankruptcy Notice Form** - The former 8 page Bankruptcy Notice form has been revised into a new plain English 3 page Bankruptcy Notice, which is to be used from 1 August 2010. The new form, which is also designed to facilitate electronic lodgement in the future, is accompanied by a Checklist for Issue, which should ensure Notices comply with legislation and do not suffer from defects, which may ultimately annul a bankruptcy.
- **Bankruptcy Legislation Amendment Bill 2009** – significant background logistics and developmental work was performed to prepare for the passing of the bill through Parliament.
- **Reconciliation Action Plan** - ITSA's inaugural Reconciliation Action Plan (RAP) was developed and published

With another full and exciting year ahead, the ITSA National Management Board look forward to working with you to ensure Australia maintains its reputation of having a robust and effective personal insolvency system.

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b. Bankruptcy Legislation Amendment Act (BLAA) 2010

The Amendment Act received Royal Assent on 14 July 2010. It contains a range of amendments to the *Bankruptcy Act 1966* which commence at different times.

1. Amendments abolishing bankruptcy districts commenced on the day after Royal Assent was given (15 July 2010);
2. Amendments increasing from \$2,000 to \$5,000 the minimum debt upon which a bankruptcy notice may be issued or a creditor's petition presented to the court will commence 28 days after Royal Assent (11 August 2010); and
3. Amendments to:

- the remuneration arrangements for trustees;
- the offence provisions (including introduction of an infringement notice regime for certain offences and enhances powers for the Inspector-General to investigate offences); and
- extend the stay period that arises when a debtor files a Declaration of Intention to Present a Debtor's Petition from 7 to 21 days

commence on a date to be fixed by proclamation (expected to be 1 October 2010¹).

Changes to the Bill made by the Parliament

The Bankruptcy Legislation Amendment Bill 2009 (the title of the Amendment Act as introduced into Parliament) also contained amendments to increase by 20% the asset, income and debt thresholds below which debtors are eligible to propose a debt agreement with their creditors. However, these amendments were removed while the Bill was before the Parliament.

The Parliament also reduced the proposed increase in the minimum debt² from \$10,000 to \$5,000, and the proposed increase in the stay period relating to a Declaration of Intention to Present a Debtor's Petition from 28 to 21 days.

ITSA information sessions on the changes

ITSA will conduct information sessions on the amendments for insolvency practitioners, financial counsellors and other interested stakeholders in late August and early September. All stakeholders are encouraged to attend these sessions. Anyone interested in attending should contact Ms Smitha Shankar on 02 6270 3406 or via e-mail to smitha.shankar@itsa.gov.au. Nominations to attend one of the information sessions need to be received by Thursday 12 August 2010. For a list of the available sessions in each city, please see the table below.

Session Details Bankruptcy Act & Regulations Amendments Information Session Details

Session No.	Session Location	Session Type 1	Day of week	Date	Time
1.	Brisbane	D	Wed	25 August	8.45am
2.	Brisbane	O	Wed	25 August	4pm
3.	Brisbane	D	Thurs	26 August	8.45am
4.	Brisbane	O	Thurs	26 August	4pm
5.	Brisbane	O	Fri	27 August	10.30am
6.	Melbourne	D	Mon	30 August	8.45am
7.	Melbourne	O	Mon	30 August	4pm
8.	Melbourne	D	Tues	31 August	8.45am
9.	Melbourne	O	Tues	31 August	4pm
10.	Melbourne	O	Wed	1 September	10.30am
11.	Adelaide	D	Thurs	2 September	8.45am

¹ Expectation at the time of going to press/printing.

² That is the minimum debt upon which a bankruptcy notice may be issued or a creditor's petition presented to the court

12.	Adelaide	O	Thurs	2 September	4pm
13.	Adelaide	O	Fri	3 September	10.30am
14.	Perth	O	Thurs	9 September	10.00am
15.	Perth	D	Thurs	9 September	1.00pm
16.	Perth	O	Fri	10 September	8.45am
17.	Sydney	D	Mon	30 August	8.45am
18.	Sydney	O	Mon	30 August	4pm
19.	Sydney	D	Tues	31 August	8.45am
20.	Sydney	O	Tues	31 August	4pm
21.	Sydney	O	Wed	1 September	1.30pm
22.	Hobart	D	Mon	23 August	1.00pm
23.	Hobart	O	Tues	24 August	10.30am
24.	Canberra	D	Mon	6 September	8.45am
25.	Canberra	O	Mon	6 September	4pm
26.	Townsville	D	Thurs	2 September	8.45am
27.	Townsville	O	Thurs	2 September	4pm
28.	Cairns	D	Fri	3 September	8.45am
29.	Cairns	O	Fri	3 September	4pm

Notes

D = Detailed Session

O = Overview Session

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c. Miscellaneous Bankruptcy Regulations Amendments

A number of technical and miscellaneous amendments to the Bankruptcy Regulations will also commence on 1 August 2010. The most important change will be made to the form of the Bankruptcy Notice in Schedule 1 of the Regulations. The new notice will be shorter than the previous version, and will be more understandable and user-friendly for both debtors and creditors.

The package of amendments is contained in the Bankruptcy Amendment Regulations 2010 (No.1) (Statutory Legislative Instrument No 195 of 2010).

Veronique Ingram, Inspector-General in Bankruptcy and Chief Executive

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2. Regulatory Activity Summary – 2009/2010

As foreshadowed in the April 2010 edition of the PIR, it is not possible to provide statistics for the June 2010 quarter and for the full year to 30 June 2010 in this edition. These statistics will be released by ITSA as part of its Annual Report for 2009-2010 – it is expected the Annual Report will be published towards the end of the first quarter of this financial year.

Jeff Hanley
National Manager
Regulation and Enforcement

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3. Debt Agreement Practitioner’s Association. Bankruptcy Act Reform – an international landscape



Brody Clarke



2010 is a watershed year for the personal insolvency regime in Australia as it undergoes reform, review and evaluation.

In developing legislation, a comparative analysis of law reform initiatives throughout international jurisdictions is useful and in this regard DAPA has found the recent approach taken in Canada illuminating. In response to heightened rates of consumer insolvency (personal insolvencies increased 45.5% from Sep-08 to Sep-09),³ Canada implemented reforms in 2009 to significantly increase the threshold for Consumer Proposals⁴ – which are largely equivalent to Debt Agreements – from \$75,000 to \$250,000. The aim was to increase accessibility to Consumer Proposals as an alternative to bankruptcy – an approach that seems to be gaining momentum globally and to a certain degree, in Australia (unlike the Australian experience, a debtor who proposes a Consumer Proposal does not commit “*an act of bankruptcy*”).

Canada also made it compulsory for the debtor to attend counselling as a condition of the issuance of a certificate of full performance of his or her Consumer Proposal. An analogous process of debtor education exists in the United States and is also likely to be introduced into the Australian legislation in some capacity sooner rather than later.

Personal insolvency law is a relatively esoteric subject and appears to go through cycles. In today’s consumer capitalist society, an effective insolvency law is once again viewed as crucial to sustaining confidence in the credit system that underlies the economy – a theme apparent during Victorian society of 19th century England.

International perspective will also be important as the Government undertakes reform to modernise the Australian regime, and countries such as Canada, the United States and the UK are an initial reference point. The present feedback emanating from the DAPA member-base suggests that professional demand is for reform that is intellectually rigorous and generates useable and effective outcomes.

Brody Clarke
Executive Director
Debt Agreement Practitioners Association and Registered Debt Agreement Administrator

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³ Source: Office of the Superintendent of Bankruptcy

⁴ Consumer proposals were introduced into the Bankruptcy and Insolvency Act in the early 1990s.

4. The Financial Counselling Perspective - AFCCRA



Fiona Guthrie



This is the first time that AFCCRA – the Australian Financial Counselling and Credit Reform Association – has contributed to this newsletter. AFCCRA is the peak body for financial counsellors in Australia.

Financial counsellors, as insolvency practitioners will no doubt know, help people in financial difficulty, by providing information, support and advocacy. For example, this could involve negotiating hardship variations with creditors, providing information about credit legislation or debt collection laws or the pros and cons of bankruptcy or a Part IX agreement. We obviously have a similar client group to at least some insolvency practitioners.

AFCCRA's role as a professional peak body is no different to any other body of this nature: to advance the standing and recognition of the profession and to work with, in our case, state financial counselling bodies to provide support and ongoing professional development. We also have a strong policy development and advocacy role in relation to issues affecting our clients. Our current work in this area includes a project on comparative debt enforcement laws across Australia, working with the banking industry to improve hardship processes and a submission on the next phase of credit law reform.⁵

The US civil rights lawyer, Dudley Field Malone, famously observed that he had never in his life "*learned anything from any man who agreed with me.*" Financial counsellors will often have different perspectives to ITSA's other industry stakeholders. For example, we were very disappointed that the change in the threshold for a creditor's petition will only increase to \$5,000 and not \$10,000 as the Attorney-General originally announced. On the other hand, there will also be areas where the views of financial counsellors and industry will coincide. These ongoing debates about reform are healthy and we welcome them.

Because of the nature of the role, financial counsellors are well placed to comment on the level of financial stress in the community. Although Australia escaped the worst of the Global Financial Crisis – to the extent, it barely rates more than a passing mention in the media any more – this is not what we are seeing on the ground. Anecdotal reports from financial counsellors are that more and more people are struggling to pay their bills. Waiting lists are growing and with the cost of living continuing to rise, for example increasing interest rates and electricity prices, there appears no end in sight.

Financial counsellors often lament that people leave it too late to seek assistance: had they sought advice earlier, more could have been done, even to the extent of saving a home. One of our challenges in the future is to understand the psychological barriers that prevent people addressing debt problems. Conversely, we also need to understand the psychological enablers that would encourage early identification. In the end, it would be good to do ourselves out of a job!

⁵ 'National Credit Reform – Enhancing confidence and fairness in Australia's credit law', Green Paper released by Minister Bowen, July 2010

5. ATO provides Seminars for Insolvency Practitioners



Helen Wright



Australian Government
Australian Taxation Office

Over May and June 2010, debt seminars were held in Melbourne and on the Gold Coast by the ATO for key stakeholder groups including insolvency practitioners. The workshops were part of a pilot by the ATO, which looked to engage and inform insolvency practitioners on topical issues about the way the ATO administers its debt collection and insolvency functions.

The seminars provided a topical backdrop for new anti-phoenix laws - laws recently passed to curb the liquidation of companies to avoid paying their bills, but who continue to operate under a different legal structure. The laws give the ATO the ability to procure security deposits from taxpayers for existing and future liabilities and will be used on a case-by-case basis for taxpayers who deliberately have not paid their tax.

Additionally, the presentation explained the ATO's guiding principles in collecting debt - understanding the taxpayer's individual circumstances, considering each case on its merits, assisting those who are attempting to engage with us and do the right thing, and being fair and equitable. The seminars gave practitioners a chance to meet face-to-face with senior ATO staff and discuss current issues with them.

The free seminars were well received by practitioners. Attendees were given information on resources available to assist their clients, such as the www.ato.gov.au website, which includes products designed to help taxpayers better understand debt collection processes, and options available for tax debts.

If you would like further information on upcoming ATO debt seminars, email debtseminars@ato.gov.au.

Helen Wright
Strategic Communications
Debt Business Line
Australian Taxation Office

6. Assigning Property to Undischarged Bankrupts – Neither Allowed nor Effective

Two (2) issues arose from [article number 6](#) in the Personal Insolvency Regulator newsletter (PIR) April 2010 edition in relation to Assigning Property to Un-discharged Bankrupts. The issues and the detail of my response is shown below for information.

1. Recommended amendment to the *Bankruptcy Act 1966*

A suggested amendment to the Act recommends that all income received by the bankrupt after the date of bankruptcy be included in the ss116(2) protected property regime and, as such, protect after acquired property purchased with such income.

The intention here appears to want to overcome the *Rodway* decision, where the WA Supreme Court confirmed on appeal that property purchased by a bankrupt with surplus income (which had been subject to an income contributions assessment) was "after-acquired property" and thereby vested in the Trustee. It was also found that the bankrupt should have notified the Trustee when that property was purchased.

ITSA's Legal and Executive Support area have taken note of this recommendation and will consider same in conjunction with the Attorney General's Department in the course of future reviews of the Act.

2. A suggestion relating to after acquired property – estoppel principles

Where a Trustee purports to transfer property (house equity for example) back to the bankrupt during bankruptcy, the after acquired property provisions in the Act work to immediately vest that property back with the Trustee. Some consider this to be a circular and impractical arrangement by preventing a bankrupt from "moving forward" and securing a residence that at the date of bankruptcy has minimal or no equity. A solution that has been proposed is to rely on the estoppel principles set out in *O'Brien v Sheahan*.

It has been suggested by one Trustee that, in these circumstances, the Trustee be entitled to, "*sell the equity back to the bankrupt party at the time of bankruptcy either by way of a lump sum or payment by installments.... While this may not be entirely in accordance with the law as it stands at the moment, I believe that once the equity is dealt with, a trustee would be estopped from dealing with the equity a second time (see O'Brien v Sheahan [2002] FCA 1292).*"

This suggestion appears contrary to the direction in article number 6 of the April 2010 PIR - that such transfers are neither allowed, nor effective - as a matter of law. Mark Findlay (Business Manager, Regulation Central Region) cites 2 decisions, *Meriton Apartments Pty Ltd v Industrial Court of NSW* [2008] FCAFC 172 and *Pascoe & Anor v Official Trustee in Bankruptcy & Ors* [2006] FMCA 1099, where the Courts held that the Trustee cannot undertake such transfers- they are 'legally ineffective and improper'.

Mark Findlay did however note that these transfers can be affected after discharge.

I agree with the principles set down in Mark Findlay's article and while it is always advisable for and open to trustees to obtain and act on their own legal advice, I do not propose that the Regulator endorse the approach above.

The after acquired property provisions in the Act would need to be amended in order for these transfers to be legally effective.

While I understand your concerns and your desire to give the most practical effect to the law, ultimately however, if you believe the legislation ought to be amended, I invite you to raise this with the bankruptcy policy area of the Attorney-General's Department via the office of Mr Anthony Coles, Acting Assistant Secretary, Bankruptcy and International Legal Services Branch.

Jeff Hanley
National Manager
Regulation & Enforcement

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7. Debt Agreements – Reimbursement of bank fees

As you are aware out of pocket expenses incurred in relation to a particular debt agreement are only recoverable from the administration in circumstances where it can be shown that the expense is directly attributable to that debt agreement and the terms of the debt agreement provide for reimbursement of the particular expense. One of the most common types of expenses incurred in a debt agreement administration are dishonour fees charged by financial institutions. More often than not these expenses have been borne by the debt agreement administrator as the Debt Agreement Proposal (DAP) for a particular debt agreement had not made provision for these expenses to be reimbursed from that administration's funds.

To facilitate the recovery of dishonour fees from debt agreement funds, the DAP and Explanatory Statement form was amended to include an automatic provision for the reimbursement of the dishonour fees without the need to make a specific provision for such expenses at the '*Allowable expenses payable to a third party*' line of the DAP. The DAP, which became effective from 23 December 2009, now includes the phrase:

'Dishonour charges incurred in the administration of the agreement with an authorised deposit-taking institution, such as a bank, will be recovered from the debtor's payments'.

The inclusion of this phrase overcomes the difficulty debtors (and administrators) faced in not being able to estimate dishonour charges at the time of submitting the DAP. It also allows administrators to recover any dishonour fee expenses that have been incurred in relation to a particular debt agreement from that administration's funds provided the DAP was lodged on the current form. This amendment does not apply to debt agreements which came into effect where the DAP was lodged on the old form⁶ and did not include any provision for such an expense to be reimbursed from the debt agreement funds.

Where there have been multiple instances of dishonour fees incurred by an administration, which will have a material effect on the dividend payable to creditors, it is expected that the administrator will notify creditors of this and the effect on the dividend rate.

For further information regarding what constitutes an expense of a registered debt agreement administrator, please refer to Inspector-General Practice Direction 3, which can be viewed at this [internet link](#).

For any queries or further information please contact your regional Regulation office or Tim Cole, Regulation's Practice Manager.

Jackie Walkom
Senior Inspector – Central Region
Regulation & Enforcement

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8. Debt Agreement Proposal Lodgement Fee

In the 2010–11 Budget, additional funding of \$12.6 million over four years was provided to the Insolvency and Trustee Service Australia (ITSA) to improve information and services for debtors in financial stress, including by increasing online information and service delivery, and to implement changes introduced by the *Bankruptcy Legislation Amendment Act 2010* (including increasing the threshold for bankruptcy notices and creditors' petitions from \$2000 to \$5000, and increasing the period of effect of a declaration of intent to file a debtor's petition from 7 days to 21 days).

⁶ The form that pre-dated the one that took effect on 23 December 2009

The Government decided that the additional funding should be fully offset by cost savings and cost recovery measures. The cost recovery measures include the introduction of a modest fee payable by debtors upon the lodgement of debt agreement proposals, to be introduced from 1 October 2010. Although the exact level of the fee has yet to be determined it will not exceed \$200. ITSA and the Attorney-General's Department will be undertaking a consultation process on the new debt agreement proposal lodgement fee and the increase in the realisations charge.

The new debt agreement proposal lodgement fee is consistent with the Government's cost recovery policy which generally requires the beneficiary of Government services to pay a fee which recovers the cost of providing those services. Debtors receive significant benefits from ITSA's role in ensuring compliance with the legislation which also assists in ensuring debt agreements are appropriate in their circumstances.

If you have any queries or concerns in relation to the new debt agreement proposal lodgement fee, please contact Katrina Woodrow, Acting Client Manager, Debt Agreement Service at katrina.woodrow@itsa.gov.au or via the ITSA information service on 1300 364 785.

Katrina Woodrow
Acting Client Manager
Debt Agreement Service

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9. Do you need an Australian Credit Licence?



On 1 July 2010 ASIC became the national regulator of consumer credit, with enhanced powers under the *National Consumer Credit Protection Act 2009*. This new legislation replaces existing state and territory legislation and will provide a nationally consistent framework for the regulation of consumer credit, credit providers, brokers and other intermediaries.

If you registered with ASIC by 30 June 2010, you may continue engaging in credit activities until 31 December 2010, by which time you must apply for your licence or become a credit representative of a licensee. If you are not registered, you must immediately suspend credit activities until you become registered, obtain a credit licence or become a credit representative of a licensee. If you have not registered and are not an authorised credit representative of a registered entity you should contact ASIC immediately to discuss your options.

Under the new law, 'credit activity' includes suggesting that a consumer apply for a particular product, or an increase in existing credit, with a particular credit provider or acting as an intermediary between the credit provider and a consumer for the purpose of obtaining credit (or further credit). Where an adviser provides budgeting or debt management advice, their activities may require a credit licence, depending upon the scope of the service provided and whether it involves renegotiating credit contracts or suggesting particular credit products or providers.

The law exempts not-for-profit financial counselling services. Registered debt agreement administrators are exempt for the preparation and administration of a Part IX debt agreement. This exemption is not extended to other commercial debt management services.

If you provide budgeting, debt management advice or other debt management services to consumers, you should consider whether you will need a credit licence. ASIC's Regulatory Guide 203: *Do I need a credit licence?* assists businesses in determining whether they will require a licence and is available on www.asic.gov.au/credit.

If you have any questions in relation to this article please contact Melissa Richards at ASIC on 03 9280 3558 or via email melissa.richards@asic.gov.au.

Melissa Richards
Analyst
Australian Securities and Investments Commission

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10. Advertising creditors' meetings – an update

Clarification - Article No. 11 in April 2010 edition of the PIR

With reference to the previous article on this topic (article number 11) in the [April 2010 edition of the PIR](#), we would like to clarify one segment of the article that read as follows:

*In the interim, Trustees are reminded that under the current legislative requirements, notices of meetings of creditors **must** be published in both a national daily newspaper that is circulated throughout Australia, and in a regional daily newspaper of the State or Territory in which the debtor or bankrupt resides.*

As correctly pointed out by a number of trustees, the requirement to advertise the notice of a meeting of creditors is only relevant in respect of Part X and section 73 meetings. It does not apply, as a matter of course or a stipulated statutory requirement, in respect of general Part IV creditors meetings.

Update

As Trustees would be aware, where creditors meetings are called pursuant to sections 73 or 188 of the Bankruptcy Act, Regulation 4.19 and Schedules 2 and 6 of the *Bankruptcy Regulations 1996*, require such meetings to be advertised in a manner approved by the Inspector-General.

Currently, this requires all such Creditors Meetings to be published in:

- (i) a national daily newspaper that circulates throughout Australia; &
- (ii) a regional daily newspaper of the State or Territory in which the debtor resides.

ITSA has received feedback from trustees and creditors criticising this method of advertising creditors meetings, claiming it is cumbersome, archaic, inefficient and expensive.

Some of the criticisms leveled towards the current advertising requirements refer to:

- The expense of advertising in national and regional newspapers (some estimates suggest this could be as much as \$1,800 for both advertisements);
- The prospect that interested parties (especially creditors) miss seeing the notice of the proposed creditors meeting – thus attendances wane and the value of the creditors meeting is called into question;
- There are several national newspapers to choose from – which ones are best?

ITSA is proposing to alter the current Inspector-General requirements surrounding the advertising of such meetings as follows:

- All section 73 and Part X Creditors Meetings will, from 1 September 2010, be required to be advertised on ITSA's Website on a dedicated Creditor Meeting page, in lieu of newspaper publication.
- Requests to advertise a meeting are to be made at least 10 days prior to the meeting using the form attached as *Appendix 1* to this edition of the PIR which will also be available from the ITSA website www.itsa.gov.au under the menu tab "Trustees" then under Forms for Trustees/Forms Relating to Trustee Administration. The form will be interactive once available on the website.
- ITSA will charge a flat fee of \$275 (inclusive of GST) to advertise each Creditors Meeting on its dedicated web page. This will see the ad processed and placed on ITSA's website at least 5 business days before the proposed meeting; it will be maintained and displayed in a user-friendly environment; and it will be removed 5 business days after the meeting has passed. The \$275 fee for advertising Part X meetings will be paid by way of a cheque, credit card, or cash payment at the time the filing fee is paid for the section 188 authority.
- For section 73 meetings, if payment is being made by credit card, it's a single step process of completing and signing the request form including credit card details and emailing/faxing it to the email address/fax number at the top of the form. If payment is being made by cash or cheque, it's a two step process: complete the form and email/fax it to place the ad; and then give a copy of the form to the trustee's nearest ITSA office with the cash or cheque payment.
- Trustees may if they choose to do so, utilise the website advertising for other types of meetings under section 64 for a fee of \$275. The payment method is as per section 73 meetings.

ITSA intends to display the advertisement links on its home page under the Part X Menu tab; on the Creditors Menu tab, on the Side Bar and, for a short time, as a flashing icon scrolling across the Home Page itself.

ITSA also recommends Trustees amend their initial notification to creditors correspondence by adding a simple sentence and / link into their existing letters promoting the change.

This cosmetic change could be as simple as, "To locate information about any Creditor Meeting that might be called in relation to this administration please refer to ITSA's website www.itsa.gov.au under the "Creditors" Menu tab."

ITSA is confident this new facility will be widely embraced by all stakeholders as it will:

- Save Trustees money and time in creating and maintaining the press advertisements.
- Reduce advertising fees by as much as \$1,525⁷ in every estate by negating the need for press advertising altogether, which in turn means smaller fees charged back to administrations.
- Reduce the cost of advertising fees by such a significant amount that the viability of Part X and section 73 compositions might be seen as more realistic and cost effective personal insolvency options;

⁷ That is, the current approximate cost of \$1,800 less the proposed cost of \$275.

- Save creditors and other interested parties from having to scour through daily newspapers in the hope of identifying these meetings;
- Lessen the volume of calls Trustees receive regarding creditor & / media enquiries about creditor meetings;
- Provide all users with a consistent standard and location of this information;
- The list of benefits to all users goes on

Other enhancements are also being contemplated to improve this facility even further and these shall be communicated in due course. Practitioners are also invited to suggest any other ideas they might have in order to make this facility as user-friendly and efficient as possible.

Jeff Hanley
National Manager
Regulation and Enforcement

Mark Findlay
Regulation Business Manager – Central Region
Regulation and Enforcement

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11. Ethics Committee Ruling – Conflict of Interest

**ETHICS
COMMITTEE RULINGS**
Bankruptcy
Conflict of Interest



(R4641 December 2009)

Can a firm acting for a bankrupt in a matter leading up to the bankruptcy later represent the spouse of the bankrupt as against the trustee in bankruptcy?

Firm A acted for the bankrupt in several matters prior to the bankrupt becoming a “bankrupt”. C was eventually appointed as the trustee in bankruptcy. The trustee in the bankruptcy sought to lodge a caveat over the bankrupt’s home, the registered proprietor for which was not the bankrupt, but the bankrupt’s wife. Firm A then sought to assist the wife in removing the caveat. The trustee in bankruptcy claimed Firm A was in a position of conflict on the basis that Firm A had previously represented the bankrupt, and that the trustee was now standing in the shoes of the bankrupt.

Recommendation

In the opinion of the Ethics Committee and on the information presented:

Firm A was able to continue to act for Mrs. K, the wife of the Bankrupt, in the caveat matter as there did not appear to be any confidential information from the previous retainer that was relevant to the current issue.

Sourced by Brett Hereward, Inspector, ITSA Regulation Southern Region
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12. 2009-10 – ITSA Cost Recovery Review

The fees and charges administered by ITSA are reviewed every two years to maintain their alignment with the cost of delivering those services. Cost Recovery Reviews are conducted in the months leading up to the beginning of the financial year and are undertaken in consultation with major stakeholder groups.

On 28 May following the 2010 review, the Inspector-General wrote to ITSA's stakeholders to provide early notification of the amounts that would be proposed to the Attorney-General for approval. The Attorney-General approved those changes which came into effect on 1 July 2010. The changes are:

- Inspection of public documents held by ITSA is now \$40 (with no additional component for each page copied)
- Issue of a Bankruptcy Notice is now \$440
- Extension of time for the service of a Bankruptcy Notice is now \$150
- Issue of an Official Receiver Notice is now \$450 (with no additional component if in excess of 2 hours, excluding disbursements)
- Three year renewal of registration for a Trustee or Administrator is now \$1,600
- The realisations charge is now 4.0%⁸
- Administration of bankruptcies by ITSA is now \$3,200 plus 20% of money received.

Any fees charged by ITSA that do not appear in the list above remain at the same level.

Adrian Wilson
Client Services Co-ordinator
Corporate Strategy and Support

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13. Annual Estate Return 2009/10

It is that time of the year again. By the time you read this article we will be right in the thick of Annual Estate Return (AER) time.

All Trustees and Debt Agreement Administrators should have received their spreadsheets by now. If you haven't please contact your local ITSA Registry staff who will be able to assist. The due date for returns is 4 August 2010.

If a Trustee or Administrator is registered for Online Services they may lodge the AER online. If you are not registered for Online Services and would like to utilise the service please go to the [ITSA website](#) and complete the application.

Payment of Realisation Charges and Interest Charges (RCIC) is due by 4 August 2010. Amounts due for multiple estates or administrations can be made with a single payment. It is not necessary to provide a cheque/payment for each matter.

⁸ This applies to all types of personal insolvency appointments regardless of the date the estate or administration began. That is it applies to receipts received in all estates and administrations on or after 1 July 2010.

Trustees and Administrators are requested to send payments and AER documents to ITSA as soon as possible and not leave it to the 4 August. This will assist registry staff in managing workflow. Also, if it is necessary to contact trustee/administrator with reconciliation issues, it provides your staff with the opportunity to rectify these before the due date.

If you require any assistance please contact your local registry.

Linda Bloomfield
Business Services Manager
Information and Registry

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Appendix 1 (see article number 10)

<Adrian Wong to insert the “Request to Advertise Meeting of Creditors” form here.>

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How to contact Regulation and Enforcement:

For Regulation and Enforcement locations and contacts click [here](#).

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Personal Insolvency Regulator (PIR) Editors

If you would like to submit an article for inclusion in the next edition of the PIR please forward it to one of the following.

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Acronyms that may be used in this Newsletter

Acronym	Full title
AAT	Administrative Appeals Tribunal
AER	Annual Estate Return
AFCCRA	Australian Financial Counselling and Credit Reform Association
APESB	Accounting Professional and Ethical Standards Board
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BLAB	Bankruptcy Law Amendment Bill
CA	Chartered Accountant
CDPP	Commonwealth Director of Public Prosecutions
CPA	Certified Practising Accountant
CSS	Corporate Strategy and Support
DAP	Debt Agreement Proposal
DAPA	Debt Agreement Practitioners Association
DAS	Debt Agreement Service

IAIR	International Association of Insolvency Regulators
IC	Interest Charge
IGPD	Inspector-General Practice Direction
IGPS	Inspector-General Practice Statement
IPA	Insolvency Practitioners Association
IR	Information and Registry
ITSA	Insolvency and Trustee Service Australia
PIR	Personal Insolvency Regulator
PPSR	Personal Property Security Register
R&E	Regulation & Enforcement
RC	Realisations Charge
RDAA	Registered Debt Agreement Administrator
RT	Registered Trustee
TS	Trustee Services

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