

Bankruptcy (Fees and Remuneration) Determination 2015

made under subsection 316(1) of the

Bankruptcy Act 1966

**Compilation No. 1**

**Compilation date:** 1 April 2021

**Includes amendments up to:** F2021L00265

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**About this compilation**

**This compilation**

This is a compilation of the *Bankruptcy (Fees and Remuneration) Determination 2015* that shows the text of the law as amended and in force on 1 April 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1 Preliminary

1.01 Name of Determination

 This Determination is the *Bankruptcy (Fees and Remuneration) Determination 2015.*

1.04 Transitional

 Despite the repeal of the *Bankruptcy (Fees and Remuneration) Determination 2010*, sections 2.08 and 2.09 of that Determination continue to apply to a bankruptcy if the date of the bankruptcy is before 1 December 2010.

*Note*   The *Bankruptcy (Fees and Remuneration) Determination 2010*, provided for a fee of $50 for each period of 15 minutes, or part of 15 minutes:

(a) under section 2.08 — for a taxing officer to tax a claim for remuneration under regulation 8.09 of the *Bankruptcy Regulations 1996*; or

(b) under section 2.09 — for taxation of the bill of costs under section 167 of the Act.

1.05 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 2021*.

 (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****Index*** means the National Personal Insolvency Index established under section 73 of the Regulations.

1.06 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).

Part 2 Fees exempt from GST

Division 2.1 Fees for certain provisions of the Act

2.01 Inspection, application etc

 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 | 45 |
| 2 | Subsection 55 (9) | Inspection of a statement of affairs that accompanied a petition presented by a bankrupt | 45 |
| 3 | Subsection 56G (2) | Inspection of a statement of affairs that was given to an Official Receiver in connection with a debtor’s petition against a partnership | 45 |
| 4 | Subsection 57 (11) | Inspection of a statement of affairs that accompanied a petition presented by joint debtors | 45 |
| 5 | Subparagraph 77C (3) (b) (iii) |  (a) Inspection of notes taken down by a person who attends before an Official Receiver or an authorised officer | 45 |
|  |  |  (b) Inspection of the transcript of evidence given by a person who attends before an Official Receiver or an authorised officer | 45 |
| 6 | Paragraph 154A (3) (b) | Application for registration as a trustee (other than for renewal of registration) | 2 200 |
| 7 | Paragraph 155C (1) (b) | Registration as a trustee | 1 300 |
| 8 | Paragraph 155D (1) (b) | Extension of registration as a trustee | 1 700 |
| 9 | Subsection 163A (2) | Exercise by an Official Receiver, or officer assisting an 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 | 480 |
| 10 | Paragraph 186B (2) (c) | Application for registration as a debt agreement administrator (other than for renewal of registration) | 2 200 |
| 10A | Paragraph 186D (1) (b) | Registration as a debt agreement administrator | 1 300 |
| 11 | Paragraph 186D (1) (b) | Renewal of registration as a debt agreement administrator | 1 700 |
| 12 | Subsection 188B (3) | Inspection of a statement, or a copy of a statement, of a debtor’s affairs | 45 |
| 13 | Subsection 226 (3) | Inspection of a document filed under Part X of the Act | 45 |
| 14 | Subsection 226 (4) | Obtaining an office copy of a document filed under Part X of the Act | 45 |
| 15 | Subsection 246 (5) | Inspection of a statement of affairs of a deceased person filed under section 246 of the Act | 45 |

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 an Official Receiver inspecting material and giving an extract of that material under subsection 84(2) of the Regulations is $45.

 (2) The fee for a person other than an Official Receiver inspecting material or giving an extract of that material under subsection 84(3) of the Regulations is $15.

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 $6.80.

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 $470.

2.05 Extending period to serve bankruptcy notice

 The fee for making an application for a further period mentioned in paragraph 10(1)(b) of the Regulations within which to serve a bankruptcy notice is $160.

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 $45 (whether or not the person obtains a copy of the composition or scheme).

2.07 Debt agreement proposals

 (1) The fee for a person mentioned in subsection (2) for presentation or lodgement of a debt agreement proposal under section 185C of the Act is $200.

 (2) The person is a person who in the 12 months before presentation or lodgement of the debt agreement proposal did not receive any of the payments mentioned in the table.

| Item | Payment |
| --- | --- |
| 1.1 | Australian Government Disaster Recovery Payment under the *Social Security Act 1991* (Cth) |
| 1.2 | Disaster Income Recovery Subsidy (ex-gratia payment under the Commonwealth executive power) |
| 1.3 | The following payments from the Premier’s Disaster Relief Appeal Fund under the *Trusts Act 1973* (Qld): (a) Emergency Assistance payment; (b) Structural Damage Assistance – Destroyed Home |
| 1.4 | The following payments under the *Natural Disaster Relief and Recovery Arrangements Determination 2007* and the *Appropriation Act 2010* (Qld): (a) Cyclone Assistance Grant for Small Business; (b) Emergent Assistance Grant; (c) Essential Household Contents Grant; (d) Essential Services Safety and Reconnection Grant; (e) Flood Assistance Grant for Small Business; (f) Low Interest Loan for Primary Producer; (g) Low Interest Loan for Small Business; (h) Structural Assistance Grant |
| 1.5 | The following payments under the *Natural Disaster Relief and Recovery Arrangements Determination 2007* and the *Appropriation (2010/2011) Act 2010*(Vic): (a) Clean-up and Restoration Grant; (b) Emergency Grant; (c) Re-establishment Grant; (d) Temporary Living Expenses Grant |
| 1.6 | Disaster Relief Grant under the NSW Natural Disaster Relief Scheme, the *Natural Disaster Relief and Recovery Arrangements Determination 2007* and the *Appropriation Act 2010* (NSW) |
| 1.7 | Assistance under the Western Australia Natural Disaster Relief and Recovery Arrangements, the *Natural Disaster Relief and Recovery Arrangements Determination 2007* and the *Appropriation (Consolidated Account) Capital 2010-11 Act 2010* (WA) |
| 1.8 | The following payments under the *Natural Disaster Relief and Recovery Arrangements Determination 2007* and the *Consolidated Fund Appropriation Act (No. 1) 2010* (Tas): (a) Essential Household Items Grant; (b) Repair, Restoration and Clean Up Grant; (c) Temporary Living Expenses Grant |
| 1.9 | The following payments under the *Natural Disaster Relief and Recovery Arrangements Determination 2007* and the *Appropriation Act 2010* (SA): (a) Emergency Grant; (b) Re-establishment Grant |

 (3) In this section:

***Natural Disaster Relief and Recovery Arrangements Determination 2007*** means the determination with that title, made by the Minister for Local Government, Territories and Roads under section 15 of the *Appropriation Act (No. 2) 2006–2007* (Cth), as in force on the day this section commences.

2.10 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 an Official Receiver under subsection 188 (5) of the Act is $240.

2.11 Making request for consent to leave Australia

 (1) The fee for a person mentioned in subsection (2) in relation to making a request of a kind mentioned in subsection 110(1) of the Regulations is $150.

 (2) The person is a person who in the 12 months before making the request did not receive any of the payments mentioned in the table in section 2.07.

Part 2A Fees not exempt from GST

2A.01 Publication of notice of creditors’ meeting

 (1) This section applies if a trustee or a controlling trustee chooses to publish on the website of the Australian Financial Security Authority a notice of a meeting of creditors called or convened under section 64 or 73 of the Act or under an authority under section 188 of the Act.

 (2) The fee for a request by the trustee or controlling trustee that the notice be published on the website is $260.

Part 3 Remuneration not exempt from GST

Division 3.1 Preliminary

3.01 Realised balance

 (1) For this Part, ***realised balance***, for an estate or debtor at a time, is the lesser of:

 (a) amount realised – (business costs + securities); and

 (b) costs of administration + debts;

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.

***costs of administration*** means the proper costs, charges and expenses of administration of the estate, 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) if they are interest‑bearing debts — interest accrued on and after that date on those debts.

***securities*** means the amount paid to secured creditors in relation to their securities up to that time.

Example

If the realised balance calculated under paragraph (a) is $3 500, but under paragraph (b) the costs of administration and the amount of debts totals only $3 000, the realised balance is taken to be $3 000.

 (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.

Division 3.2 Remuneration not exempt from GST

3.03 Work in relation to carrying on business or taking control of property under section 50 of the 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 $62.50 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 $62.50 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 $4 000 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 $62.50 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 $62.50 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 $62.50 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 $4 000 plus 20% of the realised balance.

 (2) If the Official Trustee acts as trustee in any of the following circumstances, the remuneration payable is $62.50 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 or debt agreement administrator

 (1) This section applies if:

 (a) a registered trustee or debt agreement administrator 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 or debt agreement administrator 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 or a debt agreement administrator is $62.50 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, section 3.04 or section 3.07 is in addition to any remuneration payable to the Official Trustee for work performed under subsection 3.09 (1).

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Bankruptcy (Fees and Remuneration) Determination 2015 | 13 May 2015 (F2015L00680) | 1 July 2015 (s 1.02) |  |
| Bankruptcy (Fees and Remuneration) Amendment (Consequential Amendments) Determination 2021 | 19 Mar 2021 (F2021L00265) | 1 Apr 2021 (s 2(1) item 1) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Part 1** |  |
| s 1.02  | rep LA s 48D |
| s 1.03  | rep LA s 48C |
| s 1.04  | am F2021L00265 |
| s 1.05  | am F2021L00265 |
| **Part 2** |  |
| s 2.02  | am F2021L00265 |
| s 2.05  | am F2021L00265 |
| s 2.11  | am F2021L00265 |