

Important notice for registered trustees

Increased cost recovery measures

On Wednesday 9 October 1996 the Government introduced a package of measures into the House of Representatives comprising three bills: [Bankruptcy Amendment Bill 1996](#), [Bankruptcy \(Estate Charges\) Bill 1996](#), and [Bankruptcy \(Registration Charges\) Bill 1996](#) that give effect to the Government's pre election announcement in "Meeting Our Commitments" in which it announced that increased cost recovery would be pursued.

The changes proposed in the bills will have a direct impact on all trustees and you will need to read the following advice carefully to ensure you are in a position to make appropriate arrangements in relation to estates administered by you.

In the Budget, the Treasurer announced that increased cost recovery amounting to an estimated \$3.648m in the 1996/97 year and \$6.248m in subsequent years would be achieved in the following three ways:

- The current basic charge of 3% payable by all bankruptcy trustees in respect of amounts realised and credited to trust accounts in respect of estates administered by registered trustees and the Official Trustee will be replaced with a flat realisations charge of 8%;
- Interest earned on trust funds held in bankruptcies and Part X administrations which are administered by registered trustees will be payable to Consolidated Revenue; and
- The flagfall fee charged by the Official Trustee on estates administered by ITSA will be increased;

The additional revenue will be paid to Consolidated Revenue.

Of these three measures the first two directly affect registered trustees. The measures are contained in the [Bankruptcy \(Estate Charges\) Bill 1996](#).

Realisation Charges

Sub rules 179(2) and (3) currently impose a charge on estates administered by registered trustees and rule 181 imposes a similar charge on estates administered by the Official Trustee. The charge is payable at the conclusion of the administration of estates. The fee is calculated as a percentage of amounts realised at a maximum of 3% reducing to 1.25% for amounts realised in excess of \$100,000.

It is proposed that this fee will be increased to a flat percentage of 8% calculated on the basis of amounts received by the trustee in a six monthly period. The charge is to be imposed in a new Act, the [Bankruptcy \(Estate Charges\) Act 1997](#) that will impose charges relating to the administration of all bankrupt estates.

NOTE:

The charge will be payable six monthly in arrears within 21 days of the conclusion of the particular charge period on all amounts received by the trustee in his or her capacity as

- trustee of the estate of a bankrupt
- controlling trustee in relation to a debtor whose property has become subject to control under Part X
- trustee of a deed of assignment or deed of arrangement or composition under Part X
- trustee of the estate of a deceased person.

If the proposed legislation is passed in the terms as introduced, the first charge period will **commence on 1 November 1996** whether or not the bills are passed by this date.

Trustees will be personally liable for payment of the fee which may be paid from funds held in the estate. If they pay late, they will be personally liable for payment of late payment penalty at the rate of 20% per year, for which they are not entitled to be reimbursed from the estate.

From 1 November 1996 the new charge will be applicable in relation to amounts realised on or after that date. Transitional arrangements to be contained in regulations will provide that the current fee is payable on amounts realised up to 1 November 1996 as if accounts required by paragraph 175(1)(c) had been lodged with the Official Receiver on 31 October 1996.

It is, therefore, important that you make arrangements in respect of any estate that you are likely to finalise after 31 October 1996 to provide for the payment of the higher realisations charge that may be applicable from 1 November 1996.

Interest Charge

When the Official Trustee, that is ITSA, administers an estate all amounts held in respect of the estate are deposited into the Common Investment Fund. These funds are invested in interest bearing investments by the Official Trustee. However, interest derived from the investment of moneys in the Common Fund does not increase the amount payable under the Act in respect of any estate or fund. The interest is regularly paid to Consolidated Revenue.

In contrast, interest earned on monies invested by registered trustees on behalf of estates they administer does increase the amount available to the estate. It is proposed that this be changed to place all estates on an equal footing, whether they be administered by ITSA or by registered trustees.

Under the proposed legislation, a registered trustee of an estate will be personally entitled to any interest earned, net of bank fees, in respect of monies held in trust accounts under the Bankruptcy Act. He or she will then be required to pay the amount of

the interest, less bank fees, to Consolidated Revenue as a charge outlined in the [Bankruptcy \(Estate Charges\) Bill 1996](#).

The amount of interest representing bank fees will be payable to the estate to enable the estate to meet those fees.

No amount of interest earned will be subject to income tax as the whole of the amount that would have been taxable will be payable to the Commonwealth as a charge within 21 days of the end of the charge period in which the interest was received.

As with the realisations charge, it is expected at this stage that the charge period will commence on 1 November 1996. Again, you will need to ensure arrangements have been made to enable the interest to be paid to the Commonwealth.

Registered trustees will be required to hold monies in interest bearing bank accounts and any funds that are not currently held in interest bearing bank accounts must be transferred as soon as practicable.

Details regarding remittance of all monies payable under the [Bankruptcy \(Estate Charges\) Bill](#) will be provided once the legislation has passed. Payments will be made to ITSA offices.

[Bankruptcy \(Registration Charges\) Bill 1996](#)

The Bankruptcy (Registration Charges) Bill 1996 proposes the imposition of charges in respect of applications for registration of trustees in bankruptcy, registration of trustees, re-registration and applications to vary conditions on registration. These charges were previously imposed in the rules made under the [Bankruptcy Act 1966](#). Instead of these charges being imposed by regulation it is proposed that they be imposed by separate legislation.

The amounts imposed by the charge are the same as would have been imposed by regulation. The charge is \$1500 in respect of an application to be registered as a trustee and \$1000 in respect of registration and re-registration. Registration is for a period of three years.

A charge of \$500 is imposed in respect of an application to vary conditions on practising as a registered trustee.

The [Bankruptcy Legislation Amendment Bill 1996](#) contains the relevant provisions relating to registration of trustees.

Other Charges

Amendments have been included that produce a simpler collection method for fees and charges in order to streamline practices for both registered trustees and ITSA and to reduce the paperwork burden within the system.

For example, registered trustees will no longer be required to open a separate bank account for each estate, nor to issue receipts in respect of each payment into estates, and accounts will no longer need to be provided to the Official Receiver (formerly the Court) at the end of an administration. Instead, the Bankruptcy Regulation Unit will be responsible for conducting regular inspections and audits of books to ensure compliance with the law.

Further Information

The above notes are an outline of the changes proposed to give you forewarning of the changes that are likely to occur and to enable you to take appropriate action.

The relevant legislation and explanatory material are available from the [Australian Government Publishing Service](#). Further details of procedures will be provided to you following passage of the legislation.

If you need further information please contact your local Bankruptcy Regulation Unit.

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