



Offence Referrals: Objection grounds that give rise to possible referrals



*Disclaimer: This is **guidance only**. If you are not sure whether specific conduct fits into the requirements of an offence provision, contact [AFSA Enforcement](#) to discuss conduct and whether a referral is desirable.*

Ground for Objection to Discharge s149D of the <i>Bankruptcy Act 1966</i>	Offence provision to consider	Notes	Evidentiary Considerations
(a) the bankrupt has, whether before, on or after the date of the bankruptcy, left Australia and has not returned to Australia	Section 272	While the bankrupt is overseas, it should be noted in your systems to consider a referral in the future. Once the bankrupt returns, refer to AFSA Enforcement.	Evidence the bankrupt was aware of their obligation to obtain the trustees consent prior to traveling overseas
(aa) any transfer is void against the trustee in the bankruptcy because of section 120 or 122	Subsection 265(7) read with s265(4)(a) Subsection 266(3)	Regarding a disposal of property pre-bankruptcy under s120, of the Act. A s122 preference is unlikely to give rise to an offence	The time frame for ss 265(7) and 266(3) is within 12 months of the presentation of a petition on which they become bankrupt For a s265(7) offence must be able to prove the bankrupt was aware of a substantial risk of bankruptcy at the time of the conduct ¹

¹ The result of the application of Chapter 2 of the Criminal Code - refer section 7A of the *Bankruptcy Act 1966*.

Ground for Objection to Discharge s149D of the <i>Bankruptcy Act 1966</i>	Offence provision to consider	Notes	Evidentiary Considerations
(ab) any transfer is void against the trustee in the bankruptcy because of section 121	Section 265(7) read with s265(4)(a) Subsection 266(3)	Regarding a disposal of property pre-bankruptcy under s121 of the Act	The time frame for ss265(7) and 266(3) is within 12 months of the presentation of a petition on which they become bankrupt For a 265(7) offence must be able to prove the bankrupt was aware of a substantial risk of bankruptcy at the time of the conduct
(ac) any transfer is void against the trustee in the bankruptcy because of section 128B	Section 265(7) read with s265(4)(a) Subsection 266(3)	Regarding a disposal of property pre-bankruptcy under 128B of the Act.	The time frame for ss265(7) and 266(3) is within 12 months of the presentation of a petition on which they become bankrupt For a s265(7) offence must be able to prove the bankrupt was aware of a substantial risk of bankruptcy at the time of the conduct
(ad) any transfer is void against the trustee in the bankruptcy because of section 128C	Section 265(7) read with s265(4)(a) Subsection 266(3)	Regarding a disposal of property pre-bankruptcy under section 128C of the Act	The time frame for ss265(7) and 266(3) is within 12 months of the presentation of a petition on which they become bankrupt For a s265(7) offence must be able to prove the bankrupt was aware of a substantial risk of bankruptcy at the time of the conduct
(b) after the date of the bankruptcy, the bankrupt contravened section 206A of the Corporations Act 2001 (disqualification from managing corporations)	Section 206A of the <i>Corporations Act 2001</i>	Constitutes an offence under the <i>Corporations Act 2001</i> , outside the jurisdiction of AFSA Enforcement, consider a referral to ASIC	Refer to ASIC
(c) after the date of the bankruptcy the bankrupt engaged in misleading conduct in relation to a person in respect of an amount that, or amounts the total of which, exceeded \$3,000	Section 269 or s265(5)	Section 265(5) in respect to a liability incurred by fraud	For a s269 offence, trustee must have evidence that the bankrupt was aware of their obligation to disclose bankruptcy. Refer to historical indexations for relevant amounts
(d) the bankrupt, when requested in writing by the trustee to provide written information about the bankrupt's property, income or expected income, failed to comply with the request	Subsection s265(1)	Ensure each of sub-provision is considered	Evidence required showing bankrupt received request for information

Ground for Objection to Discharge s149D of the <i>Bankruptcy Act 1966</i>	Offence provision to consider	Notes	Evidentiary Considerations
(da) after the date of the bankruptcy, the bankrupt intentionally provided false or misleading information to the trustee	Subsection 265(1)	Consider an offence under s265(1) and each of its sub-provisions.	Evidence required showing the information to be false or misleading
(e) the bankrupt failed to disclose any particulars of income or expected income as required by a provision of this Act referred to in subsection 6A(1) or by section 139U	Section 139U Section 267B	Consider s139U which contains an offence provision Section s267B which is the offence for breach of s6A	Evidence required showing the information to be false or misleading
(f) the bankrupt failed to pay to the trustee an amount that the bankrupt was liable to pay under section 139ZG	No offence provisions		
(g) at any time during the period of 5 years immediately before the commencement of the bankruptcy, or at any time during the bankruptcy, the bankrupt (i) spent money but failed to explain adequately to the trustee the purpose for which the money was spent; or (ii) disposed of property but failed to explain adequately to the trustee why no money was received as a result of the disposal or what the bankrupt did with the money received as a result of the disposal	Section 265(1) Subsection 265(7) read with ss265(4) or 265(5)	Consider an offence under s265(1) and each of its sub-provisions. Also consider s265(4) and its subdivisions as it relates to concealment. In respect to the underlying disposal, if there is evidence from third party sources, consider s265(4)(a) on its own or in combination with s265(7) of the Act (where the conduct occurred in the 12 months prior to bankruptcy); In respect to any fraud that might exist consider s265(5)	The time frame for s265(7) is within 12 months of becoming bankrupt. For a s265(1) offence evidence is required showing bankrupt received request
(h) while the bankrupt was absent from Australia he or she was requested by the trustee to return to Australia by a particular date or within a particular period but the bankrupt failed to return by that date or within that period;	No offence provision		
(ha) the bankrupt intentionally failed to disclose to the trustee a liability of the	Section 267(2)	If relates to an omission in Statement of Affairs consider s267(2)	For 265(1) offence evidence required showing bankrupt received request for information

Ground for Objection to Discharge s149D of the <i>Bankruptcy Act 1966</i>	Offence provision to consider	Notes	Evidentiary Considerations
bankrupt that existed at the date of the bankruptcy	Paragraph 265(1)(f) Paragraph 265(4)(b)	If relates to an omission relating to a direction by the Trustee, consider s265(1) and its sub-provisions	
(i) the bankrupt has failed, whether intentionally or not, to disclose to the trustee a liability of the bankrupt that existed at the date of the bankruptcy	Subsections 267(2) and 265(1) and its sub-provisions	If relates to an omission in Statement of Affairs consider s267(2) If relates to an omission relating to a direction by the Trustee, consider s265(1) and its sub-provisions	For 265(1) offence evidence required showing bankrupt received request for information
(ia) the bankrupt failed to comply with subparagraph 77(1)(a)(ii)	No offence provision	Passport is not a record that gives rise to any offending as it is technically a record belonging to the Commonwealth of Australia or another issuing country	
(j) the bankrupt failed to comply with paragraph 77(1)(bb) or (bc) or subsection 80(1)	Subsection 80(1)	Consider s80(1) as it itself is an offence provision	Evidence required showing details of particular change and evidence that bankrupt was aware of the obligation to notify trustee of that change
(k) the bankrupt refused or failed to sign a document after being lawfully required by the trustee to sign that document	No offence provision		
(l) the bankrupt failed to attend a meeting of his or her creditors without having first obtained written approval of the trustee not to attend or without having given to the trustee a reasonable explanation for the failure	No offence provision		
(m) the bankrupt failed to attend an interview or examination for the purposes of this Act without having given a reasonable explanation to the trustee for the failure	No offence provision	No offence provision in relation to attending an interview, however, Official Receiver will likely make a referral under s267D as it relates to s77C examination.	

Ground for Objection to Discharge s149D of the <i>Bankruptcy Act 1966</i>	Offence provision to consider	Notes	Evidentiary Considerations
(ma) the bankrupt intentionally failed to disclose to the trustee the bankrupt's beneficial interest in any property	<p>As indicated above, a number of offence provisions may be relevant to the conduct:</p> <p>Subsection 267(2)</p> <p>Subsection 265(1) and its sub-provisions</p> <p>Subsection 265(4)</p> <p>Subsections 266(1) or (3)</p> <p>Subsection 265(5)</p>	<p>If relates to an omission in Statement of Affairs consider s267(2)</p> <p>If relates to an omission relating to a direction by the Trustee, consider s265(1) and its sub-provisions</p> <p>If suspected concealment, consider s265(4) and its sub-provisions</p> <p>If underlying disposal, consider ss 266(1) or (3)</p> <p>Consider s265(5) as it relates to acquiring property by fraud</p>	For 265(1) offence evidence required showing bankrupt received request for information
(n) the bankrupt failed, whether intentionally or not, to disclose to the trustee the bankrupt's beneficial interest in any property	<p>Subsection 267(2)</p> <p>Subsection 265(1)</p> <p>Subsection 265(4)</p> <p>Subsections 266(1) or (3)</p> <p>Subsection 265(5)</p>	<p>If relates to an omission in Statement of Affairs consider s267(2)</p> <p>If relates to an omission relating to a direction by the Trustee, consider s265(1) and its sub-provisions</p> <p>If suspected concealment, consider s265(4) and its sub-provisions</p> <p>If underlying disposal, consider ss 266(1) or (3)</p> <p>Consider s265(5) as it relates to acquiring property by fraud</p>	For 265(1) offence evidence required showing bankrupt received request for information