



Bankruptcy (Fees and Remuneration) Determination 2015

Bankruptcy Act 1966

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

Dated 30 April 2015

GEORGE BRANDIS QC
Attorney-General

		Page
Contents		
Part 1	Preliminary	3
	1.01 Name of Determination	3
	1.02 Commencement	3
	1.03 Repeal	3
	1.04 Transitional	3
	1.05 Definitions	3
	1.06 Amounts include GST	4
Part 2	Fees exempt from GST	5
Division 2.1	Fees for certain provisions of the Act	5
	2.01 Inspection, application etc	5
Division 2.2	Other fees under paragraph 316 (1) (b) of the Act	6
	2.02 Inspecting or obtaining extracts of material in the Index	6
	2.03 Giving items of information	6
	2.04 Issuing bankruptcy notice	6
	2.05 Extending period to serve bankruptcy notice	6
	2.06 Inspecting or copying composition or arrangement lodged with trustee	7
	2.07 Debt agreement proposals	7
	2.10 Giving of authority and statement of affairs	8
	2.11 Making request for consent to leave Australia	8
Part 2A	Fees not exempt from GST	9
	2A.01 Publication of notice of creditors' meeting	9
Part 3	Remuneration not exempt from GST	10
Division 3.1	Preliminary	10
	3.01 Realised balance	10
Division 3.2	Remuneration not exempt from GST	11
	3.03 Work in relation to carrying on business or taking control of property under section 50 of the Act	11
	3.04 Work in relation to compositions or arrangements with creditors	11
	3.05 Work in relation to bankruptcy that is annulled	12
	3.06 Work in relation to debt agreements	12
	3.07 Work as controlling trustee	12
	3.08 Work in relation to personal insolvency agreements	12
	3.09 Work in relation to estate of bankrupt or administration of estate of deceased person	12
	3.10 Work performed in place of registered trustee or debt agreement administrator	13
	3.11 Remuneration in addition to realised balance amount	13

Part 1 Preliminary

1.01 Name of Determination

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

1.02 Commencement

This Determination commences on 1 July 2015.

1.03 Repeal

The *Bankruptcy (Fees and Remuneration) Determination 2014* is repealed.

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 Regulations; 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 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.

Section 1.06

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

Section 2.02

Item	Provision of the Act	Matter	Fee (\$)
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 subregulation 13.06(1) 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 subregulation 13.06(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 4.02A (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 <i>Social Security Act 1991</i> (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 <i>Trusts Act 1973</i> (Qld): <ol style="list-style-type: none">(a) Emergency Assistance payment;(b) Structural Damage Assistance – Destroyed Home
1.4	The following payments under the <i>Natural Disaster Relief and Recovery Arrangements Determination 2007</i> and the <i>Appropriation Act 2010</i> (Qld): <ol style="list-style-type: none">(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 <i>Natural Disaster Relief and Recovery Arrangements Determination 2007</i> and the <i>Appropriation (2010/2011) Act 2010</i> (Vic): <ol style="list-style-type: none">(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 <i>Natural Disaster Relief and Recovery Arrangements Determination 2007</i> and the <i>Appropriation Act 2010</i> (NSW)

Section 2.10

Item	Payment
1.7	Assistance under the Western Australia Natural Disaster Relief and Recovery Arrangements, the <i>Natural Disaster Relief and Recovery Arrangements Determination 2007</i> and the <i>Appropriation (Consolidated Account) Capital 2010-11 Act 2010</i> (WA)
1.8	The following payments under the <i>Natural Disaster Relief and Recovery Arrangements Determination 2007</i> and the <i>Consolidated Fund Appropriation Act (No. 1) 2010</i> (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 <i>Natural Disaster Relief and Recovery Arrangements Determination 2007</i> and the <i>Appropriation Act 2010</i> (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 to the Official Trustee for consent to leave Australia under regulation 5.02 of the *Bankruptcy Regulations 1996* 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.

Section 3.01

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.

Section 3.04

- (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.

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 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.

Section 3.11

- (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).

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>.