



Australian Government
Australian Financial Security Authority

OFFICIAL TRUSTEE PRACTICE STATEMENT 1

INCOME CONTRIBUTIONS

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If you have any comments, suggestions or queries about an issue referred to in this practice statement, please contact the National Manager, Insolvency and Trustee Services, at info@afsa.gov.au.

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1. THE INCOME CONTRIBUTION ASSESSMENT PROCESS

Overview

- 1.1. The *Bankruptcy Act 1966* (“the Act”) does not restrict a bankrupt from being employed and earning an income.¹ There are also no restrictions on the amount of income a bankrupt may earn. However, if the income of a bankrupt exceeds a certain amount, he or she will have to pay contributions from his or her income to the trustee.
- 1.2. The purpose of the income contribution system under the Act is to require bankrupts who can afford to do so to pay contributions towards their estates and to provide trustees with powers to recover those contributions.
- 1.3. The amount payable is calculated by the trustee based on a formula specified in the Act. The threshold at which contributions start to become payable is also determined by legislation and is not at the discretion of the trustee.
- 1.4. The definition of “income” for contributions purposes is wider than that for income tax purposes. This means that a bankrupt’s taxable income will not necessarily be the same as their income for contributions purposes.

The process

- 1.5. The trustee assesses a bankrupt’s contribution liability each year (or part-year) of bankruptcy. Each year (or part-year) is called a contribution assessment period (“CAP”).
- 1.6. By completing an assessment as early as possible, the bankrupt is provided with an opportunity to pay the full amount owed prior to the end of the relevant CAP. This also means that the bankrupt has an opportunity to pay their final CAP liability before the end of their bankruptcy (although the trustee does still have the power to collect outstanding balances after discharge). Where the bankrupt’s income changes or there is another change that affects the liability during the CAP, a reassessment can be performed at any time.
- 1.7. In a situation where a bankrupt believes that his or her income is below the threshold and that income contributions will not be required, the trustee is still entitled to ask questions and obtain information about the bankrupt’s income. Penalties can be imposed if the bankrupt fails to provide the necessary information.

¹ Some industry associations or other legislation may place restrictions on bankrupts, but these are independent of the Bankruptcy Act and the Official Trustee

2. CALCULATION OF A BANKRUPT'S LIABILITY

Formula

- 2.1. The formula for calculating a contribution liability is contained in section 139S of the Act and is:

$$\frac{[\text{ASSESSED INCOME less ACTUAL INCOME THRESHOLD AMOUNT}]}{\text{divided by 2}}$$

- 2.2. **Assessed income** includes income from all sources less income tax, Medicare levy, Medicare levy surcharge and child support or maintenance payments paid under the [Family Law Act 1975](#) or an order that has been registered in or approved by a court in Australia.
- 2.3. The **actual income threshold amount** (“AITA”) that applies to a bankrupt is a set dollar amount that takes into account the number of dependants that the bankrupt has. It is calculated with reference to the base income threshold amount (“BITA”) and is updated twice a year in March and September. The AITA and BITA are defined in section 139K of the Act and the current thresholds can be found in AFSA’s [indexed amounts](#) fact sheet.

Dependants

- 2.4. The AITA that applies to a particular bankrupt in a particular CAP depends on the number of dependants that the bankrupt has.
- 2.5. When a bankrupt claims to have a dependant(s), the trustee may require evidence and, if this is not supplied, the lowest AITA will be applied (thereby increasing the contributions payable).
- 2.6. A dependant is defined in section 139K as a person who, during the relevant CAP:
- resides with the bankrupt
 - is wholly or partly dependent on the bankrupt for economic support
 - earns less income than the amount prescribed in regulation 6.15A.
- 2.7. The prescribed amount that a person may earn before they are no longer considered a dependant can be found in AFSA’s [indexed amounts](#) fact sheet.
- 2.8. The definition of income in relation to a dependant is somewhat different to that of a bankrupt. (Details about the determination of a bankrupt’s income are contained in [part 3](#) below.) Section 139K states that “income” has its ordinary meaning for the purposes of the definition of a “dependant” and (unlike for the definition of a bankrupt’s income) this definition is not qualified by any additions or exclusions. Payments that are income of a bankrupt, such as Disability Support Pension, are also income of a dependant.

However, some payments such as Family Tax Benefit and child support receipts that are not included in the bankrupt's income calculation are included when calculating a dependant's income. There is also a third category, being payments that are not income of a bankrupt or a dependant, such as payments under the National Disability Insurance Scheme.

- 2.9. It is important to note that any person receiving a maximum rate social security benefit will not generally be a dependant under the Act because his or her income will exceed the dependant threshold. However, if the person receives a part rate payment that is below the prescribed amount, they may be a dependant.

Applying the formula to the bankrupt's income

- 2.10. The formula at [paragraph 2.1](#) is applied to the bankrupt's assessed income for each year (or part-year) of their bankruptcy in order to calculate the amount payable for each CAP.
- 2.11. Where there is a part-year of bankruptcy, the bankrupt's assessed income and the AITA are apportioned for the relevant part of the year.

EXAMPLE 1

Lee expects his gross income for the first 12 months of his bankruptcy to be \$90,000. He has one dependant.

STEP 1 The trustee calculates Lee's assessed income.

GROSS EXPECTED INCOME	\$90,000.00
<i>less</i> INCOME TAX	\$21,246.63
<u><i>less</i> MEDICARE LEVY</u>	<u>\$ 1,800.00</u>
<i>equals</i> ASSESSED INCOME	\$66,953.37

STEP 2 Using the [indexed amounts](#) information on AFSA's website, the trustee can see that the AITA applying to Lee, as he has one dependant, is \$64,331.36.

(Note: \$64,331.36 was the applicable AITA as at the date this document was last updated.)

STEP 3 The trustee uses the formula, Lee's assessed income and the threshold to calculate his annual contribution liability.

$$\$66,953.37 - \$64,331.36 = \$2622.01 \div 2 = \$1311.00.$$

STEP 4 The trustee sends Lee a notice of assessment requiring him to pay a total of \$1311.00 to his estate and provides him with a fortnightly payment schedule. Lee makes payments directly to his trustee and the trustee monitors the amounts received to ensure that Lee pays on time. Payment arrangements may be changed if Lee is paid monthly or his income is seasonal.

3. DETERMINING THE BANKRUPT'S ASSESSABLE INCOME

- 3.1. Section 139L of the Act and Bankruptcy Regulation 6.12C define income as having its ordinary meaning and including one-off amounts such as termination payments, loans from associated entities and fringe benefits, and excluding payments such as child support.
- 3.2. Section 139M of the Act further expands the definition of income for contributions purposes to include amounts “derived” by a bankrupt, even if not received by the bankrupt, with section 139K of the Act defining “derived” as:

“...earned, derived, or received from any source, whether within or outside Australia”.
- 3.3. The Official Trustee therefore assesses the income *derived* by the bankrupt, which is not necessarily the same as the income *received* by the bankrupt. It is the income that is *derived* that is the basis of the calculation outlined in [paragraph 2.1](#) above.

Inclusions to income

- 3.4. Income includes salary and wages and profit from operating a business or profession and the following categories of payments and entitlements:
 - a. in most circumstances, fringe benefits and salary sacrifice amounts (also called salary packaging)
 - b. non-cash benefits supplied to a bankrupt by someone other than their employer
 - c. loans from associated entities (bankrupts may be disclosed as borrowing from companies, trusts or third parties where the underlying nature of these transactions is actually the payment of income)
 - d. money received by a company, trust or third party resulting from the work or services of a bankrupt, less any expenses (other than those of a capital nature)
 - e. tax refunds that relate to income earned after the date of bankruptcy are included in assessable income pursuant to section 139N (whereas refunds related to income earned before bankruptcy are assets that vest in the Official Trustee and the full amount of the refund is payable to the trustee)
 - f. superannuation payments in excess of 9% made by an employer that arise from an industrial agreement solely between the bankrupt and the employer
 - g. some allowances that are, in effect, additional income and are not expended on work-related expenses
 - h. drawings from a business
 - i. other income as determined by the Official Trustee.

Exclusions to income

- 3.5. The following are not income in relation to a bankrupt:
- a. child support and maintenance amounts, if they are received pursuant to the [Child Support \(Registration and Collection\) Act 1988](#)
 - b. a payment or amount of Family Tax Benefit paid under family assistance law
 - c. rent subsidies paid by the Commonwealth or a State or Territory, other than to an employee
 - d. the pay and allowances paid to members of the Naval Reserve, Army Reserve or the Air Force Reserve other than in respect of full-time continuous service
 - e. payments for jury service or witness expenses
 - f. any compulsory superannuation payments made by an employer pursuant to the [Superannuation Guarantee Charge Act 1992](#) (regulation 6.12B)
 - g. an amount paid under the National Disability Insurance Scheme in respect of reasonable and necessary supports, as well as any returns earned, derived or received on these amounts.
- 3.6. Certain other payments received by a bankrupt may be excluded for income purposes, depending on the nature of those payments.² Consideration will need to be given to the legislation under which the payment is made, including whether or not it provides for the payment being income, which is something that the trustee will investigate as part of the assessment process.

EXAMPLE 2

Kylie works for a State Government and receives 12% superannuation as part of her remuneration package. The additional superannuation paid to her above the 9% amount specified in the Bankruptcy Regulations is set by an Enterprise Agreement and her employer.

Kylie is not permitted to take the additional superannuation contribution as income, nor is she able to instruct her employer to only pay 9% to her super fund on her behalf.

Neither the 12% super nor the 3% component above the rate in the Regulations is income for contributions purposes.

² Some payments received may be assets of the bankrupt estate, with the full amount needing to be forwarded to the trustee

Expenses

- 3.7. The Act does not expressly provide for any expenses to be deducted from income; however, the ordinary meaning of income referred to in section 139L and case law indicate that certain expenses should be allowed.
- 3.8. Expenses that are allowed as deductions for income tax purposes are not automatically allowed as expenses for contribution assessment purposes (for example, depreciation is not allowed). Consideration will be given to the nature of the expense, whether the expense was “necessarily incurred” and whether the expense was incurred directly in relation to the work or services performed by the bankrupt.
- 3.9. If a bankrupt claims self-employed work-related expenses and derives the majority of his or her income from providing personal services, consideration should be given as to whether the bankrupt passes the results test, employment test or business premises test (see the ATO website). If these tests are not passed and in the absence of the bankrupt providing a personal services business determination from the ATO, the Official Trustee may treat the bankrupt as an employee and any expenses claimed will be scrutinised accordingly.

Determination of income by trustee

- 3.10. Sections 139Y and 139Z of the Act, in conjunction with paragraph 139L(a)(vii), allow trustees to determine the assessable income of a bankrupt where amounts of money (or the value of any non-monetary consideration) for work or services performed by the bankrupt are paid to another party.
- 3.11. Section 139Y provides that, if a bankrupt is employed or enters into a transaction that would reasonably have produced income and the bankrupt was not paid anything or is paid an amount that is regarded as less than reasonable remuneration, the Official Trustee can issue an assessment based on what would be reasonable remuneration in the circumstances.

EXAMPLE 3

Michelle is bankrupt and works as a general practitioner. For insurance purposes, she operated a company prior to her date of bankruptcy and payments from her patients for her services were paid to her company. After bankruptcy, her friend became the director of the company and Michelle’s professional fees are still paid to the company. Michelle claimed that she received \$45,000 income a year from the company.

The trustee conducted investigations into the average income of a general practitioner in the city in which Michelle works and into the company’s income, and found that the company received \$205,000 from Michelle’s patients during CAP1,

with no other income or funds from any other source received. Further, general practitioners in Michelle's city generally have an annual income of between \$200,000 and \$250,000.

In CAP2, Michelle claimed to not be in receipt of any income from the company. The trustee's investigations revealed that the company received \$215,000 from Michelle's patients in CAP2.

The trustee, pursuant to sections 139Y and 139Z of the Act and based on the evidence obtained during investigations, deemed Michelle's income to be \$205,000 for CAP1 and \$215,000 for CAP2.

- 3.12. Section 139Z provides that, if a bankrupt fails to provide information about his or her income or claims not to be in receipt of any income, and the trustee has reasonable grounds to believe the bankrupt is in receipt of income, the trustee can apply this section to issue an assessment based on income determined by the trustee.
- 3.13. Section 139Z may be applied in relatively simple cases where, for instance, a bankrupt whose liability was assessed in a previous CAP (or CAPs) has failed to return a statement of income for the next CAP. In such a case, an assessment may be issued based on previous CAP income with adjustments for an award increase and/or the consumer price index.
- 3.14. While the Official Trustee may consider using investigative provisions available under the Act, it is not required to conduct investigations before applying section 139Y or section 139Z.

4. OTHER CONSIDERATIONS

Foreign income

- 4.1. Assessable income includes income earned or derived overseas.
- 4.2. The Act does not specify how income in foreign currency should be converted. Consistent with a 2011 AAT decision,³ the approach taken by the Official Trustee is to convert the foreign income at the exchange rate **on the date of the assessment**.
- 4.3. Depending on the bankrupt's employment and the country where the money is earned, the bankrupt may be required to pay foreign tax rather than Australian income tax. Section 139N does not expressly include foreign income tax; however, the Official Trustee will allow this deduction upon receipt of sufficient evidence of the amount paid.

³ [Sheikholeslami and Inspector-General in Bankruptcy \[2011\] AATA 670 \(28 September 2011\)](#)

5. THE INCOME CONTRIBUTION ASSESSMENT PROCESS

The first (CAP1) assessment

- 5.1. In most cases, a CAP1 assessment will be based on the information provided by the bankrupt on his or her statement of affairs. Where further information is required to complete the assessment, the trustee will request this from the bankrupt.
- 5.2. Where no statement of affairs has been filed within a month of the date of bankruptcy, the trustee may determine the bankrupt's income pursuant to section 139Z and issue an assessment based on the best information available.
- 5.3. When an assessment has been completed, the Official Trustee will issue a notice of assessment outlining the bankrupt's liability.
- 5.4. A [reassessment](#) can be carried out at any stage if there are changes in any of the bankrupt's circumstances that will affect his or her liability.

Subsequent assessments

- 5.5. Section 139U of the Act requires a bankrupt to, as soon as practicable and not later than 21 days after the end of a CAP, give to the trustee a statement outlining their income for that CAP and their expected income for the next CAP. To assist with this, the Official Trustee will issue a statement of income to the bankrupt before the end of the CAP to facilitate both the assessment for the next CAP and a review of the assessment of the CAP about to expire (refer to the information below about reassessments).
- 5.6. If a bankrupt fails to return his or her completed statement of income within 21 days after the end of the CAP or to notify the Official Trustee of changes in his or her income or number of dependants and a liability or an increased liability results, an objection to discharge will be lodged by the Official Trustee and, under certain circumstances, a referral will be made to AFSA's Enforcement team, as the failure to supply a statement of income may constitute an offence. More information about objections is contained in [part 6](#) of this document.

EXAMPLE 4

Christian became bankrupt on 1 February 2013. At that date, he was unemployed and he disclosed this on his statement of affairs.

Consequently, the Official Trustee assessed him as not liable to pay income contributions for CAP1.

On 1 April 2013, Christian obtained new employment with a salary of \$75,000 a year,

which meant he was liable to pay income contributions. However, he did not advise the trustee of his employment and income.

In December 2013, while reviewing CAP1 and preparing for the CAP2 assessment, the trustee asked Christian for details of his income for CAP1 and his expected income for CAP2. It was at this point that the trustee first became aware of Christian's new job.

CAP1 and CAP2 were both assessed in December 2013 and the combined liability was approximately \$10,000. Christian was required to pay this to the trustee by 20 fortnightly instalments of \$500. He struggled to make these repayments and an objection was lodged, meaning Christian could be bankrupt for eight years. He is expected to have to pay contributions for the full eight years.

Had Christian disclosed his new employment and the associated income to the trustee on or about 1 April 2013, he would have been able to spread the CAP1 instalments over 2013 instead of having to pay these at the same time he paid his CAP2 instalments during 2014.

Reassessments

- 5.7. Reassessments of contribution liabilities may be conducted at the trustee's initiative or where the bankrupt satisfies the trustee that there are reasonable grounds for a reassessment.
- 5.8. Reassessments may be issued at any time, pursuant to section 139WA.
- 5.9. A reassessment for a previous CAP is calculated based on the current AITA and not the AITA that applied at the time of the original assessment.

Nil assessments

- 5.10. Where the Official Trustee assesses a bankrupt as not having a liability to make contributions, a record of that decision will be retained and the bankrupt will be advised in writing. If information or documents other than the statement of affairs are used to reach the decision to issue a nil assessment, that material will be identified in the record of the decision.

Assessment notices

- 5.11. The trustee will issue an assessment notice in all cases where an assessment or reassessment has been completed and the bankrupt has a liability.
- 5.12. The assessment notice will include sufficient detail to show how the liability was calculated and the payment schedule. The notice will also explain the review and hardship processes.

Payment schedules

- 5.13. The assessment notice will include a payment schedule.
- 5.14. The Official Trustee aims to collect each CAP liability within 10 months to ensure it is collected in full by the end of the CAP and before instalments for the following CAP commence and, in the last CAP, before discharge from bankruptcy. Payment schedules that run beyond the current CAP are to be avoided if possible.
- 5.15. The Official Trustee will prepare a payment schedule that will usually involve instalments of no less than \$100. The instalments will generally not be more than 20 per cent of the bankrupt's assessed net income, unless the bankrupt is a high income earner in which case a higher instalment rate is acceptable. The Official Trustee aims to set the highest affordable payment schedule.
- 5.16. In the first instance, the payment schedule will generally be coordinated with the dates on which the bankrupt receives their income to ensure prompt payments; however, the Official Trustee will consider alternative payment schedules if it makes it easier for the bankrupt to make payments and encourages compliance.
- 5.17. The Official Trustee will consider varying the payment schedule if the bankrupt's circumstances change unexpectedly for reasons that would not otherwise be dealt with under the hardship provisions.
- 5.18. Bankrupts who fail to pay the liability before the end of a CAP may then be required to pay two (or more) CAP liabilities in the following year, which may mean paying more per instalment than they would have had to pay over each separate CAP.

EXAMPLE 5

Cara became bankrupt on 1 February 2013. She was assessed as liable to contribute \$10,000 to her estate 20 fortnightly instalments of \$500, beginning in March. Cara paid \$7000 and then stopped making her payments.

In January 2014, the trustee calculated Cara's CAP2 liability, which was \$12,000. She still had \$3000 owing from CAP1. Her new payment schedule required her to pay \$750 per fortnight, whereas if she had already paid the CAP1 liability she would only need to pay \$500 per fortnight.

In addition to the increased amount of each payment due, Cara's bankruptcy was extended when an objection to discharge was lodged because she failed to pay her CAP1 liability in accordance with the schedule set by the trustee and did not bring payments up to date when an arrears letter was sent to her. The objection, unless it is later withdrawn by the trustee because Cara rectifies the arrears situation, will

extend her bankruptcy to 2021 and result in approximately \$60,000 more in contributions being payable by her.

Hardship applications

- 5.19. There are specific hardship provisions in section 139T of the Act that provide for the reduction in a contribution liability for a bankrupt who has faced or will face financial hardship if required to pay their assessed contribution liability.
- 5.20. The list of what constitutes “hardship” for the purposes of the Act is specific and the Official Trustee does **not** have discretion to grant hardship for expenses that are not listed in the Act. The exceptional circumstances that may be considered in relation to assessing whether a bankrupt will face undue hardship are:
- ongoing medical expenses incurred by the bankrupt for themselves or a dependant
 - child care costs essential for the bankrupt to work
 - particularly high rent for non-public housing when there are no alternatives available
 - substantial expenses incurred when travelling to and from work
 - the loss of financial contribution by someone who lives with the bankrupt (usually the bankrupt’s spouse) and contributes to household costs
 - any other reason specified in the Bankruptcy Regulations (although there are presently no reasons specified).
- 5.21. The granting of a hardship application is not automatic. The trustee will need to be satisfied, based on evidence supplied by the bankrupt, that one of the hardship grounds exists and that the bankrupt will actually suffer hardship if required to pay the assessed income contribution liability.

EXAMPLE 6

Ben’s expected income for CAP3 is \$150,000. The trustee has assessed his contribution liability for the CAP, using the formula contained in [paragraph 2.1](#), and he is liable to pay approximately \$26,500 to his estate.

Ben lodges a written hardship application and provides evidence of his ongoing medical expenses of \$50 per month.

The trustee considers Ben’s situation, including his total net income and his other expenses, but cannot reasonably conclude that paying the contribution liability plus \$50 per month will cause Ben hardship and, pursuant to the requirements of subsection 139T(7) of the Bankruptcy Act, Ben’s hardship application must be rejected.

Ben’s income contribution liability for CAP3 remains at \$26,500.

- 5.22. The Official Trustee has a recommended hardship application form available for use by bankrupts that it can provide upon request. It must be noted that this form is neither a prescribed form nor an approved form, which means that bankrupts are not required to use it and the trustee must accept any hardship application, so long as it is “in writing” (a requirement of the legislation). However, bankrupts are encouraged to use the form as it provides guidance regarding the supporting documents required and has been designed to capture the information the trustee requires to make a decision, which will speed up the process.

6. COLLECTION AND ENFORCEMENT

Investigations

- 6.1. The ability of the Official Trustee to issue valid enforceable assessments is not affected by a bankrupt’s failure to cooperate and provide information, nor does the Official Trustee have to carry out expensive and time-consuming investigations before issuing an assessment. Any investigations to determine a bankrupt’s income and his or her contribution liability will only be carried out where it is expected to result in a cost-effective return to the estate and, if creditors have been requested to provide funding to enable investigations to continue, creditors have been forthcoming.

Collecting an outstanding liability after discharge

- 6.2. Section 139R of the Act provides that a contribution liability survives discharge from bankruptcy. This means that the trustee can continue to collect payments from a person after their bankruptcy has ended and take action to have the debt enforced like any other debt.
- 6.3. In addition, regulation 6.18 specifically requires a discharged bankrupt who was a contributor immediately before discharge and who has an outstanding liability to notify the trustee of changes to the information on his or her statement of affairs and contact details.

Recovering arrears

- 6.4. Arrears occur when a bankrupt has not made payments towards an outstanding contribution liability in accordance with the most recent payment schedule set by the Official Trustee.
- 6.5. The Official Trustee aims to be a model trustee and, when collecting arrears, will comply with the minimum standards set out in the joint ACCC and ASIC publication [Debt collection guideline: for collectors and creditors](#). This guideline provides practical guidance to creditors, including government agencies, on how the Commonwealth consumer protection laws apply to

debt collection. For example, it refers to when and how many times a collector may telephone a debtor.

- 6.6. If a bankrupt falls into arrears with payments, the Official Trustee will contact the bankrupt via telephone, email or post.
- 6.7. If the bankrupt fails to rectify the arrears or negotiate a new payment schedule after being contacted by the trustee, a notice of overdue payment of contribution letter will be sent via email or post.
- 6.8. The arrears letter advises the bankrupt that he or she must attend to payment of the arrears or contact the trustee to come to a suitable arrangement for payment. The letter also advises that, if the bankrupt does not comply, the trustee may lodge an objection to discharge and may make an application to the Official Receiver for the issue of a section 139ZL notice to garnishee the bankrupt's wages. (More information about garnishee notices and objections is contained [below](#).)
- 6.9. The trustee will reassess the situation after sending the arrears letter and, if the bankrupt's payments are not up-to-date or a suitable payment arrangement has not been negotiated, the trustee may proceed with the objection and garnishee notice without further recourse to the bankrupt.
- 6.10. Other avenues available to the trustee for collection of arrears include:
 - applying to court to obtain a judgment
 - making the debtor bankrupt again by sequestration order
 - using the services of a debt collection agent
 - requesting that the Official Receiver issue a garnishee notice to the ATO, which will result in any refunds that would have been due to the bankrupt being paid to the trustee
 - making use of the Act's supervised account regime (which requires the bankrupt to open a bank account and pay in all cash income).

Objections to discharge from bankruptcy

- 6.11. Section 149B of the Act provides for the extension of a bankruptcy, generally to five or eight years from the date the bankrupt's statement of affairs is accepted by the Official Receiver, if the trustee lodges an objection to discharge.
- 6.12. Grounds of objection contained in section 149D that relate to income contributions include where the bankrupt has provided misleading information, has failed to provide information about income or has failed to pay income contributions.
- 6.13. Although objections can be lodged at any stage before discharge, they will generally be lodged promptly after the bankrupt has failed to return a statement of income, provide other information about income within 21 days

after the end of a CAP or where the bankrupt has failed to rectify arrears following contact from the Official Trustee.

- 6.14. The Official Trustee will generally only advise the bankrupt once, in writing, that an objection may be lodged before proceeding to lodge the objection.
- 6.15. Objections will be considered during the third CAP where the bankrupt has a history of arrears and it is considered likely that the contribution liability will not be paid within three months after the third anniversary of the bankruptcy.
- 6.16. If an objection is in place after the third anniversary of the bankruptcy, the Official Trustee will continue to issue and collect assessments for CAP4 and beyond while the bankrupt is undischarged.
- 6.17. More information about objections can be found in [Official Trustee Practice Statement 5 – Objections to discharge from bankruptcy](#).

Garnishee notices

- 6.18. Section 139ZL of the Act allows the Official Trustee to request that the Official Receiver issue a notice to a third party for the recovery of income contributions payable by a bankrupt. A common example is the issuance of a notice to a bankrupt's employer, in which the employer is required to pay a certain amount to the trustee each pay period.
- 6.19. In accordance with the requirements outlined in [Official Receiver Practice Statement 7 – Exercise of the Official Receiver's powers to assist trustees](#), the Official Trustee will not consider a section 139ZL notice unless the bankrupt:
 - has been notified of his or her liability to pay income contributions
 - is in arrears with their payments with reference to the most recent payment schedule sent
 - has been given an opportunity to negotiate a payment arrangement and has failed to do so or, having made such an arrangement, has failed to comply.

Supervised account regime

- 6.20. Where the bankrupt has failed to pay contributions and a section 139ZL notice has been ineffective, the Official Trustee will consider using the supervised account regime ("SAR").
- 6.21. A determination that the SAR applies to a bankrupt will not be made unless, at the time of making the determination, the bankrupt is liable to pay an income contribution and either:
 - where the contribution is payable by instalments, the bankrupt has not paid the whole of an instalment when it became payable
 - where the contribution is payable at a specified time, the bankrupt has

not paid the whole of the contribution at that time.

- 6.22. The SAR is generally applied in a small number of cases, typically where the bankrupt is self-employed and has failed to meet his or her obligations voluntarily and other collection methods have been or are likely to be unsuccessful.
- 6.23. The Official Trustee will come to an arrangement with the bankrupt allowing for regular withdrawals from the account to meet the bankrupt's living expenses but, at the same time, ensuring that the balance of the account remains sufficient to meet the bankrupt's liability to pay contributions. Generally, it is intended that the Official Trustee will consent to regular or periodic withdrawals from the account and that the Official Trustee will not consent to the bankrupt withdrawing amounts in excess of those required to meet the contribution liability. In addition to this ongoing consent to meet living expenses, the Official Trustee may also consent to additional withdrawals to meet unexpected liabilities or where a balance has accumulated in the account that exceeds the amount required to meet the bankrupt's contribution liability.
- 6.24. The bankrupt is prohibited from entering into non-monetary or constructive receipt arrangements and must obtain the trustee's consent in order to continue with such arrangements where the effect is that income derived by the bankrupt is not actually received by the bankrupt.
- 6.25. A determination will cease to be in force where the bankruptcy is annulled or where the bankrupt is discharged and there is no further liability to pay income contributions. Where the bankrupt is discharged from bankruptcy and has an outstanding contributions liability, the determination will cease to be in force only when the bankrupt is no longer liable to pay income contributions.
- 6.26. Non-compliance with the requirements under this regime is an offence punishable by imprisonments for six months. Any instances of non-compliance will be referred to AFSA's Enforcement team.
- 6.27. All decisions made by the Official Trustee under the provisions relating to the SAR are subject to review by the Inspector-General and the AAT.

Death of a bankrupt

- 6.28. Regulation 6.15 addresses the treatment of a contribution liability in the situation where a bankrupt dies and provides for no refund being payable for amounts paid until the date of death and for the bankrupt's deceased estate being liable for any balance owing until the date of death after apportioning the liability for the CAP into pre-death and post-death periods.

7. RIGHTS OF REVIEW

- 7.1. The Official Trustee will explain the bankrupt's rights and the process for requesting a review in correspondence accompanying the notice of assessment.
- 7.2. Bankrupts are encouraged to take up any concerns or queries they may have with their case manager or supervisor in the first instance before making a formal application for review.
- 7.3. An assessment may be reviewed by the Inspector-General, either on the Inspector-General's initiative or at the request of a bankrupt. Decisions regarding hardship applications may also be reviewed by the Inspector-General, either on the Inspector-General's initiative or at the request of a bankrupt.
- 7.4. Any decision made by the Inspector-General may be reviewed by the Administrative Appeals Tribunal.
- 7.5. An application for review of an assessment or hardship decision by a bankrupt must be in writing and addressed to the Inspector-General, who must make a decision within 60 days. More information about reviews of decisions can be found on AFSA's [website](#).
- 7.6. When making a decision, the Inspector-General has all the powers of the Official Trustee and may confirm the Official Trustee's decision or issue a reassessment.
- 7.7. If an application for review has been made and the Official Trustee agrees the assessment should be reduced, the Official Trustee should issue a reassessment promptly rather than await the outcome of the review.