



# **Bankruptcy (Fees and Remuneration) Determination 2010<sup>1</sup>**

*Bankruptcy Act 1966*

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

Dated 17 June 2010

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 2010*.

### 1.02 Commencement

This Determination commences on 1 July 2010.

### 1.03 Repeal

The *Bankruptcy (Fees and Remuneration) Determination 2008* is repealed.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 has the same meaning in this Determination as it has in 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))

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	40
2	Subsection 55 (9)	Inspection of a statement of affairs that accompanied a petition presented by a bankrupt	40
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	40
4	Subsection 57 (11)	Inspection of a statement of affairs that accompanied a petition presented by joint debtors	40
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	40
		(b) Inspection of the transcript of evidence given by a person who attends before the Official Receiver or an authorised officer	40
6	Paragraph 154A (3) (b)	Application for registration as a trustee (other than for renewal of registration)	2 000
7	Paragraph 155C (1) (b)	Registration as a trustee	1 200
8	Paragraph 155D (1) (b)	Extension of registration as a trustee	1 600
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	450
10	Paragraph 186B (2) (c)	Application for registration as a debt agreement administrator (other than for renewal of registration)	2 000
10A	Paragraph 186D (1) (b)	Registration as a debt agreement administrator	1 200
11	Paragraph 186D (1) (b)	Renewal of registration as a debt agreement administrator	1 600
12	Subsection 188B (3)	Inspection of a statement, or a copy of a statement, of a debtor's affairs	40

**Section 2.05**

Item	Provision of the Act	Matter	Fee (\$)
13	Subsection 226 (3)	Inspection of a document filed under Part X of the Act	40
14	Subsection 226 (4)	Obtaining an office copy of a document filed under Part X of the Act	40
15	Subsection 246 (5)	Inspection of a statement of affairs of a deceased person filed under section 246 of the Act	40

## 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 the Official Receiver inspecting material or giving an extract of that material under subregulation 13.06 (1) of the Regulations is \$35.
- (2) The fee for a person other than the Official Receiver inspecting material or giving an extract of that material under subregulation 13.06 (3) of the Regulations is \$11.

### 2.03                      Giving items of information

- (1) This section 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 is \$1.62.

*Examples of items of information*

- 1 Names of persons who are bankrupt.
- 2 Names of persons who have been discharged from bankruptcy.
- 3 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 \$440.

### 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 \$150.

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**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 \$40 (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**

The fee for a taxing officer to tax a claim for remuneration under regulation 8.09 of the Regulations is \$50 for each period of 15 minutes, or part of 15 minutes.

**2.09 Taxation of costs**

The fee for taxation of the bill of costs under section 167 of the Act is \$50 for each period of 15 minutes, or part of 15 minutes.

## Part 3                      Remuneration

### Division 3.1              Preliminary

#### 3.01              Realised balance

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

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

where:

**amount realised** means the total amount realised, or brought to credit, in the estate or for the debtor by the Official Trustee up to that time, other than any amounts paid to the trustee by creditors:

- (a) under an indemnity for costs; or
- (b) under section 50 of the Act.

**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 relation to their securities up to that time.

- (2) For subsection (1), property vested in the Official Trustee because of section 58 of the Act in connection with the estate of a bankrupt or deceased person is taken, unless the Court otherwise orders, to have been realised or brought to credit by the Official Trustee if:
- (a) the property is applied by the bankrupt, or a person acting on behalf of the bankrupt or deceased person, 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 the property.

#### 3.02              Restriction on amount of realised balance

- (1) For section 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 subsection (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

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- (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) if they are interest-bearing debts — interest accrued on and after that date on those 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**

- (1) This section applies 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.
- (2) The remuneration that is payable to the Official Trustee for work mentioned in subsection (1) 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 subsection (2) and section 3.10, if the Official Trustee performs work under Division 6 of Part IV of the Act, the remuneration 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 subsection (1) to, or is replaced by, a registered trustee, the remuneration payable to the Official Trustee for work performed is \$50 for each period of 15 minutes, or part of 15 minutes.
- (3) The remuneration payable to the Official Trustee is payable:
  - (a) for work under subsection (1) — out of the composition or scheme of arrangement; or
  - (b) for work under subsection (2) — out of the estate.

**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 payable to the Official Trustee for acting as trustee in a bankruptcy is \$3 200 plus 20% of the realised balance.

**3.06 Work in relation to debt agreements**

- (1) Subject to subsection (2) and section 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 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 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 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 section (1) is payable out of the estate.

**3.08 Work in relation to personal insolvency agreements**

- (1) Subject to subsection (2) and section 3.10, if the Official Trustee acts under Part X of the Act as trustee of a personal insolvency agreement, the remuneration 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 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 subsection (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) If the Official Trustee acts as trustee of the estate of a bankrupt, or of a deceased person for whose estate an order for administration has been made under Part XI of the Act, the remuneration payable to the Official Trustee is \$3 200 plus 20% of the realised balance.

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- (2) If the Official Trustee acts as trustee in any of the following circumstances, the remuneration payable 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;
  - (b) if a registered trustee is replaced by the Official Trustee for work as trustee of the estate of a bankrupt, or of a deceased person for whose estate an order for administration has been made under Part XI of the Act;
  - (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 this section is payable out of the estate.

### 3.10 Work performed in place of registered trustee

- (1) This section applies if:
  - (a) a registered trustee is replaced by the Official Trustee for work or administration of the kind mentioned in subsection 3.04 (1), 3.06 (1) or 3.08 (1); or
  - (b) a registered trustee transfers work or administration of the kind mentioned in subsection 3.04 (1), 3.06 (1) or 3.08 (1) to the Official Trustee.
- (2) The remuneration 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 payable to the Official Trustee for work performed under section 3.03, subsection 3.04 (1) or section 3.07 is in addition to any remuneration payable to the Official Trustee for work performed under subsection 3.09 (1).

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### 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>.