



**Australian Government**

**Australian Financial Security Authority**

# OFFICIAL TRUSTEE PRACTICE STATEMENT 2

## Application of section 125 of the Bankruptcy Act

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**Our vision:** To be a firm and fair regulator and world-class government service provider that delivers improved and equitable financial outcomes for consumers, business and the community.

- 1.1. Section 125 of the [Bankruptcy Act 1966](#) requires a “prescribed organisation” (defined as a bank or co-operative society) to notify the trustee of the existence of a bankrupt’s account and not to make any payments out of the account except under an order of the court or in accordance with written instructions of the trustee. If no such court order or instructions from the trustee are received within a month from the organisation becoming aware of the existence of the account, payments out of the account are permitted.
- 1.2. Most bankrupt estates administered by the Official Trustee have few assets, and any accounts the bankrupt holds with prescribed organisations generally have low balances and are used wholly or predominantly to receive personal income such as salary and government benefits.
- 1.3. Although upon bankruptcy accounts with prescribed organisations vest in the Official Trustee pursuant to section 58 of the Bankruptcy Act, as a matter of practice the Official Trustee will not claim the balance of a bankrupt’s account used predominantly to receive personal income, where the account has a low balance. The automatic freezing of such an account pursuant to section 125 can lead to hardship or inconvenience for bankrupts trying to access funds to meet living expenses.
- 1.4. Therefore, where the Official Trustee is administering a bankrupt estate, prescribed organisations will not be required to suspend or restrict transactions in accounts held by the bankrupt, nor will they be required to notify the Official Trustee of the existence of the account in the situations below.
  - A. The balance in the account at the time the prescribed organisation is notified of the bankruptcy by the Official Trustee is under \$3000.
    - Should the balance subsequently exceed \$3000, either during or after the one-month period stipulated in section 125, there is no requirement for the prescribed organisation to notify the Official Trustee of the existence of the account, unless the Official Trustee advises otherwise.
    - However, if the insolvency division of the prescribed organisation becomes aware of a payment or payments being received into an account which takes the balance well in excess of \$3000, the organisation is encouraged to notify the Official Trustee of this.
  - B. The account is used for the receipt of predominantly personal income.
    - It is acknowledged that a prescribed organisation may not always be able to determine whether, or to what extent, an account is used to receive personal income. Prescribed organisations are requested to adopt a “reasonable endeavours” approach – where an account is clearly of a non-personal nature (e.g. it is identifiable as a business-related account) the requirement to notify the Official Trustee and prevent payments from the account should apply.
- 1.5. In summary, prescribed organisations will be expected to apply section 125 to accounts:
  - used to receive predominantly personal income with balances of \$3000 or more at the date of notification of the bankruptcy
  - that are reasonably identifiable as being used to receive non-personal income (regardless of the balance in the account).