



# **Insolvency Practice (Bankruptcy) Amendment Rules 2022**

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I, Amanda Stoker, Assistant Minister to the Attorney-General and Parliamentary Secretary to the Attorney-General, make the following rules.

Dated 1 April 2022

Amanda Stoker  
Assistant Minister to the Attorney-General  
Parliamentary Secretary to the Attorney-General

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## 1 Name

This instrument is the *Insolvency Practice (Bankruptcy) Amendment Rules 2022*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument	The day after the end of the period of 3 months beginning on the day this instrument is registered.	5 July 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Bankruptcy Act 1966*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *Insolvency Practice Rules (Bankruptcy) 2016*

#### **1 Subsection 20-1(3)**

Repeal the subsection, substitute:

- (3) For the purposes of paragraph (2)(c), *relevant employment* must include:
- (a) employment that involves any of the following:
    - (i) assisting a registered trustee in the performance of the registered trustee's duties as trustee under the Act;
    - (ii) providing advice in relation to matters under the Act; and
  - (b) employment that provides direct or indirect exposure to any of the following:
    - (i) the external administration of companies, receivership or receivership and management;
    - (ii) the restructuring of companies or the giving of advice in relation to the restructuring of companies.

#### **2 Subsections 20-5(2) and (3)**

Repeal the subsections, substitute:

- (2) It is a condition on the registration of any person as a registered trustee that:
- (a) the person undertake at least 120 hours of continuing professional education during:
    - (i) the period of 3 years starting on the day the person is first registered as a trustee; and
    - (ii) each subsequent period of 3 years during which the person is registered as a trustee; and
  - (b) at least 30 hours of the 120 hours of continuing professional education is capable of being objectively verified by a competent source.

#### **3 After section 50-45**

Insert:

##### **50-47 Termination of consideration of a matter if no utility**

If a Part 2 committee is satisfied that there is no utility in continuing to consider a matter, the committee may decide to terminate its consideration of the matter.

#### **4 Paragraph 60-10(2)(g)**

Repeal the paragraph, substitute:

- (g) must be accompanied by the following, in relation to the regulated debtor's estate:
- (i) the initial remuneration notice given by the trustee under section 70-35;
  - (ii) any report about remuneration prepared by the trustee under subsection 70-45(2) or (3);

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- (iii) any remuneration claim notice given by the trustee under section 70-47.

## **5 After section 60-15**

Insert:

### **60-17 Notice of remuneration determination by Inspector-General**

If the Inspector-General makes a remuneration determination under subsection 60-11(1) of the Insolvency Practice Schedule (Bankruptcy), the Inspector-General must give a copy of the remuneration determination to the following:

- (a) the trustee;
- (b) the regulated debtor;
- (c) as many of the creditors as reasonably practicable.

## **6 Section 65-20 (heading)**

After “**Application**”, insert “**to Inspector-General**”.

## **7 At the end of Division 65 of Part 3**

Add:

### **65-25 Application to Court for review of Inspector-General decision**

- (1) This section is made for the purposes of paragraph 65-46(2)(f) of the Insolvency Practice Schedule (Bankruptcy).
- (2) If the Inspector-General:
  - (a) has received an application for review of a bill of costs for services provided by a person (a *third party*) in relation to the administration of a regulated debtor’s estate under section 65-20; and
  - (b) has completed and made a decision on the review under section 90-65; the trustee of the regulated debtor’s estate or the third party may apply to the Court for an order in relation to the decision of the Inspector-General.
- (3) The application must be made no later than 60 days after the day on which the person making the application was notified of the Inspector-General’s decision.

## **8 At the end of paragraph 70-30(2)(c)**

Add “that the trustee is, or should reasonably be, aware of”.

## **9 After subsection 70-30(2)**

Insert:

- (2AA) However, the trustee does not need to give the information set out in paragraphs (2)(a), (b), (c), (e), (g) and (j) to (n) to a creditor if the trustee is satisfied that the information has already been provided to the creditor by a former trustee.

## **10 Before paragraph 70-35(5)(a)**

Insert:

- (aa) in the case where:

- (i) the regulated debtor has become a bankrupt by force of section 55, 56E or 57 of the Act in connection with the presentation of a debtor's petition; and
  - (ii) the trustee receives the regulated debtor's statement of affairs from the Official Receiver under subsection 55(5), 56E(4) or 57(6) of the Act;
- within 20 business days after the day the trustee receives that statement; and

**11 After subsection 75-27(2A)**

Insert:

- (2AA) At the time the trustee gives notice of the meeting to creditors, the trustee must also give the following to the regulated debtor:
- (a) a copy of the notice given to creditors;
  - (b) a copy of the documents given to creditors under subsection (2).

**12 Before subsection 75-60(1)**

Insert:

*Meetings in relation to compositions or arrangements*

**13 Before subsection 75-60(2)**

Insert:

*Meetings in relation to personal insolvency agreements*

**14 After paragraph 75-60(2)(a)**

Insert:

- (aa) a copy of the proposal for dealing with the regulated debtor's affairs given by the debtor under paragraph 188(2C)(b) or 188(2D)(b) of the Act;

**15 After subsection 75-60(2A)**

Insert:

- (2B) At a meeting called under section 188 of the Act, if:
- (a) it were assumed that the regulated debtor had been required, immediately before the start of the meeting, to prepare a statement of affairs; and
  - (b) that statement would have differed in one or more material respects from the statement a copy of which was tabled under paragraph (2)(a);
- the regulated debtor must table at the meeting a written statement identifying those differences.
- (2C) At a meeting called under section 188 of the Act, if:
- (a) it were assumed that the trustee had been required, immediately before the start of the meeting, to make a declaration stating whether the regulated debtor is a related entity of:
    - (i) the trustee; or
    - (ii) a related entity of the trustee; and
  - (b) that declaration would have differed in one or more material respects from the declaration a copy of which was tabled under paragraph (2)(b);



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the trustee must table at the meeting a written statement identifying those differences.

*Requests for copies of tabled documents*

**16 Subsections 75-105(1)**

Repeal the subsection, substitute:

- (1) A quorum consists of:
  - (a) the trustee present in person; and
  - (b) one person entitled to vote present in person; and
  - (c) if the number of persons entitled to vote is 2 or more—one or more other persons entitled to vote present in person or by proxy or attorney.

**17 Subsection 75-105(2)**

Repeal the subsection.

**18 Subsection 75-105(3)**

Repeal the subsection, substitute:

- (3) If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting is adjourned:
  - (a) to the same day in the next week at the same time and place; or
  - (b) to the day (not being less than 5 or more than 15 business days after the day on which the meeting is adjourned) and at the time and place that the person presiding appoints.

**19 Subsection 75-105(6)**

Repeal the subsection, substitute:

- (6) If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the adjourned meeting lapses.

**20 Before paragraph 75-110(4)(a)**

Insert:

- (aa) is a related entity of the regulated debtor; and

**21 Paragraph 75-110(4)(a)**

Omit “and”.

**22 Paragraphs 75-110(4)(b) and (c)**

Repeal the paragraphs.

**23 Paragraph 75-115(6)(a)**

After “subsection (3)”, insert “or (5)”.

**24 After subsection 75-130(4)**

Insert:

- (4A) For the purposes of paragraphs (2)(b) and (c), the value of a responding creditor who:

- (a) is a related entity of the regulated debtor; and
- (b) has been assigned a debt;

is to be worked out by taking the value of the assigned debt to be equal to the value of the consideration that the creditor gave for the assignment of the debt.

## **25 At the end of section 75-132**

Add:

- (3) For the purposes of paragraph (1)(b), the value of a creditor who:

- (a) is a related entity of the regulated debtor; and
- (b) has been assigned a debt;

is to be worked out by taking the value of the assigned debt to be equal to the value of the consideration that the creditor gave for the assignment of the debt.

## **26 After subsection 75-137(4)**

Insert:

- (4A) For the purposes of paragraph (2)(b), the value of a responding creditor who:

- (a) is a related entity of the regulated debtor; and
- (b) has been assigned a debt;

is to be worked out by taking the value of the assigned debt to be equal to the value of the consideration that the creditor gave for the assignment of the debt.

## **27 After subsection 75-140(2)**

Insert:

- (2A) However, subsection (2) does not apply to a meeting called under section 188 of the Act.

## **28 Paragraph 90-65(4)(e)**

Repeal the paragraph, substitute:

- (e) sets out the effect, in relation to the Inspector-General's decision, of:
  - (i) if the decision is in relation to an application for review under section 65-20—section 65-25; and
  - (ii) in any other case—subsection 90-21(3) of the Insolvency Practice Schedule (Bankruptcy).

## **29 Subsection 90-65(4) (note)**

Omit "Note", substitute "Note 1".

## **30 At the end of section 90-65(4)**

Add:

Note 2: Section 65-25 of these Rules allows the trustee or the third party to apply to the Court for an order in relation to the Inspector-General's decision in relation to the review.

## **31 At the end of the instrument**

Add:

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## **Part 5—Transitional matters**

### **Division 110—Transitional matters relating to the Insolvency Practice (Bankruptcy) Amendment Rules 2022**

#### **110-1 Definitions**

In this Division:

*amending Rules* means the *Insolvency Practice (Bankruptcy) Amendment Rules 2022*.

*commencement day* means the day on which the amending Rules commence.

#### **110-2 Trustee experience**

The amendment of subsection 20- 1(3) made by the amending Rules applies in relation to applications for registration as a trustee properly made on or after the commencement day.

#### **110-3 Trustee registration conditions**

The amendment of section 20- 5 made by the amending Rules applies in relation to a person who is a registered trustee regardless of whether the person's registration began, or was renewed, before, on or after the commencement day.

#### **110-4 Part 2 committee consideration of matters**

Section 50-47, as inserted by the amending Rules, applies in relation to a Part 2 committee, regardless of whether the committee was established before, on or after the commencement day.

#### **110-5 Remuneration determinations**

Section 60-17, as inserted by the amending Rules, applies in relation to a remuneration determination made by the Inspector-General on or after the commencement day.

#### **110-6 Review of decisions relating to third party bills of costs**

The following apply in relation to a decision of the Inspector-General made on or after the commencement day:

- (a) section 65-25, as added by the amending Rules;
- (b) the amendments of subsection 90-65(4) made by the amending Rules.

#### **110-7 Giving of information**

The following apply in relation to the administration of estates by a registered trustee that the trustee started on or after the commencement day:

- (a) the amendment of paragraph 70-30(2)(c) made by the amending Rules;
- (b) subsection 70-30(2AA), as inserted by the amending Rules;
- (c) paragraph 70-35(5)(aa), as inserted by the amending Rules.

### **110-8 Meetings of creditors**

The following apply in relation to a meeting of a regulated debtor's creditors for which notice was given in writing on or after the commencement day:

- (a) subsection 75-27(2AA), as inserted by the amending Rules;
- (b) the amendments of section 75-60 made by the amending Rules;
- (c) the amendments of section 75-105 made by the amending Rules;
- (d) the amendment of paragraph 75-115(6)(a) made by the amending Rules;
- (e) subsection 75-140(2A), as inserted by the amending Rules.

### **110-9 Value of certain assigned debts**

The amendments to subsection 75-110(4) made by the amending Rules, and subsections 75-130(4A), 75-132(3) and 75-137(4A) as inserted by the amending Rules, apply in relation to a resolution in respect of which:

- (a) if the resolution is to be passed at a meeting of creditors—notice of the meeting was given in writing on or after the commencement day; and
- (b) if the resolution is to be taken to have been passed based on a proposal put to creditors—notice of the proposal was given in writing to the creditors on or after the commencement day.