

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Bankruptcy Act 1966

Bankruptcy Amendment (Fees) Regulations 2017

The *Bankruptcy Act 1966* (the Act) provides for bankruptcy and personal insolvency laws in Australia.

Section 315 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Bankruptcy Regulations 1996* (the Principal Regulations) refer to the regulations that deal with bankruptcy and personal insolvency.

The *Bankruptcy Amendment (Fees) Regulations 2017* (the Regulations) amends the Principal Regulations to provide for the Inspector-General in Bankruptcy (Inspector-General) to waive or reduce the fee for obtaining information from the National Personal Insolvency Index (NPII) in certain circumstances.

The amendments contained in the Regulations will encourage new agreements between the Inspector-General and prospective Personal Insolvency Reporting Service clients by reducing the initial on-boarding costs for those entities, with the aim of increasing competition in the credit report market and strengthening the credit reporting regime.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The amendments have been informed by consultation with the Australian Financial Security Authority (AFSA).

The Regulations is an instrument for the purposes of the *Legislation Act 2003*.

The Office of Best Practice Regulation was consulted and a Regulation Impact Statement is not required. No further consultation was undertaken for the Regulations as it is a minor technical amendment and does not significantly alter the operation of the Principal Regulations or the Act.

The Regulations commence on the day after registration.

Authority: Section 315 of the
Bankruptcy Act 1966

Statement of Compatibility with Human Rights

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

Bankruptcy Amendment (Fees) Regulations 2017

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

Currently, subregulation 16.11(5) of the Principal Regulations provides that the Inspector-General in Bankruptcy may waive or remit the whole or part of any ‘fee’. Fee is defined in paragraph 16.11(5)(c) and refers to, inter alia, a number of fees in the *Bankruptcy (Fees and Remuneration) Determination 2015* (the Determination).

Clause 2.03 of the Determination applies if there is an agreement between the Inspector-General and a corporation, entity or government department or agency (often referred to as a Personal Insolvency Reporting Service (PIRS) client) under which the Inspector-General undertakes to give to the other party items of information entered in the NPII. At present, the fee referred to in clause 2.03 of the Determination is not capable of being waived or remitted.

The Regulations insert a reference to clause 2.03 of the Determination into paragraph 16.11(5)(c) of the Principal Regulations. This will allow the Inspector-General to waive or reduce the fee for obtaining NPII information for PIRS clients. The objective of this amendment is to strengthen the credit reporting regime by increasing competition in the credit report market. This will improve the accuracy of credit risk assessments which may result in lower rates of over-indebtedness and default, greater competition in the credit market and less expensive credit.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Article 17 of the *International Covenant on Civil and Political Rights* provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. The right to privacy may be engaged if the Regulations involve the collection, security, use, disclosure or publication of personal information.

The Regulations do not engage Article 17 as it does not insert a new right or extend the existing right to collect personal information. Rather, it provides for the ability of the Inspector-General to waive or reduce the fee for obtaining information from the NPII in certain circumstances.

Conclusion

The Regulations are compatible with human rights.

Details of the Bankruptcy Amendment (Fees) Regulations 2017

This Attachment sets out further details of the *Bankruptcy Amendment (Fees) Regulations 2017* (the Regulations). All references to a section should be taken as a reference to a section of the Regulations unless otherwise stated.

Section 1 – Name

This section provides that the title of the Regulations is the *Bankruptcy Amendment (Fees) Regulations 2017*.

Section 2 – Commencement

This section provides for the whole of the Regulations to commence the day after it is registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Bankruptcy Act 1966* (the Act).

Section 4 – Schedules

This section provides that the *Bankruptcy Regulations 1996* (the Principal Regulations) specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Schedule 1 – Amendments

Bankruptcy Regulations 1996

Schedule 1 of the Regulations sets out amendments to the Principal Regulations as follows:

Item 1 – Subregulation 16.11(5) (paragraph (c) of the definition of fee)

Previously, Divisions 2 and 3 of Part 16 of the Principal Regulations provided for the fees in relation to the Act, including remuneration of the Official Trustee. As a result of amendments to the Act by the *Bankruptcy Legislation Amendment (Fees and Charges) Act 2006*, the remuneration of the Official Trustee and fees in relation to the Act are currently set out in the *Bankruptcy (Fees and Remuneration) Determination 2015* (the Determination).

Notwithstanding, Division 2 of Part 16 of the Principal Regulations continues to provide for matters relevant to fees.

Regulation 16.11 of the Principal Regulations provides that the Inspector-General in Bankruptcy may waive or remit the whole or part of any ‘fee’. Fee is defined in paragraph 16.11(5)(c) and refers to, inter alia, a number of fees in the Determination. At present, the fee referred to in clause 2.03 of the Determination is not capable of being waived or remitted.

Clause 2.03 of the Determination applies if there is an agreement between the Inspector-General and a corporation, entity or government department or agency under which the Inspector-General undertakes to give to the other party items of information entered in the National Personal Insolvency Index (NPII). The NPII contains information about individuals who have been subject to proceedings under the Act from August 1928. The fee for each item of information provided to the other party in accordance with the agreement is \$6.80. Examples of information provided include: names of persons who are bankrupt; names of persons who have been discharged from bankruptcy; and names of persons against whose discharge from bankruptcy a notice of objection has been lodged.

The Inspector-General has agreements with a small number of entities, referred to as Personal Insolvency Reporting Service (PIRS) clients, under which those entities are granted access to data from the NPII at the fee provided for in clause 2.03 of the Determination. Some of these PIRS clients use the data from the NPII to include in credit reports for their clients, who may be financial institutions and other lending bodies. The credit reports are used to determine eligibility and pricing for credit cards, home mortgage loans, automobile loans, and other types of consumer financial products. Inclusion of NPII data in credit reports supports responsible lending practices.

The Australian Financial Security Authority (AFSA) is approached from time to time by entities wanting to become new PIRS clients. When on-boarding a new PIRS client, the entity usually seeks a download of historical NPII data, which may extend back 5 or 10 years but could potentially include all data on the NPII. Given the number of items of information on the NPII that can be made available to PIRS clients (presently approximately 160,000 items), the on-boarding costs can be substantial and far greater than the actual cost of AFSA making the historical data available in bulk. This currently acts as a significant barrier to entry for new PIRS clients. Further, existing PIRS clients sometimes request a data 'refresh' of the information contained on the NPII. These data refreshes may be undertaken because data on the NPII is found to be incorrect or corrupted. Refreshes benefit both the PIRS clients and AFSA by ensuring that the PIRS clients have the most up-to-date and accurate NPII data. At present, AFSA is obliged to charge for these refreshes at \$6.80 per item of information. Despite \$6.80 being an appropriate fee for individual requests for new lines of data, it does not accurately represent the cost to AFSA of on-boarding PIRS clients or providing the refreshed data, given that it is conducted in bulk.

Item 1 of Schedule 1 inserts a reference to clause 2.03 of the Determination into paragraph 16.11(5)(c) of the Principal Regulations, to provide for the Inspector-General to waive or reduce the \$6.80 per item of information fee in PIRS on-boarding or data refresh situations. Expanding the Inspector-General's ability to waive or reduce the fees will encourage new PIRS entrants and increase competition in the credit report market where NPII data is used. This will strengthen the credit reporting regime by improving the accuracy of credit risk assessments, potentially resulting in lower rates of over-indebtedness and default, greater competition in the credit market and less expensive credit.