

EXPLANATORY STATEMENT

Select Legislative Instrument No. 36, 2014

Issued by the authority of the Attorney-General

Bankruptcy Act 1966

Bankruptcy Amendment (2014 Measures No. 1) Regulation 2014

The *Bankruptcy Act 1966* (the Bankruptcy Act) sets out the law relating to bankruptcy. Subsection 315(1) of the Bankruptcy Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Bankruptcy Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Bankruptcy Act.

A debtor's petition may be presented to the Official Receiver under section 55, section 56B and section 57 of the Bankruptcy Act. Subparagraph 315(2)(j)(v) provides that the regulations may provide for the charging and payment of fees in relation to the presentation of documents under the Bankruptcy Act.

Paragraph 315(2)(j) of the Bankruptcy Act provides that the regulations may, in particular, provide for the charging and payment of fees in relation to the making of "other requests" under "this Act". Subsection 316(1) of the Bankruptcy Act provides that the Minister may make legislative instruments determining the amount of fees.

The primary purpose of the *Bankruptcy Amendment (2014 Measures No. 1) Regulation 2014* is to give effect to the Government's commitment to increase personal insolvency fees to fully recover the costs of administering personal insolvencies. This measure will recover additional revenue of \$25.0 million over four years for the Commonwealth.

The Regulation will provide for two new fees to be charged:

- a fee of \$120 for the processing of a debtor's petition; and
- a fee of \$150 for the processing of a request by an undischarged bankrupt whose bankruptcy is being administered by the Official Trustee for permission to travel overseas pursuant to paragraph 272(1)(c) of the Bankruptcy Act.

Details of the Regulation are set out in Attachment A.

A Statement of Compatibility with Human Rights is set out in Attachment B prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny Act) 2011*.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

In accordance with the Australian Government's Cost Recovery Guidelines a Cost Recovery Impact Statement was released for public consultation.

The Office of Best Practice Regulation was consulted on this Regulation and advised that no Regulation Impact Statement was required.

The Regulation will commence on 1 April 2014.

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Attorney-General

Authority: Subsection 315(1) of the
Bankruptcy Act 1966

ATTACHMENT A

Bankruptcy Amendment (2014 Measures No. 1) Regulation 2014

Part 1 – Preliminary

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Bankruptcy Amendment (2014 Measures No. 1) Regulation 2014*.

Section 2 – Commencement

This section provides for the Regulation to commence on 1 April 2014.

Section 3 – Authority

This section provides that the Regulation is made under the *Bankruptcy Act 1966*.

Section 4 – Schedule(s)

This section provides that amendments or repeals have effect according to the terms set out in the Schedule(s).

Schedule 1

Regulation 4.10A – Fee for presentation of debtor’s petition

This section provides that a fee is payable in relation to the presentation of a debtor’s petition.

Regulation 5.02 – Fee for making request for consent to leave Australia

This section would provide that:

- (1) This Regulation applies in relation to a request by a bankrupt to the Official Trustee for the Official Trustee’s consent, under paragraph 272(1)(c) of the Bankruptcy Act, to the bankrupt leaving Australia.
- (2) A fee is payable to the Official Trustee in relation to the making of the request.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Bankruptcy Amendment (2014 Measures No. 1) Regulation 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The *Bankruptcy Amendment (2014 Measures No. 1) Regulation 2014* (the Regulation) gives effect to the Government's commitment to increase personal insolvency fees to fully recover the costs of administering personal insolvencies. It will be implemented in accordance with the Government's cost recovery policy, as stated in the Mid-Year Economic Financial Outlook 2013-2014.

The Regulation will specify where fees will be levied to fully recover the costs of administering personal insolvencies. This includes:

- inserting a regulation that provides that a fee is payable to the Commonwealth in relation to the presentation of a debtor's petition; and
- inserting a regulation that states that where the bankrupt makes a request to the Official Trustee for written consent to leave Australia, a fee is payable to the Official Trustee in relation to the making of that request.

Human rights implications

This Legislative Instrument does not engage with any rights enshrined in the International Covenant on Civil and Political Rights.