



**Submission by the
Financial Rights Legal Centre**

The Treasury

Insolvency Practice Rules 2016 and other
legislative instruments, October 2016

November 2016

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2015/2016 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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Credit & Debt Hotline 1800 007 007
Insurance Law Service 1300 663 464
Aboriginal Advice Service 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on the *Improving bankruptcy and insolvency laws Proposal Paper* and agreeing to an extension of time until 8/11/16 to provide this submission.

Financial Rights' comments relate only to the *Insolvency Practice Rules (Bankruptcy) 2016*. We do not have any comments on the other documents released for consultation.

1. Standards for trustees of bankrupt estates - Division 42-185(3)(b)

Division 42-185(3)(b) states that in relation to assessing income and contributions, the trustee must:

"if full payment within the contribution assessment period or before discharge would cause hardship to the bankrupt, consider giving the bankrupt an extension of the time for payment of contributions liability."

Financial Rights contends that more detail is required here. We regularly give advice to bankrupt debtors experiencing serious financial hardship in making income contributions. This hardship may occur after an assessment and could include illness, caring for an ill family member, the birth of a child, or rental costs increasing.

Our view is that the Trustee must be reasonable and flexible so the debtor can manage their hardship. The word "consider" is not a very strong word and leaves Trustees able to comply by simply "considering" and then saying no. The word "reasonably" needs to be added before "consider".

Recommendation

Financial Rights recommends that division 42-185(3)(b) be amended to state:

*"if full payment within the contribution assessment period or before discharge would cause hardship to the bankrupt, **reasonably** consider giving the bankrupt an extension of the time for payment of contributions liability."*

2. Right of the regulated debtor to request information from the trustee: Division 70-15 (4) and (5)

Division 70-15 (4) and (5) state:

(4) It is reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to a creditor if subDivision (2) does not apply to the request.

(5) Despite paragraph (2)(d), (e) or (f), it is also reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to a creditor if: (a) the creditor agrees to bear the cost of complying with the request; and (b) if required to do so by the trustee—security for the cost of complying with the request is given to the trustee before the request is complied with.

Financial Rights supports providing a bankrupt with reasonable access to documents. However, a bankrupt may not be in a position to bear the costs of a Trustee to provide these documents. The division needs to be amended so a bankrupt is entitled to certain basic documents for free, that must be provided on demand including:

1. A statement of the cost to annul the bankruptcy
2. A statement covering current Trustee costs to date (every 6 months)

Recommendation

Financial Rights recommends that an additional sub-division be included in division 70-10 providing bankrupts with the right to free access to :

1. A statement of the cost to annul the bankruptcy
2. A statement covering current Trustee costs to date (every 6 months)

3. Initial Remuneration Notice: Division 70-25

Division 70-25 outlines the information to be included in an initial remuneration notice. In addition to the information already outlined in this division, the initial remuneration notice should also include details for the bankrupt debtor on dispute resolution processes for remuneration and other issues, with details of their rights to resolve the dispute in court or with the Inspector-General.

Recommendation

Financial Rights recommends that an additional sub-division be included in division 70-25 ensuring that in the initial remuneration notice, the debtor is provided with information relating to dispute resolution processes for remuneration and other issues, with details of their rights to resolve the dispute in court or with the Inspector-General.

4. Review of trustee remuneration on application: Division 90-5

Division 90-5 details the arrangements for applying for a review of remuneration. Financial Rights is concerned that this division may unfairly exclude bankrupt debtors who find it

difficult to particularise their complaint. In those cases, the Inspector-General should ensure that debtors have access to assistance to draft their dispute. In this regard, it is important that Community Legal Centres are reasonably funded to assist bankrupt debtors for this type of matter.

We also contend that a mechanism needs to be in place for reviewing excessive legal costs.

Recommendation

Financial Rights recommends that Community Legal Centres be funded appropriately to ensure they are able to provide assistance to debtors in disputes, and that a mechanism needs to be in place for reviewing excessive legal costs.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



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