

**BANKRUPTCY (FEES AND REMUNERATION) AMENDMENT  
(CONSEQUENTIAL AMENDMENTS) DETERMINATION 2021**

**EXPLANATORY STATEMENT**

Issued by authority of the Assistant Minister to the Attorney-General

under subsection 316(1) of the *Bankruptcy Act 1966*.

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The Determination amends the Bankruptcy (Fees and Remuneration) Determination 2015, to reflect that the *Bankruptcy Regulations 1996* sunset on the 1 April 2021 and were replaced by the *Bankruptcy Regulations 2021*. As such, the Determination makes minor amendments to the Bankruptcy (Fees and Remuneration) Determination 2015 to ensure that all references to the *Bankruptcy Regulations 1996* are appropriately updated.

The *Bankruptcy Act 1966* (the Act) regulates Australia's personal insolvency system and provides a framework to allow people in severe financial stress to discharge unmanageable debts while providing for the realisation of a debtor's available assets for distribution to affected creditors.

As provided under subsection 316(1) of the Act, the Bankruptcy (Fees and Remuneration) Amendment (Consequential Amendments) Determination 2021 (the Determination) determines the fees and remuneration payable for the purposes of the Act. The Determination does not list those matters that do not incur a fee or services for which a levy is charged.

The Australian Financial Security Authority (AFSA) has responsibility for the administration and regulation of Australia's personal insolvency system. As AFSA is funded completely through a cost recovery model, it must ensure the pricing for its activities cover the efficient costs of performing them. The activities AFSA performs for which a fee or remuneration is payable under the Determination include:

- processing requests to the Official Trustee for consent to travel outside Australia
- processing debt agreement proposals
- processing personal insolvency agreement proposals
- extension of bankruptcy notices
- issuing Official Receiver notices
- regulation of trustees and debt agreement administrators, including interviewing applicants and registration
- advertising creditors' meetings on AFSA's website, and

- estate administration by the Official Trustee.

## **CONSULTATION**

The Determination has been informed by close collaboration with AFSA.

## **REGULATION IMPACT STATEMENT**

The *Sunsetting legislative instruments guidance note*, issued by the Office of Best Practice Regulation, stipulates that agencies can self-assess the performance of an instrument. The Attorney-General's Department has assessed that the Determination is operating effectively and efficiently and that a Regulation Impact Statement is not required.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **Bankruptcy (Fees and Remuneration) Amendment (Consequential Amendments) Determination 2021**

This Legislative Instrument (the Determination) 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**

The Determination makes minor amendments to the Bankruptcy (Fees and Remuneration) Determination 2015, to reflect that the *Bankruptcy Regulations 1996* sunset on the 1 April 2021 and were replaced by the *Bankruptcy Regulations 2021*.

This Bankruptcy (Fees and Remuneration) Determination 2015, as amended by this Determination, determines the fees and remuneration that are payable for the purposes of the *Bankruptcy Act 1966* (the Act).

The Australian Financial Security Authority (AFSA) has responsibility for the administration and regulation of Australia's personal insolvency system. As AFSA is funded completely through a cost recovery model, it must ensure the pricing for its activities cover the efficient costs of performing them. The Bankruptcy (Fees and Remuneration) Determination 2015 prescribes the fees and remuneration payable for certain of AFSA's activities under the Act, including but not limited to: processing requests to the Official Trustee for consent to travel outside Australia; processing debt agreement proposals; extending bankruptcy notices; regulating trustees and debt agreement administrators; and advertising creditors' meetings on AFSA's website.

#### **Human rights implications**

As this Determination makes only minor, consequential amendments to the Bankruptcy (Fees and Remuneration) Determination 2015, it does not engage or impact any of the applicable rights or freedoms.

#### **Conclusion**

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

## **NOTES ON SECTIONS**

### **PART 1 – Preliminary**

#### **Section 1 – Name**

Section 1 provides that the title of the Determination is the Bankruptcy (Fees and Remuneration) Amendment (Consequential Amendments) Determination 2021.

#### **Section 2 – Commencement**

Section 2 provides for the commencement of provisions of the Determination, as set out in the table. Table item 1 provides that the whole of the instrument commences at the same time as the *Bankruptcy Regulations 2021* commence. Those Regulations commenced on 1 April 2021.

#### **Section 3 – Authority**

Section 3 provides that the Determination is made under subsection 316(1) of the *Bankruptcy Act 1966*.

#### **Section 4 - Schedules**

Section 4 provides that each instrument that is specified in a Schedule to the Determination is amended or repealed as set out in the applicable Schedule.

### **SCHEDULE 1 – Amendments**

#### ***Bankruptcy (Fees and Remuneration) Determination 2015***

##### **Section 1 – Section 1.04 (paragraph (a) of the note)**

Section 1.04 of the Bankruptcy (Fees and Remuneration) Determination 2015 provides transitional arrangements, to ensure that the correct provisions and fees apply in relation to historical bankruptcies with a date of bankruptcy before 1 December 2010. As such, section 1 of the Determination clarifies that the relevant provision applicable to those historical bankruptcies is regulation 8.09 of the *Bankruptcy Regulations 1996*.

##### **Section 2 – Subsection 1.05(1) (definition of *Regulations*)**

Section 2 provides that the definition of Regulations under the Determination is the *Bankruptcy Regulations 2021*. This ensures that any references made in the Determination to the Regulations are taken to refer to the current and in-force Bankruptcy Regulations.

### **Section 3 – Subsection 1.05(2) (note 2)**

Section 3 stipulates that in note 2 of subsection 1.05(2), a reference to the Index is taken to mean the National Personal Insolvency Index as established under section 73 of the Regulations. This consequential amendment simply updates the Determination to ensure that it references the correct and up-to-date provision in the *Bankruptcy Regulations 2021*.

### **Section 4 – Subsection 2.02(1)**

Section 4 stipulates that the reference to subregulation 13.06(1) of the Regulations is replaced with a reference to the equivalent provision in the *Bankruptcy Regulations 2021*, being subsection 84(2). This consequential amendment simply updates the Determination to ensure that it references the correct and up-to-date provision in the Regulations.

### **Section 5 – Subsection 2.02(2)**

Section 5 stipulates that the reference to subregulation 13.06(3) of the Regulations is replaced with a reference to the equivalent provision in the *Bankruptcy Regulations 2021*, being subsection 84(3). This consequential amendment simply updates the Determination to ensure that it references the correct and up-to-date provision in the Regulations.

### **Section 6 – Section 2.05**

Section 6 stipulates that the reference to paragraph 4.02A(b) of the Regulations is replaced with a reference to the equivalent provision in the *Bankruptcy Regulations 2021*, being paragraph 10(1)(b). This consequential amendment simply updates the Determination to ensure that it references the correct and up-to-date provision in the Regulations.

### **Section 7 – Subsection 2.11(1)**

Section 110 of the *Bankruptcy Regulations 2021* provides that a fee is payable by a bankrupt to the Official Trustee, when making a request for consent to leave Australia.

Section 7 stipulates that the reference in subsection 2.11(1) to ‘the Official Trustee for consent to leave Australia under regulation 5.02 of the *Bankruptcy Regulations 1996*’, is replaced with ‘of a kind mentioned in subsection 110(1) of the Regulations’.

This consequential amendment simply updates the Determination to ensure that it references the correct and up-to-date provision in the Regulations, and simplifies the language of the reference.