

EXPLANATORY STATEMENT

Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2015

Summary

The *Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2015* (the Determination) is made under section 7 of the *Bankruptcy (Estate Charges Act) 1997* (the Act) by the Attorney-General.

The instrument determines the percentage payable as the realisations charge on amounts received by trustees, controlling trustees and debt agreement administrators.

Background

The Australian Financial Security Authority (AFSA) has responsibility for the administration and regulation of Australia's personal insolvency system. In the 2013-14 Mid-Year Economic and Fiscal Outlook, Government announced AFSA to be funded completely through cost recovery. AFSA must therefore ensure the pricing for its activities cover the efficient costs of performing them. The revenue from estate charges covered in this determination is used to fund activities such as:

- Processing Debtor Petitions, Creditor Petitions and Declarations of Intentions;
- Debt Agreements – Compliance and Education;
- Issuing Official Receiver notices under section 77CA of the *Bankruptcy Act 1966*;
- Information provision;
- Regulation of Trustees and Debt Agreement Administrators (education, monitoring, inspections and compliance)
- Administration of non fee-paying bankruptcies; and
- Investigation of bankruptcy offences.

Consistent with the Australian Government Cost Recovery Guidelines, a Cost Recovery Impact Statement (CRIS) was produced to provide transparency over the setting of fee prices and remuneration rates. The CRIS is also a means of consultation over the fees and remuneration presented in the Determination. The CRIS is available to view on AFSA's internet site.

Consultation

A review of AFSA's activities and costs has been undertaken as part of a Cost Recovery Impact Statement (CRIS) on AFSA's insolvency and trustee services that was developed in compliance with the Australian Government Cost Recovery Guidelines. The formal consultation period for the CRIS commenced on 10

November 2014 and closed on 5 December 2014. During this process, the draft CRIS was made available on AFSA's internet site. The draft CRIS was brought to the attention of stakeholders subscribing to AFSA's stakeholder mailing lists. Issues raised by stakeholders during the consultation period were used in finalising the CRIS.

Regulation Impact Analysis

The Determination has been assessed against *The Australian Government Guide to Regulation* as not requiring the production of a regulation impact statement.

Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at **Attachment A** to this Explanatory Statement.

Notes on Sections

Section 1 – Name of Determination

Section 1 provides for the citation of the *Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2015*.

Section 2 – Commencement

The Determination commences on 1 July 2015.

Section 3 – Repeal

Commencement of the Determination ends the application of the *Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2014*.

Section 4 – Amount of charge payable

Section 4 sets out the percentage payable as the realisations charge on amounts received by trustees, controlling trustees and debt agreement administrators. The amount payable is increased from 6.0% to 7.0%.

Attachment A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument determines the percentage payable as the realisations charge on amounts received by trustees, controlling trustees and debt agreement administrators.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.