



Bankruptcy (Fees and Remuneration) Determination 2008¹

Bankruptcy Act 1966

I, ROBERT McCLELLAND, Attorney-General, make this Determination under subsection 316 (1) of the *Bankruptcy Act 1966*.

Dated 17 June 2008

ROBERT McCLELLAND
Attorney-General

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Part 1 Preliminary

1.01 Name of Determination

This Determination is the *Bankruptcy (Fees and Remuneration) Determination 2008*.

1.02 Commencement

This Determination commences on 1 July 2008.

1.03 Repeal

The *Bankruptcy (Fees and Remuneration) Determination 2007* is repealed.

1.04 Definitions

- (1) In this Determination:

Act means the *Bankruptcy Act 1966*.

GST has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Regulations means the *Bankruptcy Regulations 1996*.

- (2) An expression used in this Determination and in the Act or Regulations, or in a provision of the Act or Regulations, has the same meaning in this Determination as it has in the Act or Regulations, or the provision of the Act or Regulations.

Note 1 **Controlling trustee** is defined in subsection 187 (1) of the Act.

Note 2 **the Index** is defined in subregulation 1.03 (1) of the Regulations.

1.05 Amounts include GST

The amount of a fee or remuneration specified in, or calculated in accordance with, this Determination includes GST (if payable on the fee or remuneration).

Section 2.01

Part 2 Fees

Division 2.1 Fees for certain provisions of the Act

2.01 Inspection, application etc (Act para 316 (1) (a))

- (1) The fee for a matter mentioned in the following table is the amount mentioned in the item.

Item	Provision of the Act	Matter	Fee (\$)
1	Subsection 54 (4)	Inspection of a statement of affairs filed by a bankrupt	20
2	Subsection 55 (9)	Inspection of a statement of affairs that accompanied a petition presented by a bankrupt	20
3	Subsection 56G (2)	Inspection of a statement of affairs that was given to the Official Receiver in connection with a debtor's petition against a partnership	20
4	Subsection 57 (11)	Inspection of a statement of affairs that accompanied a petition presented by joint debtors	20
5	Subparagraph 77C (3) (b) (iii)	(a) Inspection of notes taken down by a person who attends before the Official Receiver or an authorised officer	20
		(b) Inspection of the transcript of evidence given by a person who attends before the Official Receiver or an authorised officer	20
6	Paragraph 154A (3) (b)	Application by an individual to be registered as a trustee	2 000
7	Paragraph 155C (1) (b)	Registration of an applicant as a trustee by the Inspector-General	1 200
8	Paragraph 155D (1) (b)	Extension of registration of a person as a trustee by the Inspector-General	1 200

Section 2.01

Item	Provision of the Act	Matter	Fee (\$)
9	Subsection 163A (2)	Exercise by an Official Receiver, or officer assisting the Official Receiver under subsection 15 (1) of the Act, of a power under the Act at the request of a trustee of the estate of a bankrupt	(a) if the exercise of the power does not exceed 2 hours — 400; or (b) if the exercise of the power exceeds 2 hours — 400 for the first 2 hours plus 50 for each additional period of 15 minutes, or part of 15 minutes
10	Paragraph 186B (2) (c)	New application for registration as a debt agreement administrator	2 000
11	Paragraph 186D (1) (b)	Registration fee for an applicant approved as a debt agreement administrator	1 200
12	Subsection 188B (3)	Inspection of a statement, or a copy of a statement, of a debtor's affairs	20
13	Subsection 226 (3)	Inspection of a document filed under Part X of the Act	20
14	Subsection 226 (4)	Obtaining an office copy of a document filed under Part X of the Act	20
15	Subsection 246 (5)	Inspection of a statement of affairs of a deceased person filed under section 246 of the Act	20

- (2) The fee for making copies of, or taking extracts from, a document mentioned in item 1, 2, 3, 4, 5, 12, 13 or 15 of the table is \$2 for each page that is copied or extracted.

Section 2.02

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

2.02 Inspecting or obtaining extracts of material in the Index

- (1) The fee for inspecting material in the Index and giving an extract of that material (if any) following an application to an Official Receiver under subregulation 13.06 (1) of the Regulations is \$20.
- (2) If a person other than an Official Receiver inspects material entered in the Index, the fee is \$11 (whether or not the person obtains an extract of that material).

2.03 Giving items of information

- (1) This clause applies if there is an agreement between the Inspector-General and a corporation, entity or government department or agency (the *other party*) under which the Inspector-General undertakes to give to the other party items of information entered in the Index.
- (2) The fee for each item of information provided to the other party in accordance with the agreement mentioned in subclause (1) is \$1.62.

Examples Items of information that may be covered by the agreement include:

- (a) the names of persons who are bankrupt; and
- (b) the names of persons who have been discharged from bankruptcy; and
- (c) the names of persons against whose discharge from bankruptcy a notice of objection has been lodged.

2.04 Issuing bankruptcy notice

The fee for making an application to an Official Receiver to issue a bankruptcy notice under subsection 41 (1) of the Act is \$400.

2.05 Extending period to serve bankruptcy notice

The fee for making an application for a further period mentioned in paragraph 4.02A (b) of the Regulations within which to serve a bankruptcy notice is \$100.

2.06 Inspecting or copying composition or arrangement lodged with trustee

The fee for inspecting a copy of a composition or scheme of arrangement accepted by creditors under subsection 73 (4) of the Act is \$20 (whether or not the person obtains a copy of the composition or scheme).

2.07 Giving of authority and statement of affairs

The fee for giving a copy of the authority and of the debtor's statement of affairs to the Official Receiver under subsection 188 (5) of the Act is \$200.

2.08 Taxation of trustee's remuneration

If a bankrupt or creditor requests a taxing officer to tax a claim for remuneration by the trustee, the fee for taxation, being the fee for work performed by the taxing officer under regulations 8.09 and 8.11 of the Regulations, is \$50 for each period of 15 minutes, or part of 15 minutes.

2.09 Taxation of costs

If a trustee of a bankrupt's estate requires a taxing officer to tax a bill of costs for services provided by a person in relation to the administration of the estate, the fee for taxation of the bill of costs, being the fee for work performed by the taxing officer under subsection 167 (5) of the Act, is \$50 for each period of 15 minutes, or part of 15 minutes.

Section 3.01

Part 3 Remuneration

Division 3.1 Preliminary

3.01 Realised balance

- (1) Subject to clause 3.02, *realised balance*, for an estate or debtor at a particular time, is determined using the formula:

$$\text{amount realised} - (\text{business costs} + \text{securities})$$

where:

amount realised means, subject to subclauses (2) and (3), the total amount realised, or brought to credit, in the estate or debtor by the Official Trustee up to that time.

business costs means the amount paid by the Official Trustee in carrying on the business of the bankrupt, debtor or deceased person up to that time.

securities means the amount paid to secured creditors in respect of their securities up to that time.

- (2) If, in connection with the estate of a bankrupt or deceased person:
- (a) the bankrupt, or a person acting on behalf of the bankrupt or deceased person, applies property that has vested in the Official Trustee, by reason of section 58 of the Act, in payment of a creditor of the estate; and
 - (b) the Official Trustee is consequently prevented from realising or bringing to credit the value of that property;
- that property is taken, for subclause (1), unless the Court otherwise orders, to have been realised or brought to credit by the Official Trustee.
- (3) For subclause (1), *total amount realised, or brought to credit* does not include any amounts paid to the trustee by creditors:
- (a) under an indemnity in respect of costs; or
 - (b) under section 50 of the Act.

3.02 Restriction on amount of realised balance

- (1) For clause 3.01, the realised balance is not to exceed the total of:
- (a) the costs of administration of the estate; and
 - (b) the amount of the debts of the estate or debtor.

(2) In subclause (1):

costs of administration means the proper costs, charges and expenses of the administration, other than:

- (a) any realisation charge paid or payable by the Official Trustee under an Act; and
- (b) any remuneration paid or payable to the Official Trustee under this Determination.

debts means the total of:

- (a) the taxed costs of the petitioning creditor; and
- (b) proved or provable debts of the estate or debtor, including interest accrued before the date of bankruptcy; and
- (c) interest accrued on and after that date on those debts if they are interest-bearing debts.

Division 3.2 Remuneration of Official Trustee

3.03 Work in relation to carrying on business or taking control of property under section 50 of Act

If the Official Trustee:

- (a) takes control of the property of a debtor under a direction of the Court under section 50 of the Act; or
- (b) carries on the business of a bankrupt or deceased person; or
- (c) having been directed to take control of the property of a debtor under section 50 of the Act, carries on the business of the debtor;

the remuneration that is payable to the Official Trustee is \$50 for each period of 15 minutes, or part of 15 minutes.

3.04 Work in relation to compositions or arrangements with creditors

- (1) Subject to subclause (2) and clause 3.10, if the Official Trustee performs work under Division 6 of Part IV of the Act, the remuneration that is payable to the Official Trustee is 20% of the value of the composition or scheme of arrangement accepted by the creditors in accordance with that Division.
- (2) If the Official Trustee transfers work mentioned in subclause (1) to, or is replaced by, a registered trustee, the remuneration that is payable to the Official Trustee for work performed is \$50 for each period of 15 minutes, or part of 15 minutes.
- (3) The remuneration that is payable to the Official Trustee is payable:
 - (a) out of the composition or scheme of arrangement if the remuneration is for work performed under subclause (1); or
 - (b) out of the estate if the remuneration is for work performed under subclause (2).

Section 3.05

3.05 Work in relation to bankruptcy that is annulled

If a bankruptcy is annulled under section 153A or 153B of the Act, the remuneration that is payable to the Official Trustee for acting as trustee in a bankruptcy is the greater of:

- (a) \$3 000; and
- (b) \$3 000 plus 20% of the realised balance.

3.06 Work in relation to debt agreements

- (1) Subject to subclause (2) and clause 3.10, if the Official Trustee is appointed to be an administrator for a debt agreement made under section 185H of the Act, the remuneration that is payable to the Official Trustee is 20% of the value of the debt agreement.
- (2) If the Official Trustee transfers administration of a debt agreement to, or is replaced by, an administrator or a registered trustee, the remuneration that is payable to the Official Trustee for acting as administrator of the debt agreement is \$50 for each period of 15 minutes, or part of 15 minutes.

3.07 Work as controlling trustee

- (1) If the Official Trustee acts under Part X of the Act as controlling trustee, the remuneration that is payable to the Official Trustee is \$50 for each period of 15 minutes, or part of 15 minutes, for work as controlling trustee.
- (2) The remuneration of the Official Trustee for work mentioned in subclause (1) is payable out of the estate.

3.08 Work in relation to personal insolvency agreements

- (1) Subject to subclause (2) and clause 3.10, if the Official Trustee acts under Part X of the Act as trustee of a personal insolvency agreement, the remuneration that is payable to the Official Trustee is 20% of the value of the personal insolvency agreement.
- (2) If the Official Trustee transfers administration of a personal insolvency agreement to, or is replaced by, a registered trustee, the remuneration that is payable to the Official Trustee for acting as trustee of the personal insolvency agreement is \$50 for each period of 15 minutes, or part of 15 minutes.
- (3) The remuneration of the Official Trustee for work mentioned in subclause (1) or (2) is payable out of the estate.

3.09 Work in relation to estate of bankrupt or administration of estate of deceased person

- (1) Subject to subclause (2), if the Official Trustee acts as trustee of the estate of a bankrupt, or of a deceased person in respect of whose estate an order for administration has been made under Part XI of the Act, the remuneration that is payable to the Official Trustee is \$3 000 plus 20% of the realised balance.
- (2) The remuneration that is payable to the Official Trustee for acting as trustee in the following circumstances is \$50 for each period of 15 minutes, or part of 15 minutes:
 - (a) if the Official Trustee transfers administration of the estate to, or is replaced by, a registered trustee before the bankruptcy is annulled under section 153A or 153B of the Act; or
 - (b) if a registered trustee is replaced by the Official Trustee in relation to work as trustee of the estate of a bankrupt, or of a deceased person in respect of whose estate an order for administration has been made under Part XI of the Act; or
 - (c) if a registered trustee transfers work mentioned in paragraph (b) to the Official Trustee.
- (3) The remuneration of the Official Trustee for work mentioned in subclause (1) or (2) is payable out of the estate.

3.10 Work performed in place of registered trustee

- (1) This clause applies if:
 - (a) a registered trustee is replaced by the Official Trustee in relation to work or administration of the kind mentioned in subclause 3.04 (1), 3.06 (1) or 3.08 (1); or
 - (b) a registered trustee transfers work or administration of the kind mentioned in subclause 3.04 (1), 3.06 (1) or 3.08 (1) to the Official Trustee.
- (2) The remuneration that is payable to the Official Trustee for work performed in place of a registered trustee is \$50 for each period of 15 minutes, or part of 15 minutes.

3.11 Remuneration in addition to realised balance amount

The remuneration that is payable to the Official Trustee for work performed under clause 3.03, subclause 3.04 (1) or clause 3.07 is in addition to any remuneration that is payable to the Official Trustee for work performed under subclause 3.09 (1).

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>.