

Insolvency Practice (Bankruptcy) Amendment Rules 2022

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.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 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Note: This table relates only to the provisions of this instrument as originally made.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 Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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 anyof 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);

 (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);

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:

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.