Australian Government
Australian Financial Security Authority

AUSTRALIAN FINANCIAL SECURITY AUTHORITY
PERSONAL INSOLVENCY REGULATOR

December 2016, Volume 14, Issue 4

Supporting better outcomes for consumers, business and the community.

www.afsa.gov.au

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December 2016, Volume 14, Issue 4

This client newsletter is provided by AFSA's independent Regulation and Enforcement division and is published each quarter to registered trustees, registered debt agreement administrators, controlling trustees, major creditors and financial counsellors.

In keeping with AFSA's fourth corporate goal: quality information, this newsletter aims to inform practitioners of relevant changes to personal insolvency laws, both legislative and case law, and discusses areas of practice and Inspector-General requirements. For more information about AFSA's vision, purpose and goals, see our Corporate Plan 2016–17.

Articles are welcome and can be forwarded by email to neil.unantenne@afsa.gov.au.

AFSA actively seeks contributions from outside parties and the views expressed therein are not necessarily endorsed by, or reflect the views of, the Inspector-General in Bankruptcy, Official Trustee or the Official Receiver.

This issue of the Personal Insolvency Regulator may be cited as (2016)14(4) Personal Insolvency Regulator.

Have you seen our new-look AFSA website?

We recently launched our new AFSA website, and we're very happy with the results. The presentation has changed, but the information is the same; this site can now be accessed on all mobile devices.

The website displays information on common queries like 'I can't pay my debts', or 'I'm buying a second-hand car' prominently on the homepage. We hope this makes it easier for our clients and for you when you're directing people to information on the website.

We've used plain language and a less cluttered design—and we've met the stringent demands of the Government's Digital Service Standard, which is very pleasing.

As you become more familiar with the website, we'd like to hear your views. Every page on the website has a 'has this information been helpful?' feature where you can tell us if you found the page useful or not.

2015–16 AFSA annual report

AFSA has released its annual report for 2015–16. The report details our performance in achieving AFSA's purpose to provide improved and equitable financial outcomes for consumers, business and the community through application of bankruptcy and personal property securities laws, regulation of personal insolvency practitioners, and trustee services. The report also contains specific information about AFSA's administration of the *Bankruptcy Act 1966* and *Personal Property Securities Act 2009*.

Official Receiver notices now online

We were pleased to launch our new streamlined online service for Official Receiver notice (ORN) applications in September 2016. The new online form is available through the Practitioner AER online portal on the AFSA website.

This form has been designed to be intuitive and user friendly, to allow trustees and their staff to make applications quickly and easily.

GovHack

This year, AFSA was a sponsor of the annual open data competition GovHack, where teams have 46 hours to create a project page, proof of concept and a video that tells the story of how government open data can be reused. The best entrants are awarded cash prizes. The GovHack organisers 'believe that access to data drives the information age and the digital economy'.

A Personal Property Securities (PPS) 'bounty' prize was set up and the winning entrant used Personal Property Security Register (PPSR) data as a proxy for business investment, combined it with taxation, employment, population and accommodation data to derive relative opportunity in regional areas.

New YouTube videos

We recently released two new videos on the Personal Property Securities Register (PPSR). 'Bob gets a loan' provides an overview of key PPSR terms and concepts through a story on Bob purchasing a second-hand car. 'Check before you buy' describes the PPSR and what it can be used for. Both videos are available to view on AFSA's YouTube channel.

Recent statistical releases

AFSA published two insolvency statistical releases in October 2016.

On 14 October 2016, we released the personal insolvency statistics for the September quarter 2016.

Total personal insolvencies increased by 1.1% in the September quarter 2016 compared to the September quarter 2015. Despite recent rises, the number of personal insolvencies in the September quarter 2016 remains below the peaks reached in 2008-09 and 2009–10. The most common cause was given as unemployment or loss of income, and excessive use of credit.

Overall, bankruptcies fell 3.5% and personal insolvency agreements increased by 18.2%.

Debt agreements increased by 7.3% in the September quarter 2016, and are the second highest on record, with 3,307 debt agreements. The highest number of debt agreements was in the June quarter 2016 (3,329 debt agreements). Debt agreements reached record highs in Western Australia, South Australia and Northern Territory in the September quarter 2016.

There was a rise in debtors that entered a business related personal insolvency, from 17.5% in the June quarter, to 18.4% in the September quarter. Economic conditions was the most common business-related cause.

On 27 October 2016, we released the regional personal insolvency statistics for the September quarter 2016. Full details are on our website.

Personal Property Securities statistics

On 9 November 2016, we released the Personal Property Securities Register (PPSR) statistics for the September quarter 2016.

There were 2,168,436 searches conducted on the PPSR in the September quarter 2016. This is a fall compared to the September quarter 2015, when there were 2,168,989 searches on the PPSR. The number of searches conducted on the PPSR in the September quarter 2016 fell 0.5% compared to the June quarter 2016.

There were 536,847 non-transitional registrations created on the PPSR in the September quarter 2016. The number of non-transitional registrations created fell 0.5% in the September quarter 2016 compared to the September quarter 2015, when there were 539,722 non-transitional registrations created. The number of non-transitional registrations created in the September quarter 2016 fell 1.5% compared to the June quarter 2016.

There were 271,250 amendments to registrations and 371,367 registrations were discharged or removed from the PPSR.

Motor vehicles were the most common collateral class listed on registrations on the PPSR, and made up 49.5% of the total registrations.

Commercial property remains the most common type of collateral. As at 30 September 2016, 6,731,850 current registrations on the PPSR were of this collateral type.

You can view full details of all our statistical releases on our website (www.afsa.gov.au).

Lastly—best wishes for the Christmas season!

We've come to the end of another successful year at AFSA, with our staff at all locations looking forward to a break! I hope you are also looking forward to a restful holiday with family and friends, and that you stay safe on the roads if you're travelling. AFSA will be closed from the close of business on 24 December, and will re-open for business on 3 January 2017.

We look forward to working with you in 2017.

Veronique Ingram PSM
Chief Executive and Inspector-General, AFSA

Engaging 'lead generating' firms

AFSA has recently been informed that some practitioners have been approached by lead generating firms who 'cold call' debtors to establish whether they are interested in entering a debt agreement or other form of insolvency. The lead generating firm then offer to sell leads for those debtors to the practitioner for payment of a commission or fee.

The practice is discouraged by the Australian Restructuring Insolvency & Turnaround Association (ARITA), as mentioned in their article 'Beware insolvency leads for sale', and in their Code of Professional Practice (section 11.5). The practice is prohibited by the Personal Insolvency Professionals Association (PIPA), as stated in their Code of Conduct (paragraph 5.3), which states as follows:

A member MUST NOT accept any referral that contains, or is conditional upon:

- *referral commissions, inducements or benefits; or 'spotter's' fees or*
- *recurring commissions or*
- *understandings or requirements that work in the administration will be given to the referrer or*
- *any other such arrangements that restrict the proper exercise of the member's judgement and duties.*

Inspector General Practice Guideline 1 outlines the Inspector-General's expectations in regard to advertising of debt agreements and includes a statement that debt agreement administrators will be held responsible for any marketing done on their behalf:

> *3.11 The IG will hold DAAs responsible under this guideline for any advertising or marketing done by them (or on their behalf), either individually or jointly, and whether expressly or impliedly authorised by them.*

Registered debt agreement administrators (RDAAs) who have engaged a lead generating firm are requested to take steps immediately to cease that engagement. Conduct such as that undertaken by lead generating firms has the potential to undermine the integrity and stability of the debt agreement system and it is in the best interests of all insolvency practitioners for there to be a consistent approach to this type of activity.

Thank you to those who have already confirmed that they have ceased these types of engagements.

Charles Smith, Director
Regulation and Enforcement

Certification duties of debt agreement administrators—full disclosure of liabilities by debtor

Debt agreement administrators are required to certify at the time that a debt agreement proposal is given to the Official Receiver, that they have reasonable grounds to believe that:

a. the debtor is likely to be able to discharge the obligations created by the agreement as and when they fall due

b. all information required to be set out in the debtor's statement of affairs has been set out in that statement

c. all information required to be set out in the debtor's explanatory statement accompanying the proposal has been set out in that statement.

Each month, AFSA is made aware of creditors whose debts were not disclosed in debtors' statement of affairs when a debt agreement proposal is filed with AFSA. In the month of September 2016, there were over 65 such creditors with debts totalling $423,000. There may be other cases where AFSA is not advised of omitted creditors.

The above problem of undisclosed debts may or may not be due, in part, to a failure by the administrator to carry out the above 'certification duty'. To the extent that it is, administrators are reminded of what Inspector-General Practice Direction 13 states with respect to the above duty to certify (with emphasis added):

> ***Full Disclosure***
>
> *3.11 To properly certify that a DAA have reasonable grounds to believe that the debtor has made full and true disclosure of their claims in the proposal and accompanying explanatory statement and statement of affairs, they must have an understanding of what enquiries can be easily made both from the debtor and other resources to be able to certify with assurance to DA team that they have a reasonable basis for believing that the debtor has properly disclosed their affairs.*
>
> *3.12 For example, a DAA is expected to know what evidence they will require from a debtor concerning income, expenses, liabilities and assets; what simple checks can be undertaken and what evidence they will retain depending on the debtor's circumstances.*
>
> *3.13 There is no prescribed requirement as to what enquiries a DAA should make to establish reasonable grounds to believe that the debtor has made full and true disclosure of their affairs. Full disclosure of all creditors is important to ensure that creditors are:*
>
> i. *Notified of the debt agreement proposal (DAP)*
>
> ii. *Fully aware of a debtor's current circumstances and make informed decisions*
>
> iii. *Suspend collection action against the debt*

iv. *Given the opportunity to provide details of their debt and vote.*

3.14 In most cases it may be appropriate for the DAA to examine bank and credit card statements, review employment history and payslips, and ask if tax returns have been filed. Credit reporting records or creditors contacted to clarify amounts may also be needed.

The failure of the debtor to disclose a creditor in the statement of affairs may also be an offence under sub section 267(2) of the *Bankruptcy Act 1966*, which should be considered by the administrator for referral to investigate by AFSA. If in doubt, the administrator may care to use AFSA's pre-referral enquiry process found on our website.

Mark Findlay, Director
Regulation and Enforcement

Debt agreement administrators' duty to maintain a single interest-bearing bank account

The purpose of this article is to remind debt agreement administrators (DAAs) about the requirements to maintain a single interest bearing bank account pursuant to section 185LD (1) of the *Bankruptcy Act 1966* (the Act) which states that a DAA

> *'must pay all money received from debtors under those debt agreements to the credit of a single interest-bearing account…'*

It is the Inspector-General's view that debt agreement administration funds being split between an interest bearing cheque account other interest bearing accounts such as term deposits, is in contravention of subsection 185LD(1) of the Act.

For further guidance please refer to Inspector-General's Practice Direction 15—debt agreement administrators' guidelines relating to keeping proper accounts.

Paul Devellerez, Assistant Director Inspections
Regulation and Enforcement

Baron Ward, Senior Inspector
Regulation and Enforcement

The Insolvency Law Reform Act 2016

The September 2016 edition of the Personal Insolvency Regulator reported on a change in the timeframe for the introduction of some of the reforms under the Insolvency Law Reform Act 2016 ('the ILRA').

The amendments under the ILRA in so far as they affect the Bankruptcy Act 1966 ('the Act') create an Insolvency Practice Schedule (Bankruptcy) ('the Schedule'), which is inserted at the end of the Act and Insolvency Practice Rules ('the Rules'), which provide much of the detail of the provisions in the Schedule. Similar provisions in the Schedule or the Rules have replaced provisions currently in the Act or Bankruptcy Regulations ('Regulations'). An Exposure Draft of the Insolvency Practice Rules was released on 12 October 2016, with submissions due by 4 November 2016. The Rules are being prepared in final form before release, hopefully in the near future.

The objectives of the legislation

The stated objectives of the Schedule are:

1. to ensure that any person registered as a trustee:
    a. has an appropriate level of expertise
    b. behaves ethically
    c. maintains sufficient insurance to cover his or her liabilities in practising as a registered trustee
2. The objective of this schedule is also:
    a. to regulate the administration of regulated debtors' estates consistently, unless there is a clear reason to treat a matter that arises in relation to a particular kind of estate differently
    b. to regulate the administration of regulated debtors' estates to give greater control to creditors.

Practitioner registration and discipline

Parts 1 and 2 of the Schedule containing the provisions relating to practitioner registration and discipline provisions, are expected to commence on **1 March 2017.**

For trustees the main changes under Parts 1 and 2 are:

a. the requirement to lodge an annual trustee return within 1 month after the anniversary of registration as a trustee, giving certain information about the trustee's practice including but not limited to details and evidence of insurance cover

b. the requirement to have adequate and appropriate fidelity insurance and professional indemnity insurance.

c. changes to the experience and qualifications prescribed to become a registered trustee (with further details in the Rules)

d. greater disciplinary powers to the Inspector-General to a) suspend or cancel the registration of a trustee or b) direct the trustee not to accept further appointments in certain circumstances, without having to refer the matter to a disciplinary committee. The exercise of such powers is reviewable in the Administrative Appeals Tribunal

e. greater scope for disciplinary committees in their decisions such as suspension of registration, that the Inspector-General should publish specified information in relation to the decision and reasons, that a condition should apply to the trustee (or indeed all trustees), that the trustee should be publicly admonished or reprimanded, that a direction be given that the trustee not accept further appointments

f. the register of trustees being publicly available and displaying such information in respect to the trustee's registration as provided in the Rules

g. the Performance Standards for Trustees being relocated from Schedule 4A of the Regulations to Division 42 of the Rules and the addition of a standard in respect to communication

h. the requirement for trustees to notify the Inspector-General (using an approved form) of certain prescribed events that may have a bearing on their capacity or suitability to practice as a trustee

i. the possibility—through the Rules—of industry-wide conditions being imposed on registration (for example, to carry out a minimum number of hours of continuing professional development each year)

j. expanded grounds for a show cause notice such as (but not limited to) not being a fit and proper person, having registration as a liquidator suspended or cancelled, permanently or temporarily not being able to perform the duties of a trustee and having committed an act of bankruptcy

k. industry bodies having the capacity to notify the Inspector-General in an approved form of possible grounds for disciplinary action

l. renewal of registration application by way of an approved form.

General provisions relating to administrations

Part 3 of the Schedule is expected to commence on **1 September 2017** and deals with general provisions relating to administrations.

The main changes are:

a. the replacement of the existing provisions in the Act or Regulations dealing with reporting, remuneration, funds handling, Court and creditor oversight of the trustee, meetings of creditors and record keeping by new provisions in the Schedule with further details in the Rules yet to come, in respect to particular provisions.

b. the maximum default amount for a trustee's remuneration of $5,000 being indexed from 1 July 2017 onward based on the consumer price index (CPI)

c. a prohibition on trustees indirectly or directly deriving a profit or advantage from the estate other than as permitted in the legislation

d. annual estate return re-badged as an annual administration return

e. records of the administration being required to be kept for seven years from the end of the administration (defined as the discharge or annulment date in bankruptcies)

f. a requirement on a trustee who has been replaced, to provide the books of the administration to the incoming trustee within 10 business days or as agreed.

g. prescription in the Rules of when information is required to be given to the debtor and creditors in respect to requests for information

h. prescription in the Rules of certain information to be provided to creditors in the trustee's first communication with them, about their rights to information, review of remuneration, to direct the trustee, to remove the trustee and to requisition a meeting

i. simplification of the remuneration reporting regime (contained in the Rules)

j. a power for the Inspector-General to review a registered trustee's remuneration on his or her own initiative (rather than by debtor/creditor application as is currently the case)

k. an approved form to be used for all notices of meetings

l. a minimum ten business day notice period for meeting of creditors (expected in the Rules)

m. the trustee or the trustee's representative, presiding at meetings of creditors, throughout the meeting (i.e. no election of president).

A table comparing those provisions of the Schedule expected to commence on 1 March 2017 with existing provisions of the Bankruptcy Act is attached as an appendix to this edition of the Personal Insolvency Regulator.

More information will be made available once the Rules are released. We will provide information to trustees in due course, as it becomes available. This will include information in relation to the new approved forms that are being developed.

ARITA's website at www.arita.com.au/education/law-reform-training gives information about the courses that ARITA will be conducting in 2017 to prepare for the changes.

Mark Findlay, Director
Regulation and Enforcement

Paul Shaw, National Manager
Regulation and Enforcement

Regulatory Performance Framework update

AFSA's first self-assessment report under the Regulator Performance Framework has now been validated by our external Bankruptcy Regulation Consultative Forum and submitted to the Attorney-General for noting. Feedback from our stakeholder groups on our performance was positive. The 2015–16 report will be published on our website during December 2016.

Mary Doolan, Assistant Director, Business Transformation
Regulation and Enforcement

Australian Government
Australian Taxation Office

ATO update

Digital interactions

During the 2016 financial year, we have seen an impressive surge in business portal interactions from insolvency practitioners.

In comparison to the previous year, there was a four-fold increase in correspondence received via the portal. More practitioners are using the portal to submit their notifications using the Mail function and lodging their electronic business activity statements for administrations and liquidations.

Those practitioners already using the portal are reaping the benefits of faster, simpler and more cost effective interactions with the Australian Taxation Office (ATO). The ATO offers a service commitment of 90 per cent of electronic taxpayer requests being finalised within 15 business days. For more information, search for 'our commitments to service'.

Thank you to all insolvency firms that have transitioned to ATO digital services. This year, our Industry Engagement team has visited firms in Melbourne, Brisbane, Canberra and Sydney to educate and provide support setting up the portal and moving towards a digital platform.

When your business is ready to go digital and you want more information about our digital services, email us at insolvencypractitionerservices@ato.gov.au.

Requests for documents

Secure messaging is the preferred method to send us correspondence. Practitioners can submit request for documents via the portal. When you send a secure message to us via the portal, we receive your message instantly and you will be provided with a unique receipt number, allowing you to follow up on the request more easily should it be necessary.

When creating a message in the portal, ensure you select the subject matter 'request for documents' topic so that your request reaches the correct department and is actioned efficiently. Where a response is required we will reply via the portal and include the documents as attachments.

For any requests that are being sent via white mail (i.e. paper, fax and post), ensure you include the debt insolvency cover sheet and select the subject 'request for documents'. When you use white mail rather than the portal, please allow more time for processing.

Authorisation to act on behalf of clients—information for debt management firms and financial counsellors

We have listened to industry's feedback and have included the following method to assist you when acting on behalf of an individual.

A letter of authority from a debt management firm requesting to be a representative (authorised contact) for an individual will be accepted if it contains the following information:

- sufficient details to identify the debt management firm and the contact officer(s) at that firm. This must include:
  - business/legal name or the full name of a representative(s) of the firm (if available)
  - phone number
  - business, postal or electronic address
- sufficient details to identify the individual:
  - full name
  - postal address
  - electronic address (if available)
- matters nominated by individual for which the debt management firm can act
- the time period the debt management firm is representing the individual
- a signed declaration from the individual:
  - stating they have nominated the debt management firm to be an authorised contact for the matters nominated
  - declaring that any information provided to the debt management firm is true and correct
- a signed declaration from the debt management firm stating:
  - the document has been prepared in accordance with the information supplied by the individual
  - they have a signed declaration from the individual stating that the information provided to them is true and correct
  - they are authorised by the individual to give the document to the Commissioner.

Please ensure your requests contain all the above requirements in order to finalise the process.

More information

For general information regarding insolvency matters, refer to the insolvency practitioners section on http://www.ato.gov.au/insolvency

Bronwyn du Mont, Director
Debt – Significant Debt Management
Australian Taxation Office

CDPP
Australia's Federal Prosecution Service

CDPP plea negotiation

Introduction

Plea negotiations are a normal and accepted part of any criminal matter.

When approaching plea negotiations, the Commonwealth Director of Public Prosecutions (CDPP) must have regard to paragraphs 6.14 to 6.20 of the *Prosecution Policy of the Commonwealth*, which contain guidelines for charge negotiation (more commonly known as plea negotiation or plea bargaining).

Paragraph 6.14 explains:

> *'Charge negotiation involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to fewer than all of the charges he or she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.'*

Considerations

The CDPP encourages charge negotiations at any stage during the criminal legal process, with the caveats that:

- the charges must bear a reasonable relationship to the criminal conduct of the defendant
- those charges must provide an adequate basis for an appropriate sentence in the circumstances of the case
- there must be evidence to support the charges.

When considering whether or not to agree to a charge negotiation proposal, the CDPP must take into account all the circumstances of the case and other relevant matters (outlined in paragraph 6.18 of the Prosecution Policy). This includes whether the defendant is willing to co-operate or the extent to which the defendant has done so, the strength of the prosecution case, any arrangements that may have been made for restitution of financial losses sustained, and whether the likely sentence would be appropriate for the criminal conduct involved.

Another relevant factor for the CDPP to consider is the time and expense involved in a trial and appeal proceedings.

The views of the investigating agency (in this instance, AFSA) are also an important factor that the CDPP takes into account. During the charge negotiation process, AFSA are consulted and kept advised of progress.

Where relevant, the CDPP will also consult with victims.

Importantly, under no circumstances will a plea negotiation proposal be entertained if the accused maintains his or her innocence with respect to a charge or charges to which his or her legal representative has offered to plead guilty.

Conclusion

It is in the best interests of the criminal justice system for matters to be resolved, wherever practicable, at the earliest stage possible.

Negotiating guilty pleas is an effective tool to ensure that matters proceed on the most appropriate charges. There are also savings to be made in time and the costs, which would ordinarily be invested in trial preparation and court attendances by all parties, including victims and witnesses.

Further Reading

Prosecution Policy of the Commonwealth—available from the CDPP website at https://www.cdpp.gov.au/prosecution-process/prosecution-policy

Tania Kemenes, Practice Group Coordinator
International Assistance and Specialist Agencies
Commonwealth Director of Public Prosecutions

CDPP
Australia's Federal Prosecution Service

CDPP witness fees and expenses

Introduction

The Commonwealth Director of Public Prosecutions (CDPP) is the independent prosecution service established by the *Director of Public Prosecutions Act 1983* to prosecute alleged offences against Commonwealth law.

The CDPP policy regarding the payment of witness expenses is governed by a National Legal Direction.

Generally, for witnesses appearing in matters prosecuted by the CDPP, the Office undertakes to pay witness expenses in relation to the following:

- travel expenses
- accommodation
- meals and incidentals
- income lost by reason of attendance at court

- expenses incurred by reason of attendance at court, including child care fees and carer's expenses.

The amounts paid can vary, and are based on current Commonwealth government rates, noting that there are limits to the total expenses that the CDPP will pay.

Travel expenses

In some jurisdictions, conduct money is paid to provide the financial means for witnesses to attend court. The level of conduct money paid will vary from jurisdiction to jurisdiction.

With respect to a local witness attending court in the city/town in which they reside or work, the CDPP will pay for reasonable travel costs from the witness's residence or place of business to the court.

For a witness traveling from out of town, the Office will cover air travel to and from the city/town in which court proceedings are being heard. Under certain circumstances, a witness may travel by private car, by prior arrangement with the CDPP.

Accommodation

If an overnight stay is necessary, the CDPP will arrange accommodation for a witness, or, by prior arrangement, reimburse a witness who wishes to organise their own accommodation, noting that amounts payable will be in line with official public service allowances.

Meals and incidentals

Locally based witnesses who incur meal or incidental expenses as a result of attending court will be reimbursed upon the production of receipts or a declaration stating the expenses.

A meal allowance will be payable to out of town witnesses, but will not cover meals already included in accommodation arrangements.

Loss of income

In certain circumstances, the CDPP will reimburse a witness for income lost by reason of their attendance at court. The payment is limited to income actually lost:

- at the time
- on the date of the attendance
- on the date of any associated travel time
- up to a maximum, capped amount.

It should be noted that the payment is a reimbursement only and is not remunerative. Therefore, no payment will be made to public servants or others who continue to receive income.

Further, no payment will be made for 'consequential' losses or additional entitlements such as overtime.

Wherever possible, witnesses are expected to mitigate losses by rescheduling work or negotiating appearance times.

The expert witness and a witness of fact

Expert witnesses differ from witnesses of fact. A witness of fact gives evidence from their knowledge or involvement in the circumstances of a particular case. An example of a witness of fact would be a registered trustee giving evidence about his/her communication with a bankrupt.

If a witness is engaged by the CDPP to provide evidence of a technical or professional nature, using their expertise, then expert witness payments will apply.

These payments are made on a different basis from witness expenses and are not limited to a maximum amount. Experts are engaged on the same basis as consultants and remunerated on the basis of their professional fees.

Conclusion

The CDPP acknowledges that witnesses play an essential role in the prosecution process. Not only do witnesses have the capacity to make a positive contribution to the administration of justice, but they also form an integral component of the Crown's case against an accused.

If you are to be a witness in a CDPP matter, the Office will provide you with a 'guide to claiming witness expenses' and a 'witness expenses claim form' to assist you with the claims process. Please ensure you address any concerns regarding expenses and fees directly with the CDPP Federal Prosecutor prior to any court appearances.

The CDPP recognises that court attendances can cause inconvenience and stress, and we greatly value the assistance that all witnesses provide.

Further Reading

Victims and witnesses information—available from the CDPP website at https://www.cdpp.gov.au/victims-and-witnesses

Tania Kemenes, Practice Group Coordinator
International Assistance and Specialist Agencies
Commonwealth Director of Public Prosecutions

Trustees unsuccessful in grab for super payments

Most advisers would be aware that superannuation held in a regulated superannuation fund by a bankrupt is considered to be non-divisible property under section 116(2) of the *Bankruptcy Act 1966* (the Act).

Those advisers would also be aware that payments received by a bankrupt from their fund on or after the date of bankruptcy are also considered to be non-divisible property.

But advisers, including insolvency practitioners, may be unsure as to what happens when a bankrupt receives a distribution from a superannuation fund held by their deceased spouse…

In the recent decision of *Trustees of the Property of Morris (Bankrupt) v Morris (bankrupt)* [2016] FCA 846 the court has reaffirmed that protection held by superannuation extends to payments received by a bankrupt from their spouse's superannuation fund.

Background

Ms Morris became bankrupt some four months after her husband, Mr Foreman, died. Mr Foreman held policies with two superannuation funds: AustSafe Super and Plum Super.

After becoming bankrupt, Ms Morris received three payments. Plum Super made a life insurance payment of $311,865.95, which is not controversial as section 116(2)(d)(ii) of the Act provides that divisible property does not extend to life assurance policy proceeds of a bankrupt—or their spouse—received on or after the date of bankruptcy.

What was 'controversial' was AustSafe Super's payment of $45,392.48 and Plum Super's payment of $67,240.27. Those funds made these payments to the bankrupt under discretionary powers, as Mr Foreman had not nominated any dependents or beneficiaries.

Mrs Morris's bankruptcy trustees applied to court in respect of these payments arguing that the superannuation monies received by the bankrupt were after-acquired property that vested in them (as bankruptcy trustees) and was therefore divisible among the bankrupt estate's creditors.

Questions to be decided

The disagreement between the parties was largely in relation to the application of section 116(2) of the Act and in particular, subsections 116(2)(d)(iii)(A) and 116(2)(d)(iv). These sections provide that divisible property of a bankrupt does not include:

s116(2)

(d) (iii) the interest of the bankrupt in:

- A regulated superannuation fund (within the meaning of the Superannuation Industry (Supervision) Act 1993; or
- An approved deposit fund (within the meaning of that Act);or
- An exempt public section superannuation scheme (within the meaning of that Act).

(iv) a payment to the bankrupt from such a fund received on or after the date of bankruptcy...

Decision

Justice Logan held that prior to the superannuation fund trustees' exercising their discretion in favour of Ms Morris, she had no interest in either fund; however, upon this favourable decision, an interest was then created in the superannuation funds, and therefore these payments (totalling $112,632.75) made to Ms Morris (after bankruptcy) were held to be captured by s116(2)(d)(iii) and s116(2)(d)(iv) of the Act. Consequently, the bankruptcy trustees were unsuccessful with their application.

There appear to be no previous authorities concerning the meaning and effect of the above sections of the Act; however, the decision seems to be consistent with the intention of legislation to protect and preserve benefits in respect of retirement for both members of funds as well as their spouses and dependents.

Stephen Hundy, Partner
Worrells Solvency & Forensic Accountants

*(*This article reflects the views of the authors and does not necessarily reflect the position of AFSA or the Inspector-General in Bankruptcy).*

Bankruptcy and Family Law

The intersection between family law and bankruptcy is a particularly niche area of law to practice for both legal practitioners and the Court. There are conflicting ideologies in the discretionary nature of the *Family Law Act 1975* (Cth) and the commercial nature of the *Bankruptcy Act 1966* (Cth). Therein creates the practical and academic difficulty for dealing with bankruptcy issues in family law matters.

In family law property proceedings, the decision in *Stanford & Stanford* [2012] HCA 12 clarified a clear four step approach to be used to determine whether and then how matrimonial (or de facto) property interests will be adjusted in the event of separation on a just and equitable basis:

1. Firstly, the Court must identify the party's legal and equitable interests, both their individual and joint property.
2. Secondly, the Court must consider the contributions to the acquisition, conservation and improvement of the assets including financial and non-financial contributions, and homemaker and parent contributions.

3. Thirdly, the Court must consider any future needs factors for each of the parties pursuant to Section 75(2) of the *Family Law Act 1975* (Cth), which include but are not limited to each party's age and state of health, their income, property and financial resources, their physical and mental capacity for appropriate gainful employment and whether either party has the care and control of the children of the relationship under the age of 18.
4. Lastly, to consider whether any proposed adjustment would be just and equitable to both parties to the proceedings in a global sense.

If a party to the proceedings declares bankruptcy before or during the family law property proceedings, the outcome of any adjustment between the parties becomes significantly complicated by the fact that the bankrupt party's property becomes vested in the trustee of the bankrupt estate, and then too the Court's duty is expanded to consider the creditor's interests in any property adjustment proposed to be made between the parties.

In 2005, the landscape of the intersection between family law and bankruptcy drastically changed with the introduction of the *Bankruptcy and Family Law Legislation Amendment Act 2005* (Cth). The way in which the Court viewed the contributions by the non-bankrupt spouse in competition with the interests of the creditors vastly changed in removing the priority interest of the creditors and creating an even playing field for the interests of all parties to the proceedings.

As it currently stands the default bankruptcy period is three years. From a family law perspective, the biggest issue is the practical ability of the Court to determine and resolve a family law property matter within the term of bankruptcy. It is undisputed that the Federal Circuit Court of Australia and the Family Court of Australia are already under significant pressure with a serious lack of resources to keep up with the demands placed on the Courts.

For example, in the Sydney Registry of the Federal Circuit Court of Australia, matters are waiting up to six months for their first court date, eight months for an interim hearing, and anywhere between three and four years for a final hearing depending on how many days the trial requires. If you are seeking an airport watch list order to stop your former spouse from fleeing the country with your child, it is unlikely your application will be heard within a week from filing.

From the trustee's perspective, there are a few issues to consider:

1. Is it worth making an offer to avoid litigation? Yes. Not only will this save cost for the trustee in legal fees, but it will also serve to the benefit of the creditors of the bankrupt. Furthermore, an offer before entry in to the litigation is called a *Calderbank* offer, this will assist in any costs application you may make in the future.
2. Is it worth talking to the bankrupt about their relationship and family issues in the first instance? Absolutely. You should do this in your initial client appointment. Knowledge is power. If the bankrupt indicates that their relationship might be in the process of breaking down, or has broken down irretrievably, this is essential information you need to know in order to prepare yourself as the trustee in a family law dispute.
3. Can the bankrupt still participate in family law proceedings? Yes. Superannuation is protected in bankruptcy however it is treated as an asset capable of adjustment in family law proceedings. While the bankrupt cannot make submissions without permission from the court in relation to the assets vested in the trustee of the bankrupt estate, they can still freely engage in relation to their superannuation. Super-splitting is very common in family law and any adjustment made in relation to superannuation is accounted for in any overall adjustment of the non-superannuation and superannuation assets in a global sense.
4. Can a trustee bring an application under the *Family Law Act 1975* (Cth)? No. Only a party to the marriage or de facto relationship can make an application. Once proceedings have started, the trustee can make an application to be joined to the proceedings as a party.

The complex nature of bankruptcy in family law proceedings creates a myriad of obstacles to reach an outcome that could be considered just and equitable for all parties involved. It is becoming clearer that a 'one stop' approach for approaching these matters is not appropriate and each case must be assessed individually. Even though the sweeping amendments in 2005 sought to clarify the uncertain waters, we are still seeing the velocity of those changes in matters being determined today.

Watch this space!

Timothy Nicholls, Family Law Solicitor
Tiyce & Lawyers, Sydney

(This article reflects the views of the authors and does not necessarily reflect the position of AFSA or the Inspector-General in Bankruptcy).*

(Dunlop)—Bankrupt found guilty of three offences under the Bankruptcy Act

Mr James Henry Dunlop has been convicted and sentenced for three offences under the *Bankruptcy Act 1966*.

Mr Dunlop was declared bankrupt in November 2009.

In December 2009, Mr Dunlop sold a caravan for $4,500 and failed to provide those funds to his trustee, for the benefit of his creditors.

Mr Dunlop also failed to advise his trustee of the location of other assets.

Mr Dunlop pleaded guilty to the offence of removing property valued at $4,500 during his bankruptcy, and the offence of failing to comply with a direction by the trustee to deliver the proceeds from the sale of the property.

He pleaded not guilty to the offence of failing to fully and truly disclose to the trustee the location of certain assets. He was found guilty of that offence by Magistrate Walker.

Mr Dunlop was sentenced in the Coffs Harbour Local Court on 10 October 2016. For each offence he was sentenced to 12 months imprisonment commencing on 10 October 2016, to be released upon giving security to be of good behaviour for 12 months.

The Magistrate directed that all three sentences be served concurrently.

The matter was prosecuted by the Office of the Commonwealth Director of Public Prosecutions on behalf of the Australian Financial Security Authority.

(Phung)—Bankrupt found guilty of an offence under the Bankruptcy Act

On 11 November 2016, Dr Van Thien Phung, was convicted and sentenced for removing property within 12 months of going bankrupt.

Dr Phung filed for voluntary bankruptcy in September 2013 with debts of over $1 million.

Prior to his bankruptcy, Dr Phung received proceeds of over $138,000 from the sale of property in Croydon Park NSW.

Dr Phung withdrew in cash $126,700 within the 12 months prior to his bankruptcy and claimed he ‘lost the lot’ on gambling.

He pleaded not guilty.

Magistrate Williams found him guilty and convicted and sentenced him to imprisonment for 5 months, to be released upon giving security to be of good behaviour for 12 months.

In sentencing, Magistrate Williams noted that the amount gambled was significant, making this a serious offence.

He said Dr Phung knew the risk and took advantage of the situation.

Magistrate Williams commented that ‘gambling to win’ does not excuse Dr Phung of his obligations to creditors. He said those creditors were victims and were entitled to their money. By his actions, Dr Phung had deprived them and the estate of the funds.

The case was prosecuted by the Office of the Commonwealth Director of Public Prosecutions.

Paul Shaw, National Manager
Regulation and Enforcement

Makinna Pty Ltd (in liq) v Trives [2016] FCA 1247 (11 October 2016) (Jagot J)

Background

An application was brought under section 50(1) of the *Bankruptcy Act 1966 (Cth)* (the Act), which allows the Official Trustee or a specified registered trustee to take control of a debtor's property any time after a bankruptcy notice is issued or a creditor's petition is presented, but before the debtor is formally made bankrupt.

Mr Trives was the sole director and shareholder of Makinna Pty Ltd, which was wound up pursuant to an outstanding tax debt. The company books revealed that Mr Trives owed $540,182.89 to the company, for which the company liquidator demanded repayment on various occasions. When no repayment attempts were made, the liquidator sought relief in the District Court of New South Wales. The court made an ex parte judgment against Mr Trives.

Shortly after, a bankruptcy notice was issued, and on 27 September 2016, the liquidator filed a creditor's petition.

During this time, Mr Trives was in the process of selling one of his properties (the Picton property), where it later emerged that he would be likely to receive approximately $500,000 after costs and expenses. On examination, Mr Trives said that the proceeds were the only means by which he would be able to repay the outstanding judgment debt made previously by the District Court, but that he was unlikely to receive those proceeds due to other pre-existing debt repayments.

On 13 September 2016, an interlocutory order was made preventing Mr Trives from disposing of any interest in the Picton property. On 28 September 2016, the sale of the Picton property was completed. In accordance with the orders made in the interlocutory hearing, a sum of $541,045.31 was received by the liquidator and was paid into court.

Issues

This case raises the following questions:

a. Are there any mechanisms under the Act that prevent the disposition of assets by a debtor before he or she is officially made bankrupt?

b. If so, what circumstances trigger the application of the relevant section?

Decision

The Court ordered that the applicant take control of the Picton property, including the proceeds of its sale, pursuant to section 50(1) of the Act. It was also ordered that control over the property was to cease upon the making of a subsequent sequestration order against Mr. Trives.

Reasoning and legal principle:

In line with previous rulings on the issue, the Court interpreted section 50 as a provision designed to protect the debtor's property before a sequestration order is made. It held that in this case, there was a real risk of the dissipation of the sale proceeds, evidenced by

Mr Trives' precarious financial position and unquantifiable creditor claims.

The Court was satisfied that the application of section 50 in these circumstances would allow the claims of interested creditors to be heard and dealt with fairly.

Observations as to cost under section 50(1):

Under Division 3.2 of *Bankruptcy (Fees and Remuneration) Determination 2015*, the Official Trustee can claim reimbursement for costs when administering property in accordance with section 50. However, the position for registered trustees is less clear.

As it currently stands, where a registered trustee is appointed as controlling trustee and a section 50(1) order is made against a debtor, the order must expressly state whether the registered trustee can claim reasonable costs and expenses incurred. This raises questions as to whether an equitable lien would arise over a registered trustee's costs in these circumstances, and whether there are any viable common law avenues for costs to be recouped (See *Taylor v. Jarvie [2015]* FCA 590). It is difficult to establish the existence of an equitable lien under the common law, and pursuit may open up litigation where recovery may not be commercial.

Adriana Bajnar, Senior Insolvency Service Officer
Insolvency and Trustee Service

Table comparing the provisions of the Insolvency Practice Schedule (Bankruptcy)[1] that are to commence on 1 March 2017[2] with existing provisions of the Bankruptcy Act[3]

Schedule provision	Current Bankruptcy Act provision	Comment
10-5: Inspector-General (IG) must work cooperatively with ASIC in performing functions and exercising powers	No equivalent	Requirement for Inspector-General (IG) to work cooperatively with ASIC applies in relation to persons who are, have been or may become both registered trustees under the Bankruptcy Act and registered liquidators under the Corporations Act.
15-1: IG must establish a register of trustees	No direct equivalent—some trustee information is entered on the NPII	The register will contain information relating to the trustee's registration, as well as contact details and certain disciplinary action taken against trustees. The information on the register will be publicly available.
20-5: Application to IG for registration as a trustee	154A	Application must be in the approved form and accompanied by the application fee.
20-10: IG may convene committee to consider registration application	155	Three-person committee to consist of the IG; a registered trustee chosen by a prescribed body; and a person appointed by the Minister. The 'prescribed body' is ARITA.
20-15: IG must refer applications to the committee	No equivalent—155 assumes referral of applications	IG must refer application within 2 months of receiving it.
20-20: Committee to consider applications	155A	Committee must decide within 45 *business* days of interviewing applicant whether he/she should be registered.
20-25: Committee to report	155A(6)	Report given to applicant and IG.
20-30: Registration as a trustee	155B and 155C	IG must register if committee recommends it, if applicant has produced evidence in writing that he/she has taken out adequate and appropriate professional indemnity and fidelity insurance, and has paid the registration fee. Registration has effect for 3 years, and the IG must give the trustee a certificate of registration (may be given electronically).
20-35: IPRs[4] may impose conditions on all registered trustees or on specified class of trustee	No equivalent	Provides for imposition of industry-wide conditions, or conditions limiting the kinds of activity in which a trustee may engage.
20-40: Application to IG to vary or remove condition on registration	155E(1) to (3)	Application must be made in the approved form, but cannot be made if the trustee's registration is suspended; if the condition is of a prescribed kind; or in prescribed circumstances.
20-45: IG may convene committee to consider application to vary or remove condition	155E(4) & (5)	Committee to consist of the IG; a registered trustee chosen by a prescribed body; and a person appointed by the Minister. The 'prescribed body' is ARITA.
20-50: IG must refer application to the committee	No equivalent—155E assumes referral of applications	IG must refer application within 2 months of receiving it.
20-55: Committee to consider application	155E(6) & 155F(1)	Committee must interview applicant unless applicant agrees otherwise, and within 20 business days thereafter decide whether the condition should be varied or removed.
20-60: Committee to report	155F(2)	Report given to applicant and IG.

1 The Insolvency Practice Schedule (Bankruptcy) is inserted as Schedule 2 to the Bankruptcy Act 1966 by the *Insolvency Law Reform Act 2016*.

2 Not all provisions of the Insolvency Practice Schedule (Bankruptcy) will commence on 1 March 2017. The provisions in Part 1 (Introduction) and Part 2 (Registering and disciplining practitioners) of the Schedule will commence on that date. The provisions in Part 3 (General rules relating to estate administrations) and Part 4 (Other matters) are generally scheduled to commence on 1 September 2017. This table deals only with provisions in Parts 1 and 2 of the Schedule (and sections 96-1 and 105-1 in Part 4, to the extent those provisions relate to Parts 1 and 2). Transitional arrangements apply in respect of some new provisions—the transitional arrangements are not covered in this table.

3 This table does not present a full description of the new provisions, but highlights their main features and/or how they differ from existing provisions.

4 A reference to the IPRs is a reference to the Insolvency Practice Rules, which will underpin the Insolvency Practice Schedule (Bankruptcy) and provide greater detail in relation to various requirements of the Schedule. Draft IPRs were released for public exposure in October 2016 and will, when enacted, replace existing provisions in both the Bankruptcy Act and the Bankruptcy Regulations.

Schedule provision	Current Bankruptcy Act provision	Comment
20-65: Committee's decision given effect	155F(4)	If committee recommends removal or variation of condition, the condition is removed or varied in accordance with the decision.
20-70: Application for renewal of registration	155D(2) & (3)	Applications for renewal under 20-70 must be made in the approved form.
20-75: Renewal	155D(1)	IG to give trustee a certificate of registration upon renewal
20-80: False representation that a person is a registered trustee	No equivalent	New offence carrying a maximum penalty of 30 penalty units (1 penalty unit = $180).
25-1: Registered trustees to maintain adequate insurance	No equivalent, however undertaking to maintain adequate insurance is a requirement for registration and failure to do so can be grounds for the IG to issue a 'show cause' notice	New offences of failing to maintain adequate professional indemnity and fidelity insurance. Maximum penalty of 1000 penalty units (for false or reckless failure); or 60 penalty units (for failure in other circumstances—e.g. inadvertent failure). IG may, by legislative instrument, determine what constitutes adequate insurance.
30-1: Annual trustee return	No equivalent	New requirement for trustee to lodge annual return in the approved form, including evidence that adequate insurance has been maintained. Must be lodged annually within 1 month of the anniversary of the date of trustee's registration. Maximum penalty for failure to lodge, 5 penalty units.
35-1: Notice of significant events to IG	161A	Notifiable events include: • being issued with a bankruptcy notice • disqualification from managing a corporation • ceasing to have adequate insurance • being issued a 'show cause' notice in relation to registration as a liquidator, or having registration as a liquidator suspended or cancelled. Notice must be filed in the approved form within 5 business days after the trustee could reasonably be expected to be aware the event has occurred. Maximum penalty for failure to notify is 100 penalty units.
35-5: Notification of other events to IG	No equivalent	Obligation to notify in the approved form if information in the annual trustee return or annual administration return is, or becomes, inaccurate in a material particular, and any other events prescribed (in the IPRs). Notice must be lodged within 10 business days after the trustee could reasonably be expected to be aware the event has occurred. Maximum penalty for failure to notify is 5 penalty units.
40-5: Registered trustee to remedy failure to lodge documents or give information or documents	No equivalent	IG may direct trustee in writing to comply with requirement to lodge any document or give any information or document required to be given to a person under the Act or to be lodged with the IG. If trustee fails to comply, the IG can direct trustee not to accept further appointments and/or apply to the court for an order for compliance
40-10: Registered trustee to correct inaccuracies etc.	No equivalent	If the IG suspects information provided by a trustee is incomplete or incorrect, the IG can direct the trustee in writing to confirm information is complete or correct, or to provide complete or correct information and/or notify persons of the addition or correction. If trustee fails to comply, the IG can direct the trustee not to accept further appointments and/or apply to the court for an order for compliance

Schedule provision	Current Bankruptcy Act provision	Comment
40-15: Direction not to accept further appointments	No equivalent	IG may direct a trustee in writing not to accept further appointments if: • trustee has failed to comply with a direction under 40-5 or 40-10 • a committee convened to consider the trustee's ongoing registration decides the IG should give the direction • trustee has failed to comply with a direction under 7070 (to give information to debtor or creditors) or • trustee has failed to comply with a direction under 75-20(1) or (2) to convene a meeting of creditors – *note 70-70 and 75-20 will not commence before 1 September 2017.* When given, a direction not to accept further appointments becomes a condition on the trustee's registration.
40-20: Automatic cancellation of registration	182	Cancellation occurs on the death of a trustee or if he/she becomes an insolvent under administration.
40-25: IG may suspend registration	No equivalent	IG may suspend registration where the trustee: • is disqualified from managing a corporation • ceases to have adequate insurance • has had his/her registration as a liquidator suspended or cancelled (other than on request) • owes more than the prescribed amount of estate charges • fails to comply with a court order to repay remuneration to an estate • has been convicted of an offence involving fraud or dishonesty or • requests the IG to suspend registration
40-30: IG may cancel registration	No direct equivalent (155G provides a trustee may request the IG that registration cease)	IG may cancel registration where trustee requests it, or in circumstances equivalent to those mentioned in relation to suspension of registration under 40-25 (except registration as a liquidator must be cancelled, not merely suspended).
40-35: Notice of suspension or cancellation	No equivalent	If IG decides to suspend (under 40-25) or cancel (under 40-30) a trustee's registration, the IG must give notice of the decision, along with reasons, to the trustee within 10 business days. The decision comes into effect the day after the notice is given, but failure to give the notice within 10 business days does not affect the validity of the decision.

Schedule provision	Current Bankruptcy Act provision	Comment
40-40: IG may give a show-cause notice	155H(1)	A show-cause notice may be issued by the IG where the trustee: • no longer has the requisite qualifications, experience, knowledge and abilities • has committed an act of bankruptcy • is disqualified from managing a corporation • ceases to have adequate insurance • has breached a condition of registration • has breached a provision of the Bankruptcy Act • has had his/her registration as a liquidator cancelled or suspended (other than on request) • owes more than prescribed amount of estate charges • fails to comply with a court order to repay remuneration to an estate • has been convicted of an offence involving fraud or dishonesty • is permanently or temporarily unable to perform the functions of a trustee due to physical or mental incapacity • fails to carry out adequately and properly the duties of a trustee • fails to carry out adequately and properly the duties of the administrator of a debt agreement • is not a fit and proper person • is not resident in Australia or • has failed to comply with a standard prescribed in the IPRs.
40-45: IG may convene a committee	155H(2) & (3)	Three-person committee to consist of the IG; a registered trustee chosen by a prescribed body; and a person appointed by the Minister. The 'prescribed body' is ARITA.
40-50: IG may refer matter to a committee	155H(2)	IG may refer to committee if no explanation received within 20 business days after show-cause notice given; or if not satisfied by the explanation.
40-55: Decision of the committee	155I(1), (2) & (3)	The committee can decide one or more of the following: • trustee continue to be registered • registration be suspended or cancelled • IG direct the trustee not to accept further appointments • trustee be publicly admonished or reprimanded • a condition be imposed on the trustee's registration • a condition be imposed on the registration of all other trustees that they not allow the trustee in question to exercise powers or perform functions on their behalf • IG publish specified information in relation to the committee's decision.
40-60: Committee to report	155I(4)	Report given to registered trustee and IG.
40-65: IG must give effect to committee's decision	155I(6)	
40-70: Application to lift or shorten suspension	No equivalent	Trustee may lodge with the IG an application in the approved form to lift, or shorten the period of, a suspension.
40-75: IG may convene a committee to consider applications	No equivalent	Three-person committee to consist of the IG; a registered trustee chosen by a prescribed body; and a person appointed by the Minister. The 'prescribed body' is ARITA.
40-80: IG must refer applications to a committee	No equivalent	IG must refer application within 2 months of receiving it.

Schedule provision	Current Bankruptcy Act provision	Comment
40-85: Committee to consider applications	No equivalent	Committee must interview applicant unless applicant agrees otherwise, and within 10 business days thereafter decide whether the suspension should be lifted or shortened.
40-90: Committee to report	No equivalent	Report given to applicant and IG.
40-95: Committee's decision given effect	No equivalent	If committee decides to lift or shorten the suspension, the suspension is lifted or shortened in accordance with that decision.
40-100: Notice by industry bodies of possible grounds for disciplinary action	No equivalent	An industry body may lodge with the IG a notice in the approved form stating that it reasonably suspects there are grounds for the IG to impose a condition on, or suspend or cancel the registration of, a trustee, or issue a show-cause notice to the trustee. The IG must consider the information but is not bound to act on it.
40-105: No liability for notice given in good faith etc.	No equivalent	An industry body is not liable civilly, criminally or under any administrative process for a notice given in good faith and where the suspicion that is the subject of the notice is a reasonable suspicion. That protection extends to persons who give information to the industry body that is contained in a notice to the IG and to persons who make a decision as a result of which the industry body gives a notice.
40-110: Meaning of industry body	No equivalent	The IPRs may prescribe industry bodies—it is proposed to include ARITA and the peak accounting and legal professional bodies
45-1: Court oversight of registered trustees	No direct equivalent (some of the same subject matter is contained in 176 and 179. Other provisions of the ILRA also partially replicate s179, e.g. 9015)	Court may make such orders as it thinks fit in relation to a registered trustee, either on its own initiative, or on application by the IG or the trustee. In making orders the court may take into account: • whether the trustee has faithfully performed his/her duties • whether an action or failure to act by the trustee complies with the Act or IPRs, or the order of the court • whether any person has suffered, or is likely to suffer, loss or damage as a result of the trustee's act or failure to act • the seriousness of the consequences of any act or failure to act by the trustee, including the effect on public confidence in registered trustees as a group.
45-5: Court may make orders about costs	No direct equivalent, but some overlap with s176	Without limiting 45-1, the Court may make orders in relation to a registered trustee that deal with the costs of a matter considered by the Court.
50-5: Prescribed body appointing a person to a committee	No equivalent	The IPRs may prescribe knowledge and experience requirements for members of a committee chosen by a prescribed body (ARITA to be prescribed).
50-10: Minister appointing a person to a committee	No equivalent	Minister must be satisfied the person is qualified by virtue of his or her knowledge of, or experience in, one or more of: business; law; economics; accounting; public policy relating to bankruptcy.
50-15: Single committee may consider more than one matter	No equivalent	A single committee may consider one or more of the following: • matter(s) relating to one application for trustee registration • matter(s) relating to more than one applicant for registration • matter(s) relating to one or more registered trustees.
50-20: Ongoing consideration of matters by committee	No direct equivalent (but similar in some respects to the subject matter in Bankruptcy Regs 8.05G and 8.23)	Committee's powers are not affected by a change in membership of the committee; the committee may adjourn consideration of a matter (and may do so more than once); a matter may be transferred to another committee.

Schedule provision	Current Bankruptcy Act provision	Comment
50-25: Procedure and other rules relating to committees	No equivalent	The IPRs may provide for: • the manner in which committees perform their functions including: (i) meetings; (ii) quorum requirements; (iii) disclosure of interests; and (iv) how questions are decided • the reconstitution of a committee • the termination of consideration of a matter by a committee and the transfer of matters to another committee.
50-30: Remuneration of committee members	No equivalent	Committee members are entitled to receive remuneration as determined by the Remuneration Tribunal. If no Tribunal Determination is in place, the members are entitled to receive such remuneration as the Minister determines in writing.
50-35: Committee must only use information etc. for purposes for which disclosed	No equivalent	A committee member commits an offence if he/she uses or discloses information or a document that was disclosed to him/her for the purposes of serving on the committee (50-penalty unit maximum penalty). Exceptions apply where the document or information is disclosed to: ASIC; other committees under this Part or the corresponding Part of the Insolvency Practice Schedule (Corporations); prescribed bodies; authorities in states, territories or overseas exercising similar functions to the committee or the IG; or a court or tribunal.
96-1: Review by the Administrative Appeals Tribunal	155A(7)—registration application 155F(3)—application to vary/remove condition 155I(5)—disciplinary action by committee	The following decisions are reviewable by the AAT: • committee decision under 20-20 (registration application) • committee decision under 20-55 (application to vary or remove condition on registration) • IG decision under 40-15 (directing trustee not to accept further appointments) • IG decision under 40-25 (suspending registration) • IG decision under 40-35 (cancelling registration) • Committee decision under 40-55 (disciplinary action by committee) • Committee decision under 40-85 (application to lift or shorten a suspension).
105-1: The Insolvency Practice Rules	No equivalent	The Minister may, by legislative instrument, make rules providing for matters required or permitted by the Bankruptcy Act to be made by the Rules, or necessary or convenient to be provide for in order to carry out or give effect to the Act.

CONTACTS AND ACRONYMS

December 2016, Volume 14, Issue 4

Regulation and Enforcement

For Regulation and Enforcement locations and contacts, please view the Regulation and Enforcement web page on AFSA's website.

Personal Insolvency Regulator (PIR) editors

If you would like to submit an article for inclusion in the next edition of the PIR, please forward it to one of the following:

- Tim Cole, Director Operations and Strategy, Regulation and Enforcement, tim.cole@afsa.gov.au
- Neil Unantenne, Assistant Director, Practice, Regulation and Enforcement, neil.unantenne@afsa.gov.au

Citing the PIR

This issue of the Personal Insolvency Regulator may be cited as (2016)14(4) Personal Insolvency Regulator.

Acronyms

AAT	Administrative Appeals Tribunal
AER	annual estate return
AFSA	Australian Financial Security Authority
ARITA	Australian Restructuring Insolvency & Turnaround Association
ATO	Australian Taxation Office
CDPP	Commonwealth Director of Public Prosecutions
CPI	consumer price index
DAAs	debt agreement administrators
DAP	debt agreement proposal
FCA	Federal Court of Australia
IG	Inspector-General in Bankruptcy
ILRA	*Insolvency Law Reform Act 2016*
IPR	Insolvency Practice Rules
OR	Official Receiver
ORN	Official Receiver notice
PIPA	Personal Insolvency Professionals Association
PPSR	Personal Property Securities Register
RDAAs	registered debt agreement administrators