



Bankruptcy Amendment Regulations 2010 (No. 2)¹

Select Legislative Instrument 2010 No. 287

I, QUENTIN BRYCE, 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 24 November 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

ROBERT McCLELLAND
Attorney-General

1 Name of Regulations

These Regulations are the *Bankruptcy Amendment Regulations 2010 (No. 2)*.

2 Commencement

These Regulations commence immediately after the commencement of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2010*.

3 Amendment of *Bankruptcy Regulations 1996*

Schedule 1 amends the *Bankruptcy Regulations 1996*.

4 Transitional

- (1) The amendments made by items 2, 7 and 8 of Schedule 1 apply to any bankruptcy for which the date of bankruptcy is on or after the day this regulation commences.
- (2) Despite the amendments made by item 2 of Schedule 1, Division 4 of Part 8 of the *Bankruptcy Regulations 1996*, as in force immediately before the commencement of this regulation, continues to apply to a bankruptcy if the date of bankruptcy is before the day this regulation commences.
- (3) Despite the amendments made by items 7 and 8 of Schedule 1, paragraph 10.04 (f) of the *Bankruptcy Regulations 1996*, as in force immediately before the commencement of this regulation, continues to apply to a bankruptcy if the date of bankruptcy is before the day this regulation commences.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 4.05 (2)

omit

[2] Part 8, Division 4

substitute

Division 4 Trustee's remuneration

Subdivision 1 Prescribed rates — subsections 162 (2) and (3) of Act

8.07 Prescribed rate — subsection 162 (2) of the Act

For subsection 162 (2) of the Act, the rate is:

- (a) if the money received by the trustee does not exceed \$30,000 — 10%; or
- (b) if the money received by the trustee exceeds \$30,000 but does not exceed \$50,000 — 10% for the first \$30,000 and 7.5% for the balance of the money; or
- (c) if the money received by the trustee exceeds \$50,000 — 10% for the first \$30,000, 7.5% for the next \$20,000 and 5% for the balance of the money.

8.08 Prescribed rate — subsection 162 (3) of the Act

For subsection 162 (3) of the Act, the rate is 2.5%.

**Subdivision 2 Trustee's remuneration decided by
Inspector-General****8.09 Circumstances in which trustee may apply to
Inspector-General to decide remuneration**

For subsection 162 (4) of the Act, the following circumstances are prescribed:

- (a) the creditors or the committee of inspection:
 - (i) fail to vote on a motion relating to remuneration put forward by the trustee at a meeting of creditors under section 64U of the Act; or
 - (ii) reject a motion relating to remuneration put forward by the trustee at a meeting of creditors under section 64U of the Act;
- (b) the creditors or the committee of inspection:
 - (i) fail to vote on a proposal relating to remuneration put forward by the trustee under section 64ZBA of the Act; or
 - (ii) reject a proposal relating to remuneration put forward by the trustee under section 64ZBA of the Act;
- (c) it is not cost effective to seek the approval of creditors for the trustee's remuneration;
- (d) it is not practicable to seek the approval of creditors for the trustee's remuneration.

Example for paragraph (c)

It may not be cost-effective to seek the approval of creditors if the value of the assets in the estate is so small that the expense of holding a creditors' meeting or sending a notice to creditors cannot be justified.

Examples for paragraph (d)

1 It may not be practicable to seek the approval of creditors if the bankruptcy is annulled and there are no longer any creditors to vote on a remuneration proposal.

2 It may not be practicable to seek the approval of creditors if a meeting is cancelled because of a lack of quorum.

8.10 Application to Inspector-General to decide remuneration

For subsection 162 (4) of the Act, the application:

- (a) must be in writing; and
- (b) must:
 - (i) state which circumstance prescribed in regulation 8.09 applies to the application; and
 - (ii) include evidence that the prescribed circumstance applies to the application; and
- (c) must contain a single proposal about the trustee's proposed remuneration; and
- (d) must include the information required by subsections 64U (5) and (5A) of the Act about the trustee's statement; and
- (e) must explain:
 - (i) why any work already performed by the trustee was necessary; and
 - (ii) why any work proposed to be performed by the trustee will be necessary; and
 - (iii) why the proposed remuneration for the work, or proposed work, is appropriate for the particular administration; and
- (f) must be accompanied by the following:
 - (i) any notices issued by the trustee to the bankrupt and creditors under subsection 162 (6A) of the Act;
 - (ii) any other notices issued by the trustee to the bankrupt and creditors under Subdivision 3.

8.11 Matters to which Inspector-General must have regard

For subsection 162 (4A) of the Act, the Inspector-General must have regard to the following matters when deciding the trustee's remuneration:

- (a) whether the trustee has followed the procedure in section 64U of the Act for estimating remuneration, including whether the trustee has adequately described to creditors the work performed or to be performed;

- (b) whether the trustee has given the bankrupt and creditors the notices required to be given under these Regulations;
- (c) whether the trustee has explained why the work already performed was necessary;
- (d) whether the trustee has explained why the work proposed to be performed will be necessary;
- (e) whether, taking into account the nature and complexity of the work, the proposed remuneration is commensurate with:
 - (i) the work already performed; or
 - (ii) the work proposed to be performed;
- (f) any other relevant matters.

Note A decision on the application is made under subsection 162 (4A) of the Act. The Inspector-General must advise the trustee and the bankrupt and creditors of the decision in accordance with subsection 162 (4B) of the Act.

Subdivision 3 Remuneration of trustees — notices

8.12 Notices

This Subdivision is made for subsection 162 (6A) of the Act and sets out the notices that the trustee is required to give to the bankrupt and creditors in relation to the trustee's remuneration.

8.12A Initial remuneration notice

- (1) The trustee must give the bankrupt and creditors notice of:
 - (a) the method by which the trustee seeks to be remunerated; and
 - (b) the rate of remuneration; and
 - (c) an estimate of the expected amount of the trustee's remuneration.
- (2) The notice must:
 - (a) include a brief explanation of the types of methods that could be used to calculate remuneration; and
 - (b) specify the method the trustee proposes to use to calculate remuneration; and
 - (c) explain why the method is appropriate.

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- (3) If the trustee proposes to charge on a time-cost basis, the notice must include details about the respective rates at which the remuneration of the trustee and the other persons who will be assisting, or will be likely to assist, the trustee in the performance of his or her duties are to be calculated.
 - (4) The notice must be in writing and must be given to the bankrupt and creditors:
 - (a) in the case of a trustee of a personal insolvency agreement who was not the controlling trustee for a debtor under section 188 or 192 of the Act before the agreement for the debtor was executed — within 28 days after the day the agreement is executed as required by section 216 of the Act; and
 - (b) in any other case:
 - (i) within 28 days after the day the trustee receives the bankrupt's statement of affairs; or
 - (ii) if the trustee does not receive the bankrupt's statement of affairs within 60 days after the date of bankruptcy — within 7 days after the end of the 60 day period.
 - (5) This regulation does not apply to:
 - (a) a person who is the controlling trustee for a debtor under section 188 or 192 of the Act; or
 - (b) a trustee of a personal insolvency agreement who was the controlling trustee for a debtor under section 188 or 192 of the Act before the agreement for the debtor was executed.

8.12B Remuneration approval notice

- (1) If the trustee proposes to have his or her remuneration fixed by creditors or the committee of inspection in accordance with subsection 162(1) of the Act, the trustee must give the creditors or the committee a notice that complies with this regulation.

- (2) The notice must include the following information:
- (a) a description of the work that the trustee has undertaken or will, or is likely to, undertake, including details of the particular tasks to be performed by the trustee and any person assisting the trustee;
 - (b) details of:
 - (i) the number of hours to be charged by the trustee and each person assisting the trustee; and
 - (ii) the hourly rate charged by the trustee and each person assisting the trustee; and
 - (iii) the proposed total remuneration for the work;
 - (c) a statement that the costs incurred, or to be incurred, are necessary and reasonable having regard to the value and complexity of the administration;
 - (d) a report on work that has been completed, that is in progress and that is still to be undertaken.
- (3) The information in the notice must be sufficient to enable the creditors or the committee of inspection to be satisfied that the costs incurred, or to be incurred, are necessary and reasonable having regard to the value and complexity of the administration.
- (4) The notice must be given:
- (a) if the trustee proposes to have his or her remuneration fixed at a meeting of creditors — at the same time as the meeting of creditors is convened; or
 - (b) if the trustees proposes to have his or her remuneration fixed by putting a proposal to the creditors under section 64ZBA of the Act — at the same time as the notice under that section is given to the creditors.
- (5) This regulation does not apply to:
- (a) a person who is the controlling trustee for a debtor under section 188 or 192 of the Act; or
 - (b) a trustee of a personal insolvency agreement who was the controlling trustee for a debtor under section 188 or 192 of the Act before the agreement for the debtor was executed.

8.12C Remuneration claim notice

- (1) Subject to subregulation (3), the trustee must give the bankrupt and the creditors a notice that complies with this regulation when the remuneration claimed by the trustee reaches the amount (the *fixed amount*):
 - (a) fixed by the creditors or the committee of inspection; or
 - (b) decided by the Inspector-General; or
 - (c) if the trustee claims the statutory minimum or less under subsection 161B (1) of the Act — claimed by the trustee under that subsection.
- (2) The notice must be given within 14 days after the fixed amount is reached.
- (3) If the remuneration claimed does not reach the fixed amount, the trustee must give the creditors a notice that complies with this regulation:
 - (a) at the time the trustee declares a final dividend; or
 - (b) if the trustee determines that no final dividend will be declared — at the time the administration of the estate is finalised.
- (4) A notice under subregulation (1) or (3) must include the following information:
 - (a) the total remuneration claimed;
 - (b) details of:
 - (i) the work performed for which remuneration is claimed; and
 - (ii) the names of the persons who performed the work; and
 - (iii) the number of hours charged by, or in relation to, each person for the work; and
 - (iv) the hourly rate charged by, or in relation to, each person for the work;
 - (c) an explanation of any variation from the amounts set out in any notice under regulation 8.12B in relation to:
 - (i) the remuneration claimed; and
 - (ii) the number of hours charged; and

- (iii) the hourly rate charged; and
 - (iv) the persons performing the work.
- (5) A notice under subregulation (1) or (3) must also include a statement advising the bankrupt and the creditors that they may, within 28 days after receiving the notice, request the Inspector-General to review the amount of remuneration claimed by the trustee.

Note Subdivision 4 deals with applications to the Inspector-General to review decisions in relation to a trustee's remuneration. Subdivision 6 sets out how reviews are undertaken.

Subdivision 4 Review of remuneration

8.12D Review of remuneration

This Subdivision is made for subsection 167 (1) of the Act and provides for the Inspector-General to review decisions about the trustee's remuneration on application by a bankrupt or a creditor of the bankrupt.

8.12E Application for review — remuneration

- (1) A bankrupt or a creditor of the bankrupt (the *applicant*) may apply to the Inspector-General for a review of the amount of remuneration claimed by the trustee.
- (2) The application must be in writing and must, subject to subregulation (3), be made within 28 days after the day the applicant receives notification under regulation 8.12C.
- (3) The Inspector-General may, before or after the end of the 28 days mentioned in subregulation (2), extend the period in which an application for review may be made if the Inspector-General is satisfied that:
 - (a) the applicant and the trustee have been engaged in an alternative dispute resolution process to try to resolve the matter; or
 - (b) it is appropriate, in all the circumstances, to extend the period.

- (4) The Inspector-General may extend the period for any period the Inspector-General considers appropriate in all the circumstances.
- (5) The applicant may apply to the Administrative Appeals Tribunal for the review of a decision by the Inspector-General under subregulation (3) to refuse to extend the period in which an application for review may be made.
- (6) The trustee may apply to the Administrative Appeals Tribunal for the review of a decision by the Inspector-General under subregulation (3) to extend the period in which an application for review may be made.

8.12F Application threshold

- (1) The Inspector-General must refuse to accept an application:
 - (a) unless the Inspector-General is satisfied on reasonable grounds that 1 or more of the following apply:
 - (i) the trustee's remuneration may have been fixed in a manner that is inconsistent with the requirements of the Act or these Regulations;
 - (ii) the trustee may have acted improperly, or without due care and diligence, in the administration of the estate; or
 - (b) if the Inspector-General is satisfied on reasonable grounds that:
 - (i) the applicant does not have an interest in the outcome of the review; or
 - (ii) the applicant has not adequately particularised the issue giving rise to the review; or
 - (iii) the application is frivolous or vexatious.
- (2) However, the Inspector-General may accept an application if the Inspector-General is satisfied that there are exceptional circumstances to justify the review.

- (3) The Inspector-General may refuse to accept an application if the Inspector-General is satisfied on reasonable grounds that:
 - (a) it was appropriate in all the circumstances for the applicant to attempt to resolve the matter without seeking a review under this Subdivision; and
 - (b) the applicant did not do so; and
 - (c) the applicant did not provide a reasonable explanation for not doing so.

8.12G Notification of decision

- (1) If the Inspector-General refuses to accept the application, the Inspector-General must give the applicant and the trustee written notice of the refusal.
- (2) The notice must be given to the applicant and the trustee within 14 days after the day the Inspector-General refuses the application and must include the reasons for the refusal.

Subdivision 5 Review of bill of costs

8.12H Review of bill of costs

This Subdivision is made for subsection 167 (2) of the Act and provides for the Inspector-General to review a bill of costs for services provided by a third party in relation to the administration of a bankrupt's estate.

8.12I Application for review — third party bill of costs

- (1) The trustee of the bankrupt's estate may apply to the Inspector-General to review a bill of costs for services provided by a third party in relation to the administration of the bankrupt's estate.
- (2) The application must be in writing.
- (3) The application must, subject to subregulation (4), be made within 28 days after the trustee receives the bill of costs from the third party.

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- (4) The Inspector-General may, before or after the end of the 28 days mentioned in subregulation (3), extend the period in which an application for review may be made if the Inspector-General is satisfied that:
 - (a) the trustee and the third party have been engaged in an alternative dispute resolution process to try to resolve the matter; or
 - (b) it is appropriate, in all the circumstances, to extend the period.
 - (5) The Inspector-General may extend the period for any period the Inspector-General considers appropriate in all the circumstances.
 - (6) The trustee may apply to the Administrative Appeals Tribunal for review of a decision by the Inspector-General under subregulation (4) to refuse to extend the period in which an application for review may be made.
 - (7) The third party may apply to the Administrative Appeals Tribunal for the review of a decision by the Inspector-General under subregulation (4) to extend the period in which an application for review may be made.

Subdivision 6 Review by Inspector-General

8.12J Review by Inspector-General

- (1) If the Inspector-General accepts an application under regulation 8.12E or 8.12I, the Inspector-General must conduct a review in accordance with this Subdivision.
- (2) The Inspector-General may:
 - (a) affirm the amount claimed by the trustee or the third party; or
 - (b) disallow all or part of the trustee's claim for remuneration and substitute another amount for the amount claimed; or
 - (c) disallow all or part of the third party's bill of costs and substitute another amount for the amount claimed; or
 - (d) dismiss the application.

8.12K How review to be conducted

- (1) The Inspector-General must conduct the review with as little formality and technicality, and with as much expedition, as the Act and these Regulations, and a proper consideration of the matter, permit.
- (2) In conducting the review, the Inspector-General:
 - (a) is not bound by legal technicalities, legal forms or rules of evidence; and
 - (b) may inform himself or herself on any matter relevant to the review in such manner as he or she thinks appropriate.

8.12L Powers of Inspector-General

In conducting the review, the Inspector-General may do any of the following:

- (a) conduct the review:
 - (i) with the parties present; or
 - (ii) on the papers; or
 - (iii) in part with the parties present and in part on the papers;
- (b) adjourn or discontinue the review if the Inspector-General considers it necessary or appropriate to do so;
- (c) engage an expert to assist in the review and arrange for payment to be made to the expert;
- (d) direct the trustee to provide an itemised invoice in a form, and within the time, specified in the direction for work undertaken by the trustee;
- (e) direct a third party to give an itemised bill of costs in a form, and within the time, specified in the direction in relation to work undertaken by the third party;
- (f) interview any party to the review and allow the other party or their representative to question that party;
- (g) direct a person to give a written statement, in a specified form and signed by the person, about a matter relevant to the review;

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- (h) direct the trustee to produce to the Inspector-General or to a party to the review, all or part of the trustee's files or documents in relation to the administration of the bankrupt's estate;
 - (i) copy documents, or arrange for copies to be made and delivered to the Inspector-General or a party to the review;
 - (j) direct a party seeking inspection, production or copies of documents to comply with conditions (including conditions relating to payment) in relation to the inspection, production or copying;
 - (k) proceed with the review in the absence of a party if the Inspector-General considers it necessary or appropriate to do so;
 - (l) direct the trustee to take particular action for the administration of the estate, including refunding any remuneration not properly claimed or supported.

Note This regulation does not exclude the need for the Inspector-General to provide procedural fairness when conducting the review.

8.12M Non-compliance with directions

- (1) If a person to whom the Inspector-General gives a direction under regulation 8.12L does not comply with the direction, the Inspector-General may conduct the review on the basis of the information available to the Inspector-General.
- (2) If the trustee does not comply with a direction of the Inspector-General under paragraph 8.12L (d), (h) or (l), the Inspector-General may direct that the trustee is not entitled to the remuneration, or part of the remuneration, that is the subject of the review.
- (3) If a third party does not comply with a direction of the Inspector-General under paragraph 8.12L (e), the Inspector-General may order that the trustee may declare and distribute a final dividend in the bankruptcy without regard to any claim of the third party.

- (4) If the Inspector-General makes an order under subregulation (3), the estate of the bankrupt has no liability to the third party for the bill of costs that is the subject of the review.

8.12N Decision of Inspector-General

- (1) The Inspector-General must complete the review, and make a decision on the application, within 60 days after the day the Inspector-General accepts the application for review.
- (2) When the Inspector-General makes his or her decision, the Inspector-General must prepare a written statement that:
- (a) sets out the decision of the Inspector-General; and
 - (b) sets out the reasons for the decision; and
 - (c) sets out the findings on any material questions of fact; and
 - (d) refers to evidence or other material on which the findings of fact are based; and
 - (e) sets out the effect of subsection 167 (6) of the Act in relation to the Inspector-General's decision.
- (3) The Inspector-General must give each party to the review a copy of the statement within 14 days after making the decision.

8.12O Repayments of excess

For subsection 167 (4) of the Act, if the Inspector-General is satisfied that a withdrawal by the trustee of funds from the estate of the bankrupt for payment of the trustee's remuneration exceeds the amount of remuneration the trustee is entitled to under Division 2 of Part VIII of the Act, the Inspector-General may require the trustee to repay the excess to the estate.

[3] Subregulation 10.03 (2)

omit

to the Official Receiver for the District where the debtor resides a copy of the signed consent

insert

a copy of the signed consent to an Official Receiver

[4] Paragraph 10.03 (3) (a)

substitute

(a) an Official Receiver; and

[5] Subregulation 10.03 (3), note

omit

to the Official Receiver for the District in which the debtor resides, a copy of the authority and the debtor's statement of affairs

insert

a copy of the authority and the debtor's statement of affairs to an Official Receiver

[6] Regulation 10.04

omit

the Official Receiver for the District in which the debtor resides,

insert

an Official Receiver,

[7] Subparagraph 10.04 (e) (iv)

omit

claimed; and

insert

claimed.

[8] Paragraph 10.04 (f), except the note

omit

[9] Before regulation 14.01

insert

Division 1 Offences

[10] After regulation 14.02

insert

Division 2 Infringement notices

14.03 Purpose and effect of Division

- (1) For section 277B of the Act, this Division establishes an infringement notice scheme, as an alternative to prosecution, for infringement notice offences.
- (2) This Division does not:
 - (a) require an infringement notice to be issued to a person for an infringement notice offence; or
 - (b) affect the liability of a person to be prosecuted for an infringement notice offence if an infringement notice is not issued to the person for the offence; or
 - (c) prevent the issue of 2 or more infringement notices to a person for an infringement notice offence; or
 - (d) affect the liability of a person to be prosecuted for an infringement notice offence if the person does not comply with an infringement notice for the offence; or
 - (e) limit or otherwise affect the penalty that may be imposed by a court on a person convicted of an infringement notice offence.

14.04 Definitions

In this Division:

infringement notice means an infringement notice served under regulation 14.05.

infringement notice offence means an offence mentioned in the table in subsection 277B (2) of the Act.

infringement penalty, for an infringement notice offence, means the penalty for the offence mentioned in the table in subsection 277B (2) of the Act.

14.05 When infringement notices can be issued

If the Inspector-General has reasonable grounds to believe that a person has committed an infringement notice offence, the Inspector-General may, within 12 months after the alleged commission of the offence, issue the person with an infringement notice for the offence.

14.06 Contents of infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state that the notice is issued under these Regulations; and
 - (c) state the name of the person who issued the notice and how the person may be contacted; and
 - (d) be signed by the person who issued the notice; and
 - (e) state the name and address of the person to whom it is issued; and
 - (f) set out brief details of the offence the person is alleged to have committed, including:
 - (i) the infringement notice offence that was allegedly contravened; and
 - (ii) the maximum penalty that may be imposed by a court for the offence; and
 - (g) state the amount of the infringement penalty that is payable under the notice; and

- (h) state how and where the infringement penalty can be paid, including:
 - (i) the period in which the penalty may be paid; and
 - (ii) if the penalty can be paid by posting the payment — the place to which it should be posted; and
 - (i) state that if the person pays the infringement penalty in time:
 - (i) any liability of the person for the offence is discharged; and
 - (ii) a prosecution of the offence may not be brought against the person; and
 - (iii) the person is not regarded as having admitted guilt or liability for the offence; and
 - (iv) the person is not regarded as having been convicted of the offence; and
 - (j) state that the person may apply to the Inspector-General for an extension of time in which to pay the infringement penalty; and
 - (k) set out how the notice may be withdrawn; and
 - (l) state that if the notice is withdrawn:
 - (i) any amount of penalty paid under the notice must be refunded to the person; and
 - (ii) the person may be prosecuted in a court for the offence; and
 - (m) state that the person may apply in writing to the Inspector-General requesting the withdrawal of the notice.
- (2) An infringement notice may contain any other information that the Inspector-General considers necessary.

14.07 Method of serving infringement notices

- (1) An infringement notice must be served on the person to whom it is issued.
- (2) An infringement notice may be served on an individual:
 - (a) personally or by post; or

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- (b) by leaving the notice:
 - (i) at the last-known place of residence or business of the person; and
 - (ii) with a person, apparently over the age of 16 years, who appears to live or work at the place.
 - (3) An infringement notice may be served on a corporation:
 - (a) by leaving it at, or by sending it by post to, the address of the head office, a registered office or a principal office, of the corporation; or
 - (b) by giving it, at an office mentioned in paragraph (a), to someone who is, or who the person serving the notice reasonably believes is, an officer or employee of the corporation.
 - (4) Subject to subregulation (5), an infringement notice may be served on a registered trustee or a registered debt agreement administrator by sending it by electronic communication to the trustee's or administrator's business email address.
 - (5) An infringement notice must not be sent by electronic communication unless the Inspector-General believes, on reasonable grounds, that the registered trustee or a registered debt agreement administrator will access the email account to which the notice is sent.

14.08 Time for payment of infringement penalty

The penalty specified in an infringement notice must be paid:

- (a) within 28 days after the day the notice is served on the person to whom it is issued; or
- (b) if the person applies for an extension of time in which to pay the infringement penalty and that application is granted — within the extension period allowed; or
- (c) if the person applies for an extension of time in which to pay the infringement penalty and the application is refused — before the end of the later of:
 - (i) 7 days after day the notice of the refusal is served on the person; and

- (ii) 28 days after the day the infringement notice is served on the person; or
- (d) if the person applies for the notice to be withdrawn and the application is refused — within 28 days after the day the notice of the refusal is served on the person.

14.09 Extension of time to pay infringement penalty

- (1) A person served with an infringement notice may apply, in writing, to the Inspector-General for an extension of time of up to 28 days in which to pay the infringement penalty specified in the notice.
- (2) If the application is made after the end of the 28 day period specified in the notice for payment of the infringement penalty, the application must include a statement explaining why the person could not deal with the notice within that period.
- (3) Within 14 days after receiving the application, the Inspector-General must:
 - (a) grant, or refuse to grant, an extension of time to pay the infringement penalty; and
 - (b) notify the person in writing of the decision, and, if the decision is a refusal, the reasons for the decision.
- (4) Notice of the decision may be served on the person in any way in which the infringement notice could have been served on the person.

14.10 Withdrawal of infringement notice

- (1) Before the end of 28 days after receiving an infringement notice, a person may apply, in writing, to the Inspector-General for the infringement notice to be withdrawn.
- (2) Within 14 days after receiving the application, the Inspector-General must:
 - (a) withdraw, or refuse to withdraw, the notice; and
 - (b) notify the person in writing of the decision, and, if the decision is a refusal, the reasons for the decision.

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- (3) Before withdrawing, or refusing to withdraw, a notice, the Inspector-General must consider:
 - (a) the circumstances of the offence stated in the notice; and
 - (b) whether there are exceptional circumstances to justify the withdrawal; and
 - (c) any other relevant matter.
 - (4) The Inspector-General may also withdraw an infringement notice without an application having been made if he or she believes it is appropriate to do so in all the circumstances of the particular case.

14.11 Notice of withdrawal of infringement notices

- (1) Notice of the withdrawal of an infringement notice may be served on a person in any way in which the infringement notice could have been served on the person.
- (2) A notice withdrawing an infringement notice served on a person for an offence:
 - (a) must include the following information:
 - (i) the name and address of the person;
 - (ii) the number of the infringement notice;
 - (iii) the date of issue of the infringement notice; and
 - (b) must state that the notice is withdrawn; and
 - (c) if it is proposed that a prosecution be brought against the person for the offence — must state that the person may be prosecuted in a court for the offence.

14.12 Refund of infringement penalty

If an infringement notice is withdrawn after the infringement penalty specified in it has been paid, the Inspector-General must refund the amount of the penalty to the person who paid it.

14.13 Effect of payment of infringement penalty

If a person served with an infringement notice pays the infringement penalty specified in the notice within the period specified in the notice (or any further period of time allowed under regulation 14.09):

- (a) any liability of the person for the offence is discharged; and
- (b) a prosecution of the offence may not be brought against the person for the offence; and
- (c) the person is not regarded as having admitted guilt or liability for the offence; and
- (d) the person is not regarded as having been convicted of the offence.

14.14 Payment of infringement penalty — cheques

If a person pays an infringement penalty by cheque, payment is not taken to have been made until the cheque has been honoured on presentation.

14.15 Evidentiary certificates

- (1) The Inspector-General may sign a certificate that states any of the following in relation to an infringement notice served on a person:
 - (a) that the infringement penalty specified in the infringement notice was not paid by the person within the time specified in the notice;
 - (b) that the Inspector-General granted, or refused to grant, an extension of time to the person to pay the infringement penalty;
 - (c) that the infringement penalty was not paid by the person within the period specified in the extension;
 - (d) that the infringement notice was withdrawn under regulation 14.10 on a day specified in the certificate.

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- (2) At a hearing of a prosecution for an offence mentioned in an infringement notice, a certificate signed by the Inspector-General in accordance with subregulation (1) is evidence of the matters specified in the certificate.
- (3) A certificate that purports to be signed by the Inspector-General is taken to have been signed by the Inspector-General unless the contrary is proved.

[11] Regulation 15A.07

omit

the Official Receiver for the District in which the trustee carries on business

insert

an Official Receiver

[12] Schedule 4A, subclause 2.14 (2)

omit

[13] Schedule 4A, paragraph 2.16 (b)

omit

work; and

insert

work.

[14] Schedule 4A, paragraph 2.16 (c)

omit

[15] Schedule 6, Part 1, item 9

omit

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.