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Bankruptcy Amendment Regulations 2002 (No. 1)¹

Statutory Rules 2002 No. 1²

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I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Bankruptcy Act 1966*.

Dated 30 OCT 2002 2002

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

DARYL WILLIAMS
Attorney-General

1 Name of Regulations

These Regulations are the *Bankruptcy Amendment Regulations 2002 (No. 2)*.

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Bankruptcy Regulations 1996*

Schedule 1 amends the *Bankruptcy Regulations 1996*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 4.05 (1)

after

the petition

insert

, that is endorsed by the court,

[2] Subregulation 6.01 (1)

after

proceeds

insert

of the property of a bankrupt

[3] Part 6, Division 6, heading

substitute

Division 6 Definition of *income* (Act s 139L)

-
- [4] **Regulation 6.12, heading**
substitute
- 6.12 Fringe benefits: modification of the FBTA Act**
- [5] **Part 6, Division 6A, heading**
omit
- [6] **Regulation 6.12A, heading**
substitute
- 6.12A Restart scheme payments**
- [7] **Regulation 6.12A**
omit
subparagraph 139L (b) (v)
insert
subparagraph (b) (v) of the definition of *income* in section 139L
- [8] **After regulation 6.12A**
insert
- 6.12B Superannuation contributions**
- (1) Subject to subregulation (2), for subparagraph (b) (v) of the definition of *income* in section 139L of the Act, the following contributions and payments made for the purpose of providing superannuation benefits for a bankrupt person are not income of the person:
- (a) contributions made by, or on behalf of, each employer of the person to the extent that the contributions reduce the employer's potential liability for the superannuation

guarantee charge imposed under section 5 of the *Superannuation Guarantee Charge Act 1992*;

- (b) contributions made by, or on behalf of, each employer of the person in accordance with the employer's obligation to make contributions for the person under:
- (i) an industrial award or determination made under a law of the Commonwealth, a State or a Territory; or
 - (ii) an industrial agreement approved or registered under a law of the Commonwealth, a State or a Territory; or
 - (iii) a law of the Commonwealth, or of a State or Territory;

that exceed the contributions, made by or on behalf of the employer, mentioned in paragraph (a);

- (c) payments of shortfall components made to, or for the benefit of, the person under sections 65 to 67 of the *Superannuation Guarantee (Administration) Act 1992*.

(2) If:

- (a) the employer has an obligation to make contributions that arises under an industrial agreement made solely between the employer and the person; and
- (b) the contributions are not contributions of the kind mentioned in subparagraph (1) (b) (iii);

contributions that, for a particular financial year, exceed an amount equal to 9% of the employee's ordinary time earnings for the year are taken to be income of the person.

(3) For this regulation:

industrial agreement made solely between the employer and the person includes an Australian Workplace Agreement under the *Workplace Relations Act 1996* or a similar agreement under the law of a State or Territory.

ordinary time earnings has the meaning given by section 6 of the *Superannuation Guarantee (Administration) Act 1992*.

shortfall component has the same meaning as it has in Part 8 of the *Superannuation Guarantee (Administration) Act 1992*.

[9] **After regulation 7.01**

insert

7.01A Grounds of objection — failure to provide complete and accurate information

For paragraph 149D (1) (d) of the Act, a bankrupt is taken to have failed to comply with a request to provide information if the bankrupt has provided information that is incomplete or inaccurate.

[10] **Part 8, Division 1, note to heading**

omit

[11] **Part 8, Division 2**

substitute

Division 2 Registration of trustees

Subdivision 1 Preliminary

8.05 Definitions

In this Division, unless the contrary intention appears:

application means an application under subsection 154A (1) of the Act.

chairperson means the chairperson of a committee.

committee means a committee convened under subsection 155 (1) of the Act.

member, in relation to a committee, includes the chairperson.

Subdivision 2 Constitution and procedure of committees generally

8.05A Chairperson of a committee

The chairperson of a committee is:

- (a) the Inspector-General; or
- (b) if the Inspector-General appoints another member of the committee as chairperson — that person.

8.05B Trustee chosen by the Insolvency Practitioners Association of Australia

A registered trustee chosen by the Insolvency Practitioners Association of Australia under paragraph 155 (2) (c) of the Act must have practised as a registered trustee for at least 5 years.

8.05C Resignation of chairperson

- (1) A chairperson other than the Inspector-General may resign the office of chairperson by notice in writing signed by the chairperson and given to the Inspector-General.
- (2) A notice of resignation takes effect when the Inspector-General receives it.

8.05D Resignation of members

- (1) A member of a committee, other than the Inspector-General, may resign from the committee by notice in writing signed by the member and given to the Inspector-General.
- (2) A notice of resignation takes effect when the Inspector-General receives it.

8.05E Disclosure of interests

If a member of a committee:

- (a) is a close relative of the applicant; or

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- (b) has a financial or personal relationship with the applicant; the member must, as soon as practicable after becoming aware of the identity of the applicant, disclose the nature of the relationship to the other members of the committee and to the Inspector-General.

8.05F Removal of members from a committee

- (1) The Inspector-General may terminate the appointment of a member of a committee if:
- (a) the member becomes physically or mentally incapable of performing the duties of a member; or
 - (b) the member becomes a bankrupt; or
 - (c) the member signs an authority under section 188 of the Act that is effective for the purposes of Part X of the Act; or
 - (d) the member becomes a party, as a debtor, to a debt agreement; or
 - (e) the member has been convicted of an offence involving fraud or dishonesty; or
 - (f) the member neglects his or her duty as a member.
- (2) The Inspector-General may terminate the appointment of a member of a committee if:
- (a) the member:
 - (i) is a close relative of the applicant; or
 - (ii) has a financial or personal relationship with the applicant; and
 - (b) the Inspector-General believes that relationship may affect the impartiality of the member.

8.05G Convening of a replacement committee

- (1) This regulation applies if:
- (a) either of the following events occurs:
 - (i) a member of a committee resigns or dies;
 - (ii) the appointment of a member of a committee is terminated under regulation 8.05F; and

- (b) at the time of that occurrence, the committee has not made a decision under subsection 155A (1) of the Act.
- (2) If this regulation applies:
 - (a) the Inspector-General must convene another committee (the *new committee*) in place of the committee referred to in subregulation (1) (the *previous committee*); and
 - (b) the new committee must not have regard to any proceedings of the previous committee.

8.05H General procedures of a committee

- (1) Subject to the Act and this Division, a committee may determine its procedure.
- (2) A committee must observe natural justice.
- (3) A committee is not bound by any rules of evidence but may inform itself on any matter as it sees fit.
- (4) A committee must keep a written record of its decisions.

8.05I Procedure at committee meetings

- (1) Subject to this regulation, all members of a committee must be present in order to constitute a quorum for a meeting of the committee.
- (2) At a meeting of a committee a matter is to be decided by a majority of the votes of the members.
- (3) Any member may participate in a meeting by telephone.
- (4) A member who participates in a meeting by telephone is taken to be present at the meeting.
- (5) A committee may keep minutes of proceedings at its meetings.

8.05J Resolutions without meeting

- (1) If the majority of the members of a committee sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, the resolution is taken to have been passed at a meeting of the committee:
 - (a) on the day on which the document is signed; or
 - (b) if the members sign the document on different days — on the day on which the document is signed by the member who makes up the majority.
- (2) Two or more separate documents that are identical in all material respects (apart from signatures), each of which is signed by 1 or more members, are taken for the purposes of subregulation (1) to constitute a single document.

Subdivision 3 Inquiries and interviews**8.05K Inquiries by the committee**

- (1) A committee considering an application may make inquiries of any person for the purposes of deciding whether the applicant should be registered as a trustee or not.
- (2) If the committee decides that the applicant should be registered, the committee may make inquiries of any person for the purposes of deciding what conditions, if any, should apply to the applicant's practice as a registered trustee.
- (3) Inquiries made must be inquiries:
 - (a) that are reasonable, for the purpose of making an informed decision; or
 - (b) that the Chairperson of the committee believes are appropriate in order for the committee to have sufficient information to make the decision.
- (4) Before making a decision that is adverse to the applicant, a committee must:
 - (a) inform the applicant of any information or material that the committee relies on, or proposes to rely on, in making the decision; and

- (b) give the applicant a reasonable opportunity to reply to, or rebut, the information or material.

8.05L Notice of interview

For subsection 155 (3) of the Act, the Inspector-General or officer of the Department on the committee must, after consultation with the other members of the committee:

- (a) fix a date, time and place for the interview; and
- (b) give written notice of that date, time and place to the applicant and the other members of the committee.

8.05M Applicant interviews

- (1) A committee must interview the applicant as soon as practicable and, for that purpose:
 - (a) any member of the committee may participate in the interview by telephone; and
 - (b) the applicant may participate in the interview by telephone.
- (2) A member or applicant who participates in an interview as provided by paragraph (1) (a) or (b) is taken to be present at the interview.
- (3) If the applicant fails to attend, or participate by telephone in, the interview and does not, within 7 days, give the committee a reasonable excuse for that failure:
 - (a) the application is taken to have lapsed; and
 - (b) the application fee is not refundable.
- (4) If an applicant who fails to attend, or participate by telephone in, an interview gives the committee, within 7 days, a reasonable excuse for that failure, the committee must arrange another interview date, time and place.
- (5) At an interview, the committee may ask the applicant any question that the committee reasonably believes to be related to:
 - (a) the application; or
 - (b) a reference accompanying the application; or

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- (c) the issue of whether the applicant has the qualifications, experience, knowledge and abilities to perform the functions of a registered trustee.
- (6) A committee must not interview an applicant until:
- (a) the Inspector-General has received the information and documents in relation to the application that are prescribed by regulation 8.01; and
 - (b) any charge imposed by an Act for making the application has been paid.

8.05N Report of committee decision

- (1) A report under subsection 155A (6) of the Act must:
 - (a) be in writing; and
 - (b) be signed by each member of the committee; and
 - (c) in the case of a majority decision — set out the reasons of the minority member.
- (2) The report must be given to the applicant and to the Inspector-General within 14 days of the committee making its decision.

Subdivision 4 Other matters

8.05O Confidentiality

A committee must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in, or in connection with, the performance of its functions or the exercise of its powers under the Act or these Regulations.

8.05P Evidence of proceedings at committee meetings

In any proceedings, a copy of the minutes of proceedings at a committee meeting, signed by the Chairperson of the committee:

- (a) is evidence of the proceedings as recorded in the minutes; and
- (b) may be tendered in evidence without further proof.

[12] Subregulation 8.09 (1)

omit

14 days

insert

28 days

[13] After regulation 8.11

insert

8.11A Costs of taxation

- (1) If taxation under regulation 8.09 results in a reduction of at least 15% in the amount of a claim for remuneration, the trustee must meet the costs of the taxation.
- (2) Except in a case mentioned in subregulation (1), the person who asks for the taxation under regulation 8.09 must meet the costs of the taxation.

[14] Regulation 8.12

omit

[15] Part 8, Division 6

substitute

Division 6 Variation and termination of registration

Subdivision 1 Preliminary

8.15 Definitions

In this Division, unless the contrary intention appears:

application means an application under subsection 155E (1) of the Act.

chairperson means the chairperson of a committee.

committee means a committee convened under subsection 155E (4) or 155H (2) of the Act.

member, in relation to a committee, includes the chairperson.

8.16 Documents to accompany application for change or removal of conditions

For paragraph 155E (3) (a) of the Act, an application must be accompanied by 2 references signed by the respective referees, containing the particulars specified in subregulation 8.01 (3).

Subdivision 2 Constitution and procedure of committees generally

8.17 Chairperson of a committee

The chairperson of a committee is:

- (a) the Inspector-General; or
- (b) if the Inspector-General appoints another member of the committee as chairperson — that person.

8.18 Trustee chosen by the Insolvency Practitioners Association of Australia

A registered trustee chosen by the Insolvency Practitioners Association of Australia under paragraph 155E (5) (c) or 155H (3) (c) of the Act must have practised as a registered trustee for at least 5 years.

8.19 Resignation of chairperson

- (1) A chairperson other than the Inspector-General may resign the office of chairperson by notice in writing signed by the chairperson and given to the Inspector-General.
- (2) A notice of resignation takes effect when the Inspector-General receives it.

8.20 Resignation of members

- (1) A member of a committee, other than the Inspector-General, may resign from the committee by notice in writing signed by the member and given to the Inspector-General.
- (2) A notice of resignation takes effect when the Inspector-General receives it.

8.21 Disclosure of interests

If:

- (a) a member of a committee convened under subsection 155E (4) of the Act:
 - (i) is a close relative of the applicant; or
 - (ii) has a financial or personal relationship with the applicant; or
- (b) a member of a committee convened under subsection 155H (2) of the Act:
 - (i) is a close relative of the trustee concerned; or
 - (ii) has a financial or personal relationship with the trustee;

the member must, as soon as practicable after becoming aware of the identity of the applicant or trustee, disclose the nature of the relationship to the other members of the committee and to the Inspector-General.

8.22 Removal of members from a committee

- (1) The Inspector-General may terminate the appointment of a member of a committee if:
 - (a) the member becomes physically or mentally incapable of performing the duties of a member; or
 - (b) the member becomes a bankrupt; or
 - (c) the member signs an authority under section 188 of the Act that is effective for the purposes of Part X of the Act; or
 - (d) the member becomes a party, as a debtor, to a debt agreement; or

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- (e) the member has been convicted of an offence involving fraud or dishonesty; or
 - (f) the member neglects his or her duty as a member.
- (2) The Inspector-General may terminate the appointment of a member of a committee convened under subsection 155E (4) or 155H (2) of the Act if:
- (a) the member:
 - (i) is a close relative of the applicant, or trustee, concerned; or
 - (ii) has a financial or personal relationship with the applicant or trustee; and
 - (b) the Inspector-General believes that relationship may affect the impartiality of the member.

8.23 Convening of a replacement committee

- (1) This regulation applies if:
- (a) either of the following events occurs:
 - (i) a member of a committee resigns or dies;
 - (ii) the appointment of a member of a committee is terminated under regulation 8.22; and
 - (b) at the time of that occurrence, the committee has not made a decision under subsection 155F (1) or 155I (1) of the Act.
- (2) If this regulation applies:
- (a) the Inspector-General must convene another committee (the *new committee*) in place of the committee referred to in subregulation (1) (the *previous committee*); and
 - (b) the new committee must not have regard to any proceedings of the previous committee.

8.24 General procedures of a committee

- (1) Subject to the Act and this Division, a committee may determine its procedure.
- (2) A committee must observe natural justice.

- (3) A committee is not bound by any rules of evidence but may inform itself on any matter as it sees fit.
- (4) A committee must keep a written record of its decisions.

8.25 Procedure at committee meetings

- (1) Subject to this regulation, all members of a committee must be present in order to constitute a quorum for a meeting of the committee.
- (2) At a meeting of a committee a matter is to be decided by a majority of the votes of the members.
- (3) Any member may participate in a meeting by telephone.
- (4) A member who participates in a meeting by telephone is taken to be present at the meeting.
- (5) A committee may keep minutes of proceedings at its meetings.

8.26 Resolutions without meeting

- (1) If the majority of the members of a committee sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, the resolution is taken to have been passed at a meeting of the committee:
 - (a) on the day on which the document is signed; or
 - (b) if the members sign the document on different days — on the day on which the document is signed by the member who makes up the majority.
- (2) Two or more separate documents that are identical in all material respects (apart from signatures), each of which is signed by 1 or more members, are taken for the purposes of subregulation (1) to constitute a single document.

Subdivision 3 Inquiries and interviews**8.27 Inquiries by the committee**

- (1) A committee considering an application may make inquiries of any person for the purposes of making a decision under subsection 155F (1) or 155I (1) of the Act.
- (2) Inquiries made must be:
 - (a) inquiries that are reasonable for the purpose of making an informed decision; or
 - (b) inquiries that the Chairperson of the committee believes are appropriate in order for the committee to have sufficient information to make the decision.
- (3) Before making a decision that is adverse to a person, a committee must:
 - (a) inform the person of any information or material that the committee relies on, or proposes to rely on, in making the decision; and
 - (b) give the person a reasonable opportunity to reply to, or rebut, the information or material.

8.28 Notice of interview (Act s 155E (6))

For subsection 155E (6) of the Act, the Inspector-General or officer of the Department on the committee must, after consultation with the other members of the committee:

- (a) fix a date, time and place for the interview; and
- (b) give written notice of that date, time and place to the applicant and the other members of the committee.

8.29 Change of conditions on practising as a registered trustee — interview

- (1) A committee must interview the applicant as soon as practicable and, for that purpose:
 - (a) any member of the committee may participate in the interview by telephone; and

- (b) the applicant may participate in the interview by telephone.
- (2) A member, or applicant, who participates in an interview in accordance with paragraph (1) (a) or (b) is taken to be present at the interview.
- (3) If the applicant fails to attend, or participate by telephone in, the interview and does not, within 7 days, give the committee a reasonable excuse for that failure:
 - (a) the application is taken to have lapsed; and
 - (b) the application fee is not refundable.
- (4) If an applicant who fails to attend, or participate by telephone in, an interview gives the committee, within 7 days, a reasonable excuse for that failure, the committee must arrange another interview date, time and place.
- (5) At an interview, the committee may ask the applicant any question that the committee reasonably believes to be related to:
 - (a) the application; or
 - (b) a reference accompanying the application; or
 - (c) the issue of whether the applicant has the qualifications, experience, knowledge and abilities to perform the functions of a registered trustee.
- (6) A committee must not interview an applicant until:
 - (a) the Inspector-General has received the references, in relation to the application, mentioned in regulation 8.16; and
 - (b) any charge imposed by an Act for making the application has been paid.

8.30 Involuntary termination of registration — interview

- (1) If the Inspector-General is required under subsection 155H (2) of the Act to convene a committee to consider whether a trustee should continue to be registered, the Inspector-General or officer of the Department on the committee must, after consultation with the other members of the committee:
 - (a) fix a date, time and place for the interview; and
 - (b) give written notice of that date, time and place to the trustee and the other members of the committee.
- (2) The committee must interview the applicant as soon as practicable and, for that purpose:
 - (a) any member of the committee may participate in the interview by telephone; and
 - (b) the trustee may participate in the interview by telephone.
- (3) A member, or trustee, who participates in an interview in accordance with paragraph (1) (a) or (b) is taken to be present at the interview.
- (4) If the trustee fails to attend, or participate by telephone in, the interview and does not, within 7 days, give the committee a reasonable excuse for that failure, the committee may proceed with its consideration of the matter.
- (5) If an applicant who fails to attend, or participate by telephone in, an interview gives the committee, within 7 days, a reasonable excuse for that failure, the committee must arrange another interview date, time and place.

8.31 Report of committee decision

- (1) A report under subsection 155F (2) or 155I (4) of the Act must:
 - (a) be in writing; and
 - (b) be signed by each member of the committee; and
 - (c) in the case of a majority decision — set out the reasons of the minority member.
- (2) The report must be given to the applicant or trustee, and to the Inspector-General, within 14 days of the committee making its decision.

Subdivision 4 Other matters

8.32 Confidentiality

A committee must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in, or in connection with, the performance of its functions or the exercise of its powers under the Act or these Regulations.

8.33 Evidence of proceedings at committee meetings

In any proceedings, a copy of the minutes of proceedings at a committee meeting, signed by the Chairperson of the committee:

- (a) is evidence of the proceedings as recorded in the minutes; and
- (b) may be tendered in evidence without further proof.

8.34 Time for deciding matters (Act s 155I (1))

A committee must decide a matter under subsection 155I (1) of the Act within 60 days of being convened.

[16] Subregulation 10.18 (2)

omit

[17] Regulation 13.06

substitute

13.06 Inspection of the Index

- (1) A person may, after paying the prescribed data fee applying under paragraph 16.09 (a):
 - (a) inspect the Index; and

- (b) obtain an extract of information entered on the Index.

Example for paragraph (b)

Making notes of information shown on a computer screen, or obtaining a print-out of information stored electronically.

- (2) However, prior payment is not required if the person has an alternative arrangement with the Inspector-General about the method of payment.

Example

An arrangement for payment by bulk billing.

- (3) A person may, by application in writing, ask the Official Receiver to search the Index and provide an extract specified in the application.
- (4) On receipt of an application, the Official Receiver:
- (a) if the data fee applying under paragraph 16.09 (b) is paid — must conduct the search and, within 14 days of receiving the application:
- (i) send the requested extract to the applicant; or
- (ii) tell the applicant, in writing, that the requested extract is not on the Index; or
- (b) may give the applicant a list of Index search agents who may be able to carry out the search for the applicant.
- (5) This regulation applies subject to regulation 13.09.

[18] Part 15

omit

[19] Part 16, Division 2, Subdivision A, heading

substitute

Subdivision 2.1 Fees payable to the Official Receiver

[20] Regulation 16.05

relocate as regulation 16.03A in Division 1 of Part 16 (after regulation 16.03)

[21] After regulation 16.06

insert

Subdivision 2.2 Fees payable to the Official Trustee

[22] Regulation 16.07

substitute

16.07 Preliminary

For subsection 163 (1) of the Act, the fees set out in this Subdivision are prescribed as the remuneration of the Official Trustee.

16.07A Fees for acting as trustee, or for work under Part X or XI of Act

- (1) This regulation applies if the Official Trustee:
 - (a) acts as trustee of the estate of:
 - (i) a bankrupt; or
 - (ii) a deceased person in respect of whose estate an order for administration has been made under Part XI of the Act; or
 - (b) performs work under Division 6 of Part IV of the Act; or
 - (c) acts, under Part X of the Act:
 - (i) as controlling trustee; or
 - (ii) as trustee, as the result of a deed of assignment, deed of arrangement or composition.

- (2) Subject to regulation 16.07E, if this regulation applies a fee equal to the total of the following amounts is payable, in respect of the estate or debtor, to the Official Trustee:
- (a) \$4 500 or, if the realised balance is less than that amount, the realised balance;
 - (b) 16.26% of the amount by which the realised balance exceeds \$4 500 (up to a realised balance of \$50 000);
 - (c) 10.84% of the amount by which the realised balance exceeds \$50 000.

Example

The realised balance in respect of an estate is \$75 000. The fee payable to the Official Trustee is \$4 500 + (16.26% of \$45 500) + (10.84% of \$25 000), a total of \$14 608.30.

Note The amount calculated under this subregulation includes a component to reimburse the Official Trustee for goods and services tax payable in relation to the provision of the Official Trustee's services.

- (3) However, subject to subregulation 16.07E (1), if a bankruptcy is annulled under section 153A or 153B of the Act, the fee payable to the Official Trustee for work performed is the greater of:
- (a) \$4 500; and
 - (b) the fee calculated under subregulation (2) in relation to the estate.
- (4) A fee calculated under subregulation (2) is payable:
- (a) if paragraph (1) (b) applies — out of the amount realised (within the meaning given by subregulation (5)) under Division 6 of Part IV of the Act; or
 - (b) in any other case — out of the estate.
- (5) For subregulation (2) and regulation 16.07B, the **realised balance** in respect of an estate or debtor at a particular time is determined, subject to regulation 16.08, using the formula:

$$\text{amount realised} - (\text{business costs} + \text{securities})$$

where:

amount realised means, subject to subregulations (6) and (7), the total amount realised, or brought to credit, in the estate or in respect of the debtor by the Official Trustee up to that time.

business costs means the amount paid by the Official Trustee in carrying on the business of the bankrupt, deceased person or debtor up to that time.

securities means the amount paid to secured creditors in respect of their securities up to that time.

- (6) If, in connection with the estate of a bankrupt or deceased person:
- (a) the bankrupt, or a person acting on behalf of the bankrupt or deceased person, applies property that has vested in the Official Trustee, by reason of section 58 of the Act, in payment of a creditor of the estate; and
 - (b) the Official Trustee is consequently prevented from realising or bringing to credit the value of that property; the property so applied is taken, for subregulation (5), unless the Court otherwise orders, to have been realised or brought to credit by the Official Trustee.
- (7) For subregulation (5), *total amount realised or brought to credit*:
- (a) includes any amount that is:
 - (i) offered under a proposal for a composition or scheme of arrangement under Division 6 of Part IV of the Act; and
 - (ii) accepted by the creditors in accordance with subsection 73 (4) of the Act; and
 - (b) does not include any amounts paid to the trustee by creditors under:
 - (i) an indemnity in respect of costs; or
 - (ii) section 50 of the Act.

16.07B Entitlement to interim fees

The Official Trustee's entitlement to a fee under regulation 16.07A arises when the Official Trustee first acts, or performs work, as mentioned in subregulation 16.07A (1), and the fee is payable:

- (a) from time to time as the funds are realised, based on the realised balance at the time; and

(b) at the rate applicable when the funds are realised.

Examples

1 The realised balance from an estate before the commencement of the *Bankruptcy Amendment Regulations 2002 (No. 1)* was \$20 000. In relation to that amount, the Official Trustee is entitled to a fee of \$4 000 + (15% of \$16 000) + (8.4% of (\$4 000 + 15% of \$16 000)), a total of \$6 937.60. A further \$20 000 is realised after the commencement of the *Bankruptcy Amendment Regulations 2002 (No. 1)*, so that the realised balance becomes \$40 000. The fee for the further \$20 000 is ascertained under subregulation 16.07A (2) (ie. 16.26% of \$20 000 — that is, \$3 252).

2 Subsequently, a further \$20 000 is realised, so that the realised balance becomes \$60 000. The fee payable for this amount is \$2 710 ((16.26% of \$10 000) + (10.84% of \$10 000)).

3 The realised balance from another estate before the commencement of the *Bankruptcy Amendment Regulations 2002 (No. 1)* was \$4 250. In relation to that amount, the Official Trustee is entitled to a fee of \$4 000 + (15% of \$250) + (8.4% of (\$4 000 + 15% of \$250)), a total of \$4 376.65. A further \$20 000 is realised after the commencement of the *Bankruptcy Amendment Regulations 2002 (No. 1)*. The fee payable on that amount is \$250 {ie. the difference between the \$4 500 entitlement mentioned in paragraph 16.07A (2) (a) and the \$4 250 already realised} + (16.26% of \$19 750) {the remainder of the realised balance}, a total of \$3 461.35.

Note For the meaning of **realised balance**, see subregulation 16.07A (5).

16.07C Fees for work under section 50, 185H or 188 of Act, for carrying on business, or in relation to bankrupt estate from which no funds are realised

- (1) For carrying on the business of a bankrupt or deceased person or, having been directed to take control of the property of a debtor under section 50 of the Act, carrying on the business of the debtor, the Official Trustee is entitled to receive a fee calculated at the rate of 2.5% of the amount received by the Official Trustee in the course of carrying on the business.

Note For GST component, see subregulation (4).

- (2) Subregulation (3) applies if the Official Trustee:
- (a) takes control of the property of a debtor under a direction of the Court under section 50 of the Act; or
 - (b) administers a debt agreement, or property under a debt agreement, made under section 185H of the Act; or

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- (c) acts as a controlling trustee under section 188 of the Act; or
 - (d) acts, or performs work of a kind mentioned in regulation 16.07A, in relation to a bankrupt estate from which no funds are realised.
- (3) If this subregulation applies, the Official Trustee is entitled to receive a fee in respect of time spent in performing functions mentioned in subregulation (2), as follows:
- (a) if the function is performed by the Official Trustee personally, and the Official Trustee occupies, or is for the time being performing the duties of, a position in the Senior Executive Service of the Australian Public Service — \$285 for each hour or part of an hour;
 - (b) if the function is performed by the Official Trustee personally, and the Official Trustee occupies, or is for the time being performing the duties of, the position of Insolvency and Trustee Officer Grade 2, or an equivalent or higher position (other than a position mentioned in paragraph (a)) in the Australian Public Service — \$170 for each hour or part of an hour;
 - (c) if a function is performed by an officer instead of, or in addition to, the performance of the function by the Official Trustee, the fee prescribed in paragraph (a) or (b) applies to the performance of the function by the officer in accordance with the level of the position occupied, or the duties of which are performed, by the officer (as if the officer were the Official Trustee);
 - (d) if the officer mentioned in paragraph (c) occupies, or is for the time being performing the duties of, the position of Insolvency and Trustee Officer Grade 1, or an equivalent or lower position in the Australian Public Service — \$145 for each hour or part of an hour.
- Note* For GST component, see subregulation (4).
- (4) The amount of the fee payable to the Official Trustee under this regulation is the sum of:
- (a) the amount ascertained under subregulation (1) or (3); and

- (b) in consequence of the goods and services tax attaching to services performed, an amount equal to 8.4% of the amount mentioned in paragraph (a).

Note The result is the price of the taxable supply within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*. The component added by paragraph (b) is equivalent to the amount of goods and services tax that will be payable on the Official Trustee's fees. The GST component of the fees payable under regulation 16.07A is built into the calculations set out in subregulation 16.07A (2).

16.07D Entitlement to interim fees

- (1) The Official Trustee's entitlement to a fee under subregulation 16.07C (1), in relation to an amount received by the Official Trustee, arises when the amount is received, and the fee is payable:
- (a) when the amount is received; and
 - (b) at the rate applicable when the amount is received.
- (2) A fee payable under subregulation 16.07C (3), in respect of time spent performing functions, is payable:
- (a) from time to time, as the functions are performed; and
 - (b) at the rate applicable when the function is performed.

16.07E General provisions

- (1) If the Official Trustee:
- (a) acts or performs work as mentioned in paragraph 16.07A (1) (a) or (b), in relation to a bankrupt estate; and
 - (b) transfers administration of the estate to a registered trustee before the bankruptcy is annulled under section 153A of the Act;
- the lesser of the following amounts is payable to the Official Trustee:
- (c) the amount calculated under subregulation 16.07A (2), based on the total amount realised by the Official Trustee (unless that amount is \$0);
 - (d) the amount payable under subregulation 16.07C (4).

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- (2) If the Official Trustee:
- (a) acts as mentioned in paragraph 16.07A (1) (c); and
 - (b) is replaced as controlling trustee, or as trustee under the deed or composition, by a registered trustee;
- the lesser of the following amounts is payable to the Official Trustee:
- (c) the amount calculated under subregulation 16.07A (2), based on the total amount realised by the Official Trustee (unless that amount is \$0);
 - (d) the amount payable under subregulation 16.07C (4).
- (3) A fee payable under regulation 16.07C is in addition to any fee payable under regulation 16.07A.

[23] Regulation 16.08

substitute

16.08 Realised balance — restriction on amount of fee payable

- (1) For regulation 16.07A, in relation to an estate or debtor, the *realised balance* is not to exceed the total of:
- (a) the amount of the debts of the estate or debtor; and
 - (b) the costs of administration of the estate.
- (2) In subregulation (1):
- costs of administration* means the proper costs, charges and expenses of the administration, other than:
- (a) any realisation charge paid or payable by the Official Trustee under an Act; and
 - (b) any fees paid or payable to the Official Trustee under regulations 16.07A to 16.07E, or to the Official Receiver under Subdivision 2.3.
- debts* means the total of:
- (a) the taxed costs of the petitioning creditor; and
 - (b) proved or provable debts of the estate or debtor, including interest accrued before the date of bankruptcy; and

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- (c) interest accrued on and after that date on those debts if they are interest-bearing debts.

[24] After regulation 16.08

insert

16.08A Reimbursement of Official Trustee for expenses

An amount equal to the amount of expenses incurred by the Official Trustee, in performing work of a kind mentioned in subregulation 16.07A (1), or 16.07C (1) or (2), in relation to an estate or debtor, is payable to the Official Trustee:

- (a) for work under Division 6 of Part IV — out of the amount realised (within the meaning given by subregulation 16.07A (5)) under Division 6 of Part IV of the Act; or
- (b) in any other case — out of the estate.

[25] Before regulation 16.09

insert

Subdivision 2.3 Other fees

[26] Regulation 16.09

substitute

16.09 Data fees in respect of the Index

The following data fees are prescribed in relation to the Index:

- (a) in relation to an inspection of the Index by a person other than an Official Receiver:
- (i) for the inspection — \$10; and
- (ii) for obtaining an extract of data contained in the Index — \$2;
- (b) for a search of the Index by an Official Receiver, under subregulation 13.06 (3), including provision of a specified extract, if any, to the applicant — \$21.

[27] Regulations 16.10 and 16.11

omit

[28] Part 16, Division 2, Subdivision B, heading

omit

[29] Paragraph 16.12 (3) (a)

omit

\$240

insert

\$285

[30] Paragraph 16.12 (3) (b)

omit

\$155

insert

\$170

[31] Paragraph 16.12 (3) (c)

omit

\$130

insert

\$145

[32] **After regulation 16.13**

insert

Subdivision 2.4 Waiver and remission

16.13A Waiver or remission of fees by Inspector-General

- (1) Subject to subregulation (2), the Inspector-General may waive or remit the whole or part of any fee.
- (2) A fee may only be waived or remitted, whether wholly or in part, if the Inspector-General is reasonably satisfied that:
 - (a) payment of the fee by the person liable to pay it has imposed, or would impose, undue hardship on the person; or
 - (b) because of other exceptional circumstances, it is proper and reasonable to do so.
- (3) For paragraph (2) (a), *undue hardship* means hardship that is unusual and exceptional in comparison to the hardship arising in the normal course of bankruptcy.
- (4) A decision under subregulation (1) must be notified in writing to:
 - (a) the person concerned; and
 - (b) except where the fee is payable to the Inspector-General — the officer to whom the fee is or, but for the waiver or remission, would be payable.
- (5) In this regulation:
fee means a fee payable under a provision, other than regulation 16.04, of this Division.

16.13B Application to the AAT

A person who made an application for the waiver or remission of a fee and who is aggrieved by a decision under subregulation 16.13A (1) in respect of the application may apply to the Administrative Appeals Tribunal for review of the decision.

[33] Schedule 3, item 1

omit

or 16.15

[34] Schedule 3, after item 1

insert

- 1A. If the Official Trustee transfers the administration of the bankruptcy to a registered trustee — the remuneration and expenses payable to the Official Trustee under regulations 16.07 and 16.08A

[35] Schedule 4, subclause 30.3, definition of *fringe benefit*, paragraph (a)

substitute

- (a) a benefit provided to the bankrupt by his or her spouse under, or because of a genuine maintenance agreement between the spouses; or

[36] Schedule 4, subclause 30.3, definition of *fringe benefit*, paragraph (g)

omit

of the bankrupt.”.

insert

of the bankrupt.

Note **Close relative**, in relation to a person, is defined in section 136 of the *Fringe Benefits Tax Assessment Act 1986* as:

- (a) the spouse of the person; or
(b) a child or parent of the person; or
(c) a parent of the person’s spouse.”.

[37] Schedule 8, item 12*substitute*

12	Section 149N Inspector-General's review of decision to object (also: section 149Q-AAT review of decision)	if the Inspector-General cancels the objection — written notice that objection cancelled (Order 77, rule 45, Federal Court Rules)	trustee (Order 77, rule 45, Federal Court Rules)	as soon as practicable after objection cancelled (Order 77, rule 45, Federal Court Rules)	• date the cancellation takes effect (subsection 149N (2))
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[38] Schedule 8, item 15*substitute*

15	Section 153B annulment of bankruptcy by Court	court order (section 153B)	applicant (Order 77, rule 45, Federal Court Rules)	7 days (Order 77, rule 45, Federal Court Rules)	• date of annulment
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[39] Schedule 8, item 23*substitute*

23	Sections 185T and 185U voiding a debt agreement	court order (subsection 185U (1))	debtor or creditor (subsection 185T (1))	7 days (Order 77, rule 45, Federal Court Rules)	• date of order • whether agreement is voided in whole or in part
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[40] Schedule 10

omit

Notes

1. These Regulations amend Statutory Rules 1996 No. 263, as amended by 1996 No. 278; 1997 Nos. 76 and 325; 2000 Nos. 140 and 220; 2001 No. 262.
2. Notified in the *Commonwealth of Australia Gazette* on 2002. 6 November