

## EXPLANATORY STATEMENT

### Bankruptcy (Fees and Remuneration) Determination 2015

#### Summary

The *Bankruptcy (Fees and Remuneration) Determination 2015* (the Determination) is made under section 316(1) of the *Bankruptcy Act 1966* (the Act) by the Attorney-General.

The instrument determines the fees and remuneration payable for the purposes of the Act. The Determination does not list those matters that do not incur a fee or services for which a levy is charged.

#### Background

The Australian Financial Security Authority (AFSA) has responsibility for the administration and regulation of Australia's personal insolvency system. In the 2013-14 Mid-Year Economic and Fiscal Outlook, Government announced AFSA to be funded completely through cost recovery. AFSA must therefore ensure the pricing for its activities cover the efficient costs of performing them. The activities AFSA performs for which a fee or remuneration is payable under the Determination include:

- processing requests to the Official Trustee for consent to travel outside Australia;
- processing debt agreement proposals;
- processing personal insolvency agreement proposals;
- extension of bankruptcy notices;
- issuing Official Receiver notices;
- regulation of trustees and debt agreement administrators, including interviewing applicants and registration;
- advertising creditors' meetings on AFSA's website; and
- estate administration by the Official Trustee.

Consistent with the Australian Government Cost Recovery Guidelines, a Cost Recovery Impact Statement (CRIS) was produced to provide transparency over the setting of fee prices and remuneration rates. The CRIS is also a means of consultation over the fees and remuneration presented in the Determination. The CRIS is available to view on AFSA's internet site.

## **Notes on Sections**

### **Part 1 Preliminary**

#### **Section 1.01 – Name of Determination**

Section 1 provides for the citation of the Determination as the *Bankruptcy (Fees and Remuneration) Determination 2015*.

#### **Section 1.02 – Commencement**

The Determination commences on 1 July 2015.

#### **Section 1.03 – Repeal**

Commencement of the Determination ends the application of the *Bankruptcy (Fees and Remuneration) Determination 2014*.

#### **Section 1.04 – Transitional**

Section 1.04 provides for the fees for a taxing officer to tax a claim for remuneration (clause 2.08 of the *Bankruptcy (Fees and Remuneration) Determination 2010*, now repealed), or a bill of costs (clause 2.09 of the *Bankruptcy (Fees and Remuneration) Determination 2010*, now repealed), to continue to apply to bankruptcies for which the date of bankruptcy is before 1 December 2010 (the commencement date for Schedule 1 to the *Bankruptcy Legislation Amendment Act 2010*).

For bankruptcies for which the date of bankruptcy is after 1 December 2010, the taxation process has been replaced by a new cost-free review under clause 13 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2010* and clause 2 of Schedule 1 to the *Bankruptcy Amendment Regulations 2010 (No 2)*. Accordingly, these fees will not apply to bankruptcies occurring after this date.

#### **Section 1.05 – Definitions**

This section provides that *Act* means the *Bankruptcy Act 1966* and the definition of *Regulations* is the *Bankruptcy Regulations 1996*. It defines *GST* as the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*. Other words and expressions used in the Determination have the meaning given by the Act and Regulations.

#### **Section 1.06 – Amounts include GST**

This section provides that the amount of a fee or remuneration specified in, or calculated in accordance with, this Determination includes GST, if payable.

## **Part 2 Fees exempt from GST**

### **Division 2.1 – Fees for certain provisions of the Act**

The table in Division 2.1 sets out the fees payable under paragraph 316(1)(a) of the Act. The table lists the fee payable for the inspection of a public document (items 1 to 5 and 12 to 15) and other matters including the application for registration, registration and extension of registration of a trustee or a debt agreement administrator (items 6 to 8 and 10 to 11). The table also lists the fee payable by a trustee where the exercise of the power of the Official Receiver occurred at the request of the trustee.

### **Division 2.2 – Other fees under paragraph 316(1)(b) of the Act**

Division 2.2 sets out the fees payable under paragraph 316(1)(b) of the Act. It sets out the fees payable for services connected with the National Personal Insolvency Index, presenting a debt agreement proposal, giving a copy of the authority and debtor's statement of affairs, making a request to the Official Trustee for consent to travel outside Australia, and inspecting a composition or arrangement that has been accepted by creditors. In recognition of the devastating effect of natural disasters, some debtors are exempt from paying the fee for presenting a debt agreement proposal and for making a request to the Official Trustee for consent to travel outside Australia.

This Division also sets out the fees for issuing, or extending the period to serve, a bankruptcy notice.

## **Part 2A Fee not exempt from GST**

Part 2A provides that a fee for a trustee or controlling trustee to request a notice of be published on the AFSA website is \$260. This fee is not exempt from GST.

## **Part 3 Remuneration not exempt from GST**

### **Division 3.1 – Preliminary**

Division 3.1 defines and explains how the realised balance for an estate or debtor is calculated.

### **Division 3.2 – Remuneration of the Official Trustee**

Division 3.2 sets out the remuneration that is payable to the Official Trustee for work in relation to:

- carrying on business or taking control of property under section 50 of Act;
- compositions or arrangements with creditors;
- a bankruptcy that is annulled;
- debt agreements;

- personal insolvency agreements;
- the administration of an estate of bankrupt or a deceased person.

It also includes work performed as controlling trustee, or in place of registered trustee or debt agreement administrator.

Remuneration is generally calculated on a percentage or hourly basis. For example, where the Official Receiver acts as the trustee of a personal insolvency agreement the remuneration payable is 20% of the value of the personal insolvency agreement. Where the Official Receiver acts as the trustee in the place of a registered trustee the remuneration payable is \$62.50 for each fifteen minute period, or part thereof. Remuneration is not exempt from GST.

### **Consultation**

A review of AFSA's activities and costs has been undertaken as part of a Cost Recovery Impact Statement (CRIS) on AFSA's insolvency and trustee services that was developed in compliance with the Australian Government Cost Recovery Guidelines. The formal consultation period for the CRIS commenced on 10 November 2014 and closed on 5 December 2014. During this process, the draft CRIS was made available on AFSA's internet site. The draft CRIS was brought to the attention of stakeholders subscribing to AFSA's stakeholder mailing lists. Issues raised by stakeholders during the consultation period were used in finalising the CRIS.

### **Regulation Impact Analysis**

The Determination has been assessed against *The Australian Government Guide to Regulation* as not requiring the production of a regulation impact statement.

### **Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011**

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at **Attachment A** to this Explanatory Statement.

## **Attachment A**

### **Statement of Compatibility with Human Rights**

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

#### **Bankruptcy Fees and Remuneration Determination 2015**

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 Legislative Instrument**

This Legislative Instrument determines the fees and remuneration that is payable for the purposes of the *Bankruptcy Act 1966*. The Determination does not list those matters that do not incur a fee or services for which a levy is charged.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.