



Australian Government

Australian Financial Security Authority

# OFFICIAL TRUSTEE PRACTICE STATEMENT 5

## Objections to discharge from bankruptcy

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Contact: [practice@afsa.gov.au](mailto:practice@afsa.gov.au)

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**PERSONAL  
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## CONTENTS

1.	INTRODUCTION .....	3
2.	WHEN IS AN OBJECTION APPROPRIATE? .....	3
3.	GROUNDS OF OBJECTION .....	4
4.	HOW AN OBJECTION IS PREPARED AND LODGED .....	9
	Grounds .....	9
	Evidence .....	9
	Reasons .....	10
	Review rights .....	11
	Execution of the objection .....	11
	When an objection becomes effective .....	12
	Notifying the bankrupt of the objection .....	12
	Trustee’s record .....	12
5.	INCOME CONTRIBUTIONS WHEN AN OBJECTION HAS BEEN MADE .....	12
6.	SPECIAL CIRCUMSTANCES .....	13
	When a bankrupt’s address is unknown .....	13
	When a statement of affairs has not been filed .....	13
	A ground or grounds that was the basis of a previous objection .....	14
7.	WITHDRAWAL OF AN OBJECTION .....	14
8.	RIGHTS OF REVIEW .....	15



## 1. INTRODUCTION

- 1.1. The [Bankruptcy Act 1966](#) provides for the extension of a bankruptcy, generally to five or eight years from the date the bankrupt's statement of affairs ("SOA") is accepted by the Official Receiver, if the trustee lodges an objection to discharge. All trustees have the same powers to lodge objections in order to prompt bankrupts to comply with certain obligations under the Bankruptcy Act that, in turn, will assist the trustees in the administration of bankrupt estates.
- 1.2. The relevant provisions of the Bankruptcy Act are:
  - section 149A – Bankruptcy extended when objection made
  - section 149B – Objection to discharge
  - section 149C – Form of notice of objection
  - section 149D – Grounds of objection
  - section 149F – Copy of notice of objection to be given to bankrupt
  - section 149G – Date of effect of objection
  - section 149H – Trustee ceasing to object on some grounds
  - section 149J – Withdrawal of objection
  - section 149K – Internal review of objection
  - section 149Q – Review of decisions.
- 1.3. Pursuant to Schedule 8 to the [Bankruptcy Regulations 1996](#), objections to discharge are recorded on the [National Personal Insolvency Index](#) ("NPII").

## 2. WHEN IS AN OBJECTION APPROPRIATE?

- 2.1. Section 149B of the Bankruptcy Act states that a trustee may lodge an objection at any time prior to a bankrupt's discharge, and that the trustee must lodge an objection when the trustee believes that:
  - a. doing so will help make the bankrupt discharge a duty that the bankrupt has not yet discharged, and
  - b. there is no other way for the trustee to induce the bankrupt to discharge that duty.
- 2.2. The trustee must also determine that at least one of the grounds of objection, as set out in subsection 149D(1) of the Bankruptcy Act, applies. These grounds are outlined in part [3](#) below.
- 2.3. When determining whether an objection should be lodged in an estate, consideration must be given to whether the bankrupt has been provided with a reasonable opportunity to comply. For example, it is inappropriate for a trustee to lodge an objection because a bankrupt has failed to provide a particular bank statement when the trustee has not asked for that bank statement.

- 2.4. Where the Official Trustee seeks to obtain information and/or documentation from a bankrupt, a minimum of two requests will be made before proceeding to lodge an objection if the information and/or documentation is not supplied and the bankrupt does not have a reasonable excuse. At least one of the two requests made will be in writing.
- 2.5. Before lodging an objection, the Official Trustee will give consideration to the reasons a bankrupt provides for non-compliance. For example, if a trustee requests that a bankrupt provide copies of bank account statements by a particular date but does not receive them, the bankrupt may be able to provide evidence to show that a request was lodged with the bank for copies of documents and that the bank has not yet provided them. In this situation, an objection would not be appropriate because the bankrupt has made a reasonable attempt to comply. However, it may be appropriate to lodge an objection several months later if the bankrupt does not follow up with the bank, as doing so may induce the bankrupt to comply with the trustee’s request.

### 3. GROUNDS OF OBJECTION

- 3.1. In order to object to a bankrupt’s discharge, one of the grounds specified in subsection 149D(1) of the Bankruptcy Act must apply. The relevant ground that applies will determine the period of extension of the bankruptcy.
- 3.2. The grounds in subsection 149D(1) are as follows:

S149D(1) reference	Ground of objection	Comments	Period of extension of bankruptcy <sup>1</sup>
<b>Assets</b>			
(aa)	any transfer is void against the trustee in the bankruptcy because of section 120 or 122	Relates to the undervalued transactions (section 120) and preference payments (section 122)	5 years from the date statement of affairs filed
(ab)	any transfer is void against the trustee in the bankruptcy because of section 121	Relates to transfers of property to defeat creditors	8 years from the date statement of affairs filed

<sup>1</sup> Note that, on 1 January 2020, the statement of affairs form was renamed the Bankruptcy Form. Reference in this chapter to a statement of affairs includes reference to the Bankruptcy Form

OTPS5 – Objections to discharge from bankruptcy

(ac)	any transfer is void against the trustee in the bankruptcy because of section 128B	Relates to superannuation contributions made to defeat creditors	8 years from the date statement of affairs filed
(ad)	any transfer is void against the trustee in the bankruptcy because of section 128C	Relates to superannuation contributions made to defeat creditors	8 years from the date statement of affairs filed
(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		8 years from the date statement of affairs filed
(g)	(i) spent money but failed to explain adequately to the trustee the purpose for which the money was spent (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		8 years from the date statement of affairs filed
(ma)	the bankrupt intentionally failed to disclose to the trustee the bankrupt's beneficial interest in any property		8 years from the date statement of affairs filed
(n)	the bankrupt failed, whether intentionally or not, to disclose to the trustee the bankrupt's beneficial interest in any property		5 years from the date statement of affairs filed

<b>Income contributions</b>			
(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		8 years from the date statement of affairs filed
(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		8 years from the date statement of affairs filed
(f)	the bankrupt failed to pay to the trustee an amount that the bankrupt was liable to pay under section 139ZG		8 years from the date statement of affairs filed
<b>Overseas travel</b>			
(a)	the bankrupt has, whether before, on or after the date of the bankruptcy, left Australia and has not returned to Australia		5 years from the date the bankrupt returns to Australia
(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		8 years from the date the bankrupt returns to Australia
(ia)	the bankrupt failed to comply with subparagraph 77(1)(a)(ii)	Relates to the requirement that a bankrupt give his or her passport to the trustee	8 years from the date statement of affairs filed

<b>Misleading conduct</b>			
(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 the indexed amount	“Misleading conduct” is defined in section 148. The amount can be found in AFSA’s <a href="#">indexed amounts</a> webpage	5 years from the date statement of affairs filed
(da)	after the date of the bankruptcy, the bankrupt intentionally provided false or misleading information to the trustee		8 years from the date statement of affairs filed
(ha)	the bankrupt intentionally failed to disclose to the trustee a liability of the bankrupt that existed at the date of the bankruptcy		8 years from the date statement of affairs filed
<b>Failure to disclose creditors</b>			
(ha)	the bankrupt intentionally failed to disclose to the trustee a liability of the bankrupt that existed at the date of the bankruptcy		8 years from the date statement of affairs filed
(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		5 years from the date statement of affairs filed
(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		5 years from the date statement of affairs filed

Other			
(b)	after the date of the bankruptcy, the bankrupt contravened section 206A of the <i>Corporations Act 2001</i> (disqualification from managing corporations)		5 years from the date statement of affairs filed
(j)	the bankrupt failed to comply with paragraph 77(1)(bb) or (bc) or subsection 80(1)	Relates to advising the trustee of material changes to the bankrupt's affairs and notifying the trustee of a change in any of the bankrupt's contact details (address, telephone number etc.)	5 years from the date statement of affairs filed
(k)	the bankrupt refused or failed to sign a document after being lawfully required by the trustee to sign that document		8 years from the date statement of affairs filed

- 3.3. Those grounds with eight-year bankruptcy periods referred to in paragraphs 149D(1)(ab), (d), (da), (e), (f), (g), (h), (ha), (ia), (k) and (ma) are referred to as “special grounds”. (Paragraphs 149D(1)(ac) and (ad) also extend the bankruptcy to eight years but are not special grounds, as they are not mentioned in subsection 149D(1A).)
- 3.4. In circumstances where an objection is lodged under more than one ground contained in subsection 149D(1), the longer period provided for under subsection 149A(2) will apply.

**EXAMPLE 1**

Rose's trustee lodges an objection to her discharge for the following reasons:

- a. Rose failed to advise the trustee of her new telephone number
- b. Rose failed to pay her income contribution instalments to the trustee.

The relevant objection ground in 149D(1) that relates to Rose not advising the trustee of her new telephone number is 149D(1)(j), which will extend her bankruptcy to five years.



The relevant objection ground in 149D(1) that relates to Rose not paying her income contributions is 149D(1)(f), which will extend her bankruptcy to eight years.

Unless the objection is later withdrawn by the trustee, Rose will be bankrupt for at least eight years and one day from when she filed her statement of affairs.

## 4. HOW AN OBJECTION IS PREPARED AND LODGED

- 4.1. The requirements as to what an objection to discharge must contain are outlined in section 149C of the Bankruptcy Act.

### Grounds

- 4.2. This section of the template is for outlining the ground or grounds on which the objection was lodged (that is, the basis of the objection, with reference to the list in subsection 149D(1), which is outlined in the table in part [3](#) above).
- 4.3. While subsection 149C(2) states that an objection to discharge is not invalidated for failing to state the ground(s) of the objection, provided it/they can be reasonably identified from the content of the objection, the Official Trustee will not lodge an objection that does not clearly outline the relevant ground or grounds.

### Evidence

- 4.4. The trustee is required by paragraph 149C(1)(b) to outline the evidence upon which the decision to lodge the objection and the ground(s) of the objection were based.
- 4.5. The Official Trustee will provide sufficient evidence to establish that the bankrupt was given an opportunity to comply with an obligation under the Bankruptcy Act and failed to do so without a reasonable excuse.
- 4.6. The specific information that will be included as evidence to support an objection will vary depending on the ground or grounds of the objection. The evidence may comprise:
- details of documents and/or information requested by the trustee
  - the dates on which documents were requested and how the requests were made (post, email, telephone conversation)
  - the dates on which the documents and/or information were due to be provided to the trustee
  - details of any communications with the bankrupt about the trustee's requests for documents and/or information
  - details, dates and amounts of income contribution assessments
  - amounts and dates of income contribution instalments paid as at the time the objection is lodged and details of arrears
  - information about the nature, location and value of property that is the subject

of the trustee’s investigations, including property being investigated under the antecedent transaction provisions of the Bankruptcy Act

- details of overseas travel undertaken by the bankrupt, including dates, destinations and any discussions between the bankrupt and the trustee about travel
- dates and amounts of superannuation contributions that were made by the bankrupt
- details of the bankrupt’s beneficial interest in property and information about the relevant trust or deceased estate
- the names of creditors and the dates debts were incurred in relation to liabilities that were not disclosed to the trustee
- dates of meetings or examinations scheduled by the trustee and information regarding the methods by which the bankrupt was notified of the dates and requirements to attend.

## Reasons

- 4.7. Subsection 149C(1)(c) of the Bankruptcy Act requires the trustee to outline the reasons for an objection if it is lodged under one of the following grounds contained in subsection 149D(1) (being the grounds that are not special grounds):

Reference	Ground requiring reasons
(a)	the bankrupt has, whether before, on or after the date of the bankruptcy, left Australia and has not returned to Australia
(aa)	any transfer is void against the trustee in the bankruptcy because of section 120 or 122
(b)	after the date of the bankruptcy, the bankrupt contravened section 206A of the <i>Corporations Act 2001</i> (disqualification from managing corporations)
(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 the indexed amount
(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
(j)	the bankrupt failed to comply with paragraph 77(1)(bb) or (bc) or subsection 80(1)
(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

(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
(n)	the bankrupt failed, whether intentionally or not, to disclose to the trustee the bankrupt’s beneficial interest in any property

4.8. Objections based on the above grounds will therefore need to include the ground(s), evidence and reasons that apply. While the ground(s) and evidence will outline the obligation that was not satisfied and the compliance opportunities afforded to the bankrupt, the reasons must go beyond this.

- 4.9. The reasons for lodging an objection may include but are not limited to:
- the bankrupt’s fundamental obligations under section 77 of the Bankruptcy Act
  - specific obligations under certain other provisions of the Bankruptcy Act
  - further information linking the conduct establishing the connection between the ground(s) and the breach(es) of the duties referred to above
  - the trustee’s duty under paragraph 19(1)(g) to take whatever action is practicable to try to ensure that the bankrupt discharges all of his or her duties under the Bankruptcy Act
  - how the bankrupt’s actions have hindered the trustee’s investigations and, consequently, the trustee’s obligations under paragraphs 19(1)(b) and 19(1)(f) of the Bankruptcy Act
  - the inappropriateness of the bankrupt being entitled to the benefit of ordinary discharge under the Bankruptcy Act, in light of his or her interference with the compliance by the trustee with its obligations
  - the benefit that the extended bankruptcy period will afford the trustee in light of the bankrupt’s failure to assist the trustee
  - the potential outcomes of ongoing investigations
  - details of any loss to the estate or to the trustee as a result of the bankrupt’s non-compliance with his or her obligations
  - the protection that will be afforded to credit providers and members of the general public from the actions of the bankrupt by extending the bankruptcy.

### Review rights

4.10. A bankrupt’s right to request a review of an objection is contained in section 149K of the Bankruptcy Act. More information about reviews of objections is contained in part [8](#) below.

### Execution of the objection

4.11. An objection to discharge that is executed by an officer of the Official Trustee without the appropriate Bankruptcy Act delegation will not be valid.

## When an objection becomes effective

- 4.12. An objection to discharge must be filed with the Official Receiver so that it can be registered on the NPII.
- 4.13. Section 149G of the Bankruptcy Act provides for an objection to discharge taking effect on the beginning of the day on which the details are entered on the NPII, not when it is executed by a delegate of the Official Trustee. The application of section 149G means that an objection executed by a delegate of the trustee before a bankrupt's discharge that is not sent to the Official Receiver until after discharge will be ineffective. The Official Trustee must therefore allow sufficient time before discharge for the objection to be recorded on the NPII.

## Notifying the bankrupt of the objection

- 4.14. Section 149F requires the trustee to notify the bankrupt of the objection "as soon as practicable" after it is filed with the Official Receiver. Further, the Inspector-General in Bankruptcy has outlined in [Inspector-General Practice Statement 12 – Statutory reviews of trustees' decisions under the Bankruptcy Act 1966 by the Inspector-General in Bankruptcy](#) that it expects that a copy of the objection will be sent to the bankrupt "within seven days of the objection being lodged with the Official Receiver".
- 4.15. A copy of the executed objection will be sent to the bankrupt by post or email. Information about how to proceed when the bankrupt's address is unknown can be found in part [6](#) below.

## Trustee's record

- 4.16. A copy of the objection will be placed on the Official Trustee's administration file for review and audit purposes.

## 5. INCOME CONTRIBUTIONS WHEN AN OBJECTION HAS BEEN MADE

- 5.1. If a bankruptcy has been extended as a result of an objection being lodged and the bankrupt earns above the income threshold throughout the bankruptcy, he or she will be liable to pay [income contributions](#) for the entire period of bankruptcy.

### EXAMPLE 2

Sam becomes bankrupt by debtor's petition. Sam's trustee makes several requests for copies of pay slips and payment summaries. Sam fails to respond to these requests. The trustee lodges an objection to discharge, so Sam will be bankrupt for eight years.

The trustee calculates that Sam will be liable to pay about \$16,000 in contributions for each year of his bankruptcy, which will be a total of \$128,000 over eight years.

However, if Sam provides the requested information and the objection is withdrawn, he may only be bankrupt for three years (or until the date of objection is withdrawn, whichever is longer) and his income contributions over that time may be as low as \$48,000.

## 6. SPECIAL CIRCUMSTANCES

### When a bankrupt's address is unknown

- 6.1. As section 149F of the Bankruptcy Act requires the trustee to give a copy of a notice of objection to the bankrupt as soon as practicable. As noted above, the Inspector-General has specified that this should be done within seven days of the objection being filed with the Official Receiver.
- 6.2. The Official Trustee will endeavour to send a copy of the objection to the bankrupt within seven days when the bankrupt's postal or email address is known. However, in some estates, the bankrupt's postal and email addresses are both unknown, and there is no up-to-date telephone number on file to contact the bankrupt. Lodging an objection to discharge may still be appropriate because, when the bankrupt is notified of the objection, he or she may be induced to comply with his or her obligations.
- 6.3. Although subsection 149F(3) provides that a trustee's failure to notify the bankrupt of an objection as soon as practicable does not invalidate the objection, the Official Trustee will notify the bankrupt as soon as their postal or email address becomes known.
- 6.4. Further, the bankrupt's review rights are not affected by the objection not being provided to him or her immediately, as the 60-day review period (which is outlined in more detail in part [8](#) below) commences when the bankrupt is notified of the objection.

### When a statement of affairs has not been filed

- 6.5. AFSA Regulation considered whether lodging an objection to discharge due to a bankrupt's failure to lodge a statement of affairs is appropriate and advised in [Inspector-General Practice Direction 11 – Trustees' guidelines for issuing objections to discharge when statements of affairs not yet filed](#):  
*"In short, the Inspector-General's view is that the Bankruptcy Act does not contemplate the filing of a notice of objection in a bankruptcy prior to the filing of a statement of affairs by the bankrupt."*

- 6.6. Consequently, the Official Trustee will instead consider other powers available under the Bankruptcy Act to induce the bankrupt to comply with the obligation under section 54 to file a statement of affairs.

### **A ground or grounds that was the basis of a previous objection**

- 6.7. Section 149C requires that, when setting out the ground(s) of objection, this will not include a ground or grounds of a previous objection to discharge that was cancelled.
- 6.8. This means that, if the trustee previously lodged an objection to discharge that was later set aside by the Inspector-General on review, the bankrupt's non-compliance with a particular obligation in relation to a particular issue that led to that objection being lodged cannot form the basis of a future objection.
- 6.9. The application of section 149C does not prevent the trustee from lodging an objection for non-compliance with the same provision of the Bankruptcy Act on a separate occasion. For example, if a bankrupt fails to return his or her statement of income for contribution assessment period 1 and an objection is lodged, the trustee is not prevented from lodging another objection if the bankrupt later fails to return his or her statement of income for contribution assessment period 2.

## **7. WITHDRAWAL OF AN OBJECTION**

- 7.1. A trustee has the power to remove an objection to discharge. It is usually appropriate for this power to be exercised when the basis for the objection no longer exists. For example, if a bankruptcy was extended because the bankrupt failed to provide particular information that the trustee requested and this information is later provided, it may be appropriate for the objection to be withdrawn.
- 7.2. An objection withdrawal takes effect when it is entered on the NPII. For example, if the delegate of the Official Trustee signs the withdrawal on a Monday, a copy is received by the Official Receiver on Wednesday and the NPII is updated on Thursday, the objection will take effect on Thursday.
- 7.3. When an objection withdrawal has been actioned by the Official Receiver, the NPII will reference the objection having been withdrawn.
- 7.4. A copy of the objection withdrawal must be provided to the bankrupt. This obligation can be satisfied by either posting or emailing it.
- 7.5. The trustee needs to be aware that withdrawing an objection can result in a bankrupt's immediate discharge.
- 7.6. Bankrupts need to be aware that, even after discharge, they still have obligations to assist the trustee and to pay any outstanding income contributions. Further,

assets that formed part of the estate do not revert back to the bankrupt upon discharge.

## 8. RIGHTS OF REVIEW

- 8.1. The Official Trustee will explain a bankrupt's rights and the process for requesting a review when an objection to discharge has been lodged.
- 8.2. Bankrupts are encouraged to take up any concerns or queries they may have with the case officer responsible for the administration of the estate or the manager who signed the objection.
- 8.3. It is important for the bankrupt to note that the 60-day period in which a request for review must be lodged is specified in legislation (paragraph 149K(3)(a) of the Bankruptcy Act). Neither the Official Receiver nor Inspector-General has the discretion to extend this period.
- 8.4. The Inspector-General's [Application for review of objection form](#) can be found on AFSA's website.
- 8.5. Any decision made by the Inspector-General may be reviewed by the Administrative Appeals Tribunal.
- 8.6. More information about reviews of trustees' decisions can be found on [AFSA's website](#) and in [Inspector-General Practice Statement 12 – Statutory reviews of trustees' decisions under the Bankruptcy Act 1966 by the Inspector-General in Bankruptcy](#) (refer to parts 5 and 6).