



Australian Government

Australian Financial Security Authority

OFFICIAL TRUSTEE PRACTICE STATEMENT 3

Requesting consent to travel overseas

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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.

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1. INTRODUCTION

- 1.1. The [Bankruptcy Act 1966](#) makes it an offence for a bankrupt to travel overseas or do any act in preparation for overseas travel (such as purchasing flights) without first obtaining his or her trustee's consent. Section 272 of the Bankruptcy Act imposes a maximum penalty of imprisonment for three years upon conviction.
- 1.2. While section 272 of the Bankruptcy Act is applicable to all bankrupts, this practice statement applies only to those bankrupts whose estates are administered by the Official Trustee in Bankruptcy.
- 1.3. The Bankruptcy Act recognises that a bankrupt may have a legitimate reason for overseas travel, but that this reason will be balanced with the need for the bankrupt estate to be administered in an proper and efficient way, which may require the bankrupt's presence in Australia.
- 1.4. An undischarged bankrupt is not restricted from travelling within Australia.
- 1.5. A person who has been discharged from bankruptcy or whose bankruptcy has been annulled is not required to obtain the trustee's permission to travel overseas.
- 1.6. A debtor who has entered a formal arrangement with creditors under either a Part IX debt agreement or a Part X personal insolvency agreement is not restricted from leaving Australia.

2. THE OVERSEAS TRAVEL REQUEST APPLICATION FEE

- 2.1. This fee does not apply to a bankrupt whose trustee is a registered trustee.
- 2.2. Bankruptcy Regulation 5.02 and clause 2.11 of the Bankruptcy (Fees and Remuneration) Determination 2015 provide for the payment of a \$150 fee in relation to a request for the Official Trustee's consent to travel overseas.
- 2.3. Payment of the fee is not required where the bankrupt has, in the preceding 12 months, received any of the disaster relief payments listed in the table in clause 2.07 of the Bankruptcy (Fees and Remuneration) Determination. No other exemptions apply.

3. HOW TO REQUEST CONSENT TO TRAVEL OVERSEAS

- 3.1. A bankrupt can request consent to travel verbally or in writing (email is acceptable).
- 3.2. In order for the Official Trustee to be able to quickly assess requests for consent to travel overseas, bankrupts are strongly encouraged to complete the [Request for consent to travel overseas while bankrupt](#) form. As this form has been designed to capture all of the information the Official Trustee will need when considering a

request, using it will reduce delays caused by the Official Trustee having to contact the bankrupt to request certain information that was not provided when the request was made.

4. CONSENTING TO OR REJECTING AN OVERSEAS TRAVEL REQUEST

- 4.1. The Official Trustee will consider the application and may take into account the following factors:
 - has the bankrupt provided all of the information requested by the Official Trustee?
 - are there any outstanding matters that require the bankrupt's presence in Australia for their resolution?
 - has the bankrupt been assessed as liable to make contributions from his or her income and, if so, are contributions payments up-to-date?
 - is there any reason to suspect that the bankrupt will fail to return to Australia?
- 4.2. Consent to travel will normally be granted upon receipt of a request, together with any additional information requested by the Official Trustee, unless a bankrupt's absence from Australia is likely to have a detrimental impact on the Official Trustee's ability to properly administer the estate and/or the fee has not been paid.
- 4.3. The Official Trustee may impose conditions when providing consent, including conditions regarding payment in full of any contributions liability before departure (subsection 272(2)). The contravention of any of these conditions by the bankrupt is in itself an offence (subsection 272(3)).
- 4.4. Where consent to travel overseas is granted, the bankrupt is advised to keep the letter outlining the trustee's decision with his or her passport as the Australian Federal Police may require evidence that the bankrupt does have the written permission of the Official Trustee to travel overseas.
- 4.5. If the Official Trustee does not consent to the bankrupt travelling overseas, the reason(s) for this will be provided in writing, together with advice to the bankrupt of the available avenues of complaint/review, which are:
 - contacting the Regulation arm of AFSA's independent Regulation and Enforcement division (the National Service Centre contact number of 1300 364 785 can be used as a starting point)
 - contacting the [Commonwealth Ombudsman](#)
 - applying to the court for a review of the decision to withhold consent. The bankrupt will need to seek his or her own advice about this.