

## Bankruptcy Regulation

Bankruptcy Regulation was established as a separate branch of ITSA in March 1997 to discharge the regulatory and review responsibilities of the Inspector-General in Bankruptcy. This step was taken to ensure that Bankruptcy Regulation would be able to fulfil its role independently of the Official Trustee.

The main functions performed by Bankruptcy Regulation are:

- The registration of applicants as trustees who satisfy the eligibility requirements set out in the Act.
- Investigation of complaints about personal insolvency administrations.
- The conduct of statutory reviews of trustee decisions.
- The conduct of an annual inspection of the Official Trustee and registered trustees.
- Liaison
- Identification of legal and policy issues.
- The provision of information to trustees on changes to bankruptcy law and areas where mistakes occur regularly.

Bankruptcy Regulation has a presence in each ITSA office in the various State capitals. Staff in each state are led by a State Director who reports to the National Manager who, in turn, reports directly to the Inspector General. A chart setting out the structure of Bankruptcy Regulation is enclosed with this notice.

Whilst there is a Bankruptcy Regulation presence in each state it is a nationally orientated branch and its resources are applied on a national basis. In particular:

- The processing of all new trustee registrations and re-registrations has been centralised in Victoria. Ms Nannette Burfitt as the Registration Officer is the relevant person to contact in relation to the issue of Certificates of Registration and updates to trustee registration details.

- A national review team deals with all requests for reviews, waivers of fees and remissions of charges. The members of this team are currently Tony Kelly (Melbourne), George Girdis (Sydney), Paul Turner (Adelaide) and Jill Scheetz (Canberra). Tony Kelly is the team leader and replaces Arthur Carrick (Queensland).
- A program of annual inspections by Bankruptcy Regulation of the Official Trustee and Registered Trustee administrations commenced on 1 July 1999. In selecting administrations for inspection Bankruptcy Regulation will increasingly adopt a risk based inspection programme.
- From time to time Bankruptcy Regulation staff from another state may assist your local director in carrying out inspections.
- The handling of complaints has also been centralised on a trial basis until 30 June 2000 with Bankruptcy Regulation South Australia. Whilst the majority of complaints will be referred to this central unit for handling, each State Director will have a discretion to retain some complaints locally.

As part of the liaison and education role undertaken by Bankruptcy Regulation, notices to trustees on current technical matters will be issued from time to time. Such matters come to the attention of Bankruptcy Regulation as a result of the inspection program conducted.

The following information is provided to assist you in conducting your administrations.

### **Contribution Assessments - Challen**

On 25 June 1999, the full Federal Court handed down a judgement in the matter of Peter Leslie Challen and Graham Ross Bendeich. In brief, the judgement was that in bankruptcies occurring before 16 December 1996, original contribution assessments must be done within the CAP to which they relate otherwise they are ineffective.

The court made no decision about bankruptcies occurring on or after 16 December 1996. However it is suggested that trustees endeavour to complete original assessments in the CAPs to which they relate in all cases. Fresh assessments can then be made in accordance with s139W(2) as necessary.

### **Interest Charge is Payable on s73 Funds**

Contrary to the note in Important Notice to trustees 2/97 (31/10/97), trustees are advised that interest is payable on s73 compositions funds. The 8% charge is not payable on those funds. It is proposed to remove this anomaly as part of the current package of legislative amendments.

## **General and Special Proxies**

Queries have arisen regarding proxies at some Part X meetings. Please note that s64ZC and proxy form 7 make it clear that creditors are allowed to appoint a proxy to vote on all matters arising at a meeting including the special resolution under s204(1).

The interpretation of s200 prior to the amendments of 16 December 1996 was that creditors were required to specify how their proxy was to vote on the special resolutions under s204(1). Section 200 was omitted by the amendments of 16 December 1996 and s64ZC and form 7 now apply in respect of proxies for both bankruptcy and Part X meetings.

## **Notice of Finalisation of Administrations**

It appears some trustees are not complying with Regulation 8.14(1) which reads:

*A registered trustee must, within 7 days of finalising the administration of an estate, give notice in writing of the finalisation to the Official Receiver.*

*Penalty: 1 penalty unit.*

An administration is finalised when your work is complete; for example; all assets have been realised and all funds have been distributed. Such notices should be filed with the Official Receiver in your State.

Office of the Inspector-General in Bankruptcy  
Canberra  
5 March 2000