



ITSA Information Sessions - FAQs

Important Notice

The FAQ material is intended for general information purposes only and while every care has been taken in its preparation you should ensure before acting in reliance on the statements made that you refer to the relevant legislation and ITSA Practice Statements and Directions, as signed off by the Inspector-General which, as is the usual practice, will be available on the ITSA website, and seek your own legal advice as appropriate.

This is particularly the case for statements that refer to proposed amendments to the Bankruptcy Regulations issued in draft form for public consultation in July 2010. In light of comments received during the consultation process, the Government is considering whether any changes to the draft amendments are warranted. It is therefore possible that the content of the relevant draft Practice Directions/Statements may change.

WHAT ARE THE CHANGES?

FAQ: What are the changes to the personal insolvency system made by the *Bankruptcy Legislation Amendment Act 2010*?

Answer: The *Bankruptcy Legislation Amendment Act 2010* received the Royal Assent on 14 July 2010. This means there will be significant changes to several aspects of personal insolvency law under the *Bankruptcy Act 1966* most of which will commence on a date to be fixed by proclamation (expected to be 1 December 2010). The following table summarises the key changes:

Schedule and Contents	Summary of provisions	Commencing
Schedule 1 Registered trustee remuneration	Minimum remuneration entitlement increased to \$5,000 New remuneration approval and review procedures	Upon Proclamation
Schedule 2 Offences	Increased penalties Infringement Notice scheme Increased investigation powers	Upon Proclamation
Schedule 3 Bankruptcy Districts.	Removal from Act	15 July 2010
Schedule 4 Part 1 Increase in minimum debt to support a Bankruptcy Notice and Creditor's Petition	Change to Bankruptcy Notice and Creditor's Petition provisions increasing the minimum debt from \$2,000 to \$5,000	11 August 2010
Schedule 4 Part 2 Declaration of Intention	Declaration of Intention Stay period – change from 7 to 21 days Declaration of Intent to be accompanied by Statement of Affairs (s54A) Notification of creditors (s54C)	Upon Proclamation

Remuneration

COSTS

FAQ: How much will it cost me, as a bankrupt, debtor or creditor to apply to the Inspector-General (I-G) to request a review of a trustee's remuneration?

Answer: Nothing. It is free. Note certain criteria have to be met before the I-G will accept the application for review. In this regard please refer to IGPS 16.

ELIGIBILITY

FAQ: Do the changes relating to Trustee Remuneration apply to bankruptcies that commenced before the commencement date?

Answer: No. They only have application to bankruptcies that commence on or after the commencement date.

TIME PERIODS

FAQ: How long has the bankrupt, debtor or creditor got to apply to the I-G for a review of the trustee's remuneration?

Answer: Within 28 days after having received a Remuneration Claim Notice from the trustee. The I-G may extend this 28 day time-frame in exceptional circumstances.

MAXIMUM REMUNERATION WITHOUT CREDITOR APPROVAL

FAQ: What is the maximum amount of remuneration a trustee can be paid without seeking creditor approval?

Answer: \$5,000. If a trustee seeks creditor approval for an amount exceeding \$5,000, it is the entire amount that needs to be approved by creditors and not just the amount in excess of \$5,000.

Infringement Notices

INFRINGEMENT NOTICES – RETROSPECTIVITY

FAQ: Is there any retrospectivity to infringement provisions which are expected to commence on 1 December?

Answer: These offences, along with the other offence amendments, are not retrospective. However, the obligations that underpin the infringement notice are ongoing. Therefore, if a person is required to file a document 2 days from now, and the document is not filed until after 1 December, they may receive a penalty for non-compliance for the period post 1 December.

INFRINGEMENT NOTICES - EVIDENCE OF RECEIPT

FAQ: As there are some issues with delivery and read receipts, what assurances can be put in place to evidence that a Registered Trustee has received an infringement notice sent by email?

Answer: If an infringement notice is issued by email and if we do not receive any contact during the 28 day period, and payment is not made, the Enforcement officer will contact the intended recipient to ascertain whether or not they received the notice. If the evidence suggests that they did not receive the notice a fresh notice will be issued. If the notice has in fact been received then the recipient will be taken to have failed to comply with the notice. The question of whether or not a notice has been received will be one of fact.

HOW TO CONTACT US

For all enquiries call **1300 364 785** or visit www.itsa.gov.au

INFRINGEMENT NOTICES - 'SERVICE' (LEGAL REQUIREMENT TO DELIVER A LEGAL DOCUMENT TO A SPECIFIED PERSON)

FAQ: Is 'service' standardised throughout the Act?

Answer: The meaning of 'service' is standardised in the Bankruptcy Act and Regulations by virtue of regulation 16.01. However the legislators deemed it appropriate to include a separate regulation (reg 14.07) that deals with the service of infringement notices. These provisions reflect that the majority of notices will be sent to an identifiable group (registered trustees and debt agreement administrators) who already routinely interact with ITSA via email.

It was considered appropriate that separate rules should apply for service of infringement notices to these individuals.

S77CA Notices

FAQ: Given the introduction of section 77CA, is the trustee still obliged to make offence referrals in relation to the section 54 obligation to file the Statement of Affairs?

Answer: Although non compliance with section 54 of the Bankruptcy Act 1966 is still an offence, where the Inspector-General has written to the trustee seeking confirmation on whether the bankrupt has been notified of the bankruptcy and of the need to file an Statement of Affairs, and the trustee has responded to this request in the affirmative, the trustee is not expected to make a referral under section 54. The Inspector-General will pass on information provided by the trustee to the Official Receiver for consideration of whether to issue a section 77CA notice.

FAQ: Where a trustee has been unsuccessful in locating the debtor at the time of receipt of the Inspector-General's letter (30 days from Sequestration Order), but the trustee is able to locate the debtor at a later date, what will be the process for the request of a 77CA notice?

Answer: The trustee will have to apply for the issue of a section 77CA notice at the later date (after the bankrupt has been advised of the bankruptcy and the requirement to file a Statement of Affairs). An application form for the issue of a section 77CA notice in these circumstances will be made available on ITSA's website. This process (application for issue of a section 77CA Notice) will also apply for pre 1 December 2010 matters.

FAQ: Will ITSA be using other government databases to try and locate the debtor?

Answer: No. It is still the trustee's responsibility to locate the debtor and advise him/her of the obligation to file a Statement of Affairs. The Official Receiver steps in to issue a section 77CA Notice, only where the debtor has been notified and has failed to comply.

FAQ: How will the Official Receiver know the debtor has received the section 77CA Notice?

Answer: The section 77CA notice will be personally served on the debtor so the Official Receiver will know the date the notice was received. The Official Receiver will monitor compliance with the section 77CA notices and refer non-compliance to Enforcement for prosecution.

FAQ: Enforcement previously recommended that trustees issue a standard reminder letter to debtors reminding them of their obligation to file a Statement of Affairs before referral to Enforcement. Will this still be required under the section 77CA process?

Answer: No. The trustee is required to demonstrate that the bankrupt was advised of the bankruptcy and the requirement to file a Statement of Affairs. A trustee does not have to demonstrate that another reminder letter was sent to the bankrupt before the Official Receiver will issue a section 77CA Notice.

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Filing Requirements

FAQ: There is a concern that the trustee might be penalised for late lodgement of annulment certificates as he or she will have to wait until the interest bearing time period to lapse before issuing the certificate and filing the document with the Official Receiver.

Answer: The time limit of 2 days will only start running from the date the trustee is satisfied that all debts (including interest claims) have been paid. In some instances this may result in the effective date of an annulment to pre-date the actual issue date of the certificate, however for filing compliance purposes, time will start running from the date the certificate was issued rather than the effective date of the annulment.