



Australian Government

Insolvency and Trustee Service Australia

**INSPECTOR-GENERAL
PRACTICE STATEMENT NO 10**

**Complaint handling process for
complaints against bankruptcy trustees
and debt agreement administrators**

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Introduction

1. ITSA's independent Bankruptcy Regulation Branch fulfils the Inspector-General in Bankruptcy's statutory responsibilities as a regulator under the *Bankruptcy Act 1966* of maintaining high national standards of personal insolvency practice and procedure. It does this by:
 - Administering a registration scheme to ensure that only suitably qualified persons are licensed to practice as private sector bankruptcy trustees and debt agreement administrators;
 - Monitoring the standard of bankruptcy trustees and debt agreement administrators and their administrations through a targeted program of inspections of systems and practices;
 - Investigating complaints made by creditors or debtors against registered trustees, debt agreement administrators and solicitor controlling trustees;
 - Conducting statutory reviews of some bankruptcy trustee's decisions at the request of bankrupts; and
 - Working with bankruptcy trustees and debt agreement administrators to improve Bankruptcy Act knowledge and practice.
2. This document seeks to clarify and give greater transparency in relation to Bankruptcy Regulation's role in investigating complaints made by creditors or debtors against registered trustees, debt agreement administrators, debtors or solicitors who act as controlling trustees under Part X (10) of the Bankruptcy Act. It offers greater guidance to ITSA's stakeholders and confirms the practical approach that Bankruptcy Regulation will take when handling complaints and the basis of its decision making processes.
3. This policy document needs to be read alongside the ITSA Fact Sheet titled "[Resolving Complaints about Trustees and Administrators.](#)"

Reviewing practitioner's decisions

4. It must be stressed from the outset that not all matters of concern raised, relating to regulated practitioners or their administrations, can be resolved by Bankruptcy Regulation. Bankruptcy Regulation has broad inquiry powers and if breaches of the law, improper use of power or non performance of a duty are identified it can request remedial action be taken and can take disciplinary action relating to the practitioner.
5. However Bankruptcy Regulation does not have the power in many cases to direct a practitioner on how they should decide or action they need to take, so on occasions Bankruptcy Regulation may not be able to achieve the outcome a complainant seeks or expects. This will be the case particularly where the practitioner has exercised discretionary decision making powers and has operated legally in the exercise of discretion provided under the Bankruptcy Act, albeit to the complainant's disadvantage. In such instances alternative remedies may be available. A number of scenarios are shown in Table 1 at the end of this policy document to guide people in likely outcomes they can expect.

6. Complainants concerned with decisions made by trustees extending the period of bankruptcy or concerning income assessments that give rise to a liability of a bankrupt to pay contributions to the trustee have a legal right of review of those decisions by the Inspector-General. Please refer to the ITSA Fact Sheet titled "[Can I Appeal?: Review and appeal of trustee and administrator decisions](#)" for information.

Who can complain to Bankruptcy Regulation

7. Usually it will be a debtor, bankrupt or a creditor who will contact Bankruptcy Regulation if they have concerns or a complaint regarding an administration handled by, or the conduct of:
 - Registered trustees;
 - The Official Trustee (a statutory office contained within ITSA);
 - Solicitors who act as controlling trustees;
 - Debt Agreement Administrators, both registered and unregistered; and/or
 - Debtors or bankrupts.
8. Other parties affected by practitioner's actions or decisions may also complain and complaints can also be referred to Bankruptcy Regulation from ITSA's Debt Agreement Service, the Commonwealth Ombudsman, the Inspector-General or the Attorney-General.
9. People are encouraged to firstly attempt to resolve issues of concern with the practitioner and if not resolved to then contact BR.
10. While Bankruptcy Regulation deals with complaints against the Official Trustee it does not handle complaints against the services provided by other areas of ITSA.

Receipt of complaints

11. Enquiries and complaints can be made to Bankruptcy Regulation by telephone (on 1300 364 785), post, facsimile, e-mail, in person or through the [ITSA internet contact e-mail](#). The matters raised are dealt with by the Bankruptcy Regulation office nearest the state or territory where the trustee or administrator is located.
12. Verbal complaints may be able to be dealt with without the need to put the complaint in writing. However, if on initial inquiry Bankruptcy Regulation decides the issues are serious enough to warrant further investigation it may need more particulars and details in writing and may also request documentation substantiating any allegations.
13. When complaints are made in writing or if following a telephone discussion Bankruptcy Regulation seeks further particulars in writing Bankruptcy Regulation will endeavour to acknowledge the complaint in writing within 7 days and will also enclose a copy of ITSA Fact Sheet entitled "[Resolving complaints about Trustees and Administrators](#)".

How Bankruptcy Regulation will handle the matter

14. All complaints received are treated seriously and all complainants and those against whom the complaint is made will be treated professionally, courteously, with dignity and respect. If at any time you believe this has not occurred please ask to speak to the manager of the

Bankruptcy Regulation inspector you were dealing with. ITSA welcomes feedback relating to its services.

Confidentiality and Privacy Act

15. In the interests of natural justice the person against whom the complaint is made will be provided with details of the issues raised, subject to the requirements of the Privacy Act relating to the use and disclosure of personal information.
16. In those cases where the complaint is in writing, Bankruptcy Regulation will seek the consent of the author before copies of the correspondence is provided to other parties involved.
17. Bankruptcy Regulation will provide the name of the complainant to the party against whom the complaint is made only if the complainant agrees but can provide details for law enforcement purposes to law enforcement agencies.
18. If Bankruptcy Regulation requests that the trustee or administrator provides a written response to the issues raised, a copy of the trustee's or administrator's specific response to Bankruptcy Regulation will not be provided to the complainant without the trustee's or administrator's permission. However Bankruptcy Regulation will advise the complainant of details of the response in its findings.

Resolution without investigation

19. Bankruptcy Regulation will quickly review the issues raised. If the complaint is outside of Bankruptcy Regulation's jurisdiction or power Bankruptcy Regulation will advise the alternative options available to the complainant and take no further action. Sometimes Bankruptcy Regulation may be able to assist quickly without the need for further investigation, for example by provision of information. Enquiries can be finalised during the initial telephone conversation or shortly afterwards by providing complainants with information or alternatives.
20. Similarly Bankruptcy Regulation will usually quickly make initial contact with the person against whom the complaint has been made to ascertain their comments on issues raised. In some cases this may result in the trustee or administrator taking quick action to address issues raised and no further enquiry or action is needed.

Assistance in investigation

21. If after initial assessment and inquiry, Bankruptcy Regulation decides there is substance to the complaint and that the issues are within its power of inquiry, it will initiate a more detailed investigation. In these cases it is important that Bankruptcy Regulation be provided comprehensive details and evidence both by the complainant and by the bankruptcy trustees or administrators.
22. Bankruptcy Regulation expects that practitioners will provide access to all administration records and will promptly provide information needed to respond to complaints and will promptly address matters highlighted in our findings. Similarly Bankruptcy Regulation

expects complainants, when requested, will provide specific details in writing with substantiating documents and in a timely manner.

What outcome a complainant may expect

23. It is important to distinguish issues of concern where Bankruptcy Regulation are unable to become involved or where Bankruptcy Regulation does not have the power to facilitate an appropriate outcome.
24. Bankruptcy Regulation will initially focus its inquiry on whether there have been breaches of the law and the standards expected of trustees and administrators. This includes cases where a power or discretion exercised is in breach of their fiduciary duties, such as would be the case if the action did not demonstrate impartiality, was without due care or negligent.
25. Bankruptcy Regulation may find that the action taken by the practitioner is lawful, appropriate or reasonable in the circumstances. In such cases the complaint will be classified as not justified. Bankruptcy Regulation will not require the practitioner to take any remedial action, will advise the parties of its findings and take no further action. All complaints are recorded and analysed, with trends reported and feedback provided to practitioners.
26. Action taken or decisions made by the trustee or administrator in exercising a discretionary power or performing a required duty, are usually outside of Bankruptcy Regulation's jurisdiction. Similarly the action taken may not be considered to be in breach of the law. In these cases the complainant will be informed of other options that remain available including negotiated settlement and legal action. Some specific examples and options are listed in Table 1.
27. Bankruptcy Regulation may determine that some or all of the action taken by the practitioner is in conflict with their fiduciary duties, the legislation or standards required. These types of complaints will be classified as justified. Bankruptcy Regulation may:
 - request the practitioner takes remedial action if possible of being remedied; and/or
 - counsel the practitioner; and/or
 - prepare a formal report pursuant to subsection 12(1B) on the results of the investigations and may provide a copy of the report to the creditors, the debtor or to other disciplinary bodies or relevant professional association; and/or
 - if the breaches identified are serious enough consider disciplinary action or legal action against the practitioner.
28. There may be some instances where Bankruptcy Regulation finds the practitioner has breached the legislation or standards but may not be capable of reversing action taken or is unwilling to do so. Whilst Bankruptcy Regulation can examine whether the practitioner should remain registered to practice this is not the outcome often sought by the complainant. With the exception of statutory reviews of objection and income and contribution decisions mentioned earlier, Bankruptcy Regulation cannot order a practitioner to change a decision or take other action. Only a court has this power.

29. In such cases Bankruptcy Regulation will advise the complainant of the legal options available and consider whether to take legal or disciplinary action itself. Also see section on legal remedies below.

Alternative dispute resolution & mediation

30. Whilst Bankruptcy Regulation inspectors are not qualified mediators they are independent, experienced in negotiation and well versed in the practical application of the Bankruptcy Act.
31. Bankruptcy Regulation will intervene in disputes when it identifies appropriate situations where having an independent party facilitating a negotiation process may assist with speedier settlement of issues, with the aim of reducing the costs of ongoing complaints and litigation that quite often follow. Some examples are listed below.
- (i) Breakdown of relationship and communication between a debtor or creditor and the practitioner which often has the potential to escalate, increasing costs.
 - (ii) Disputes involving property where both parties indicate a willingness to resolve the dispute by negotiation.
 - (iii) Claims of over-charging or over-servicing with respect to a practitioner's remuneration. Bankruptcy Regulation will inform the complainant of their right of formal review of the costs (referred to as a taxation of costs). However Bankruptcy Regulation can require a reduction where the fees do not comply with the Bankruptcy Act requirements and may also be able to facilitate a negotiated reduction in the amount being claimed where, for example, the amount charged whilst legally incurred and supported by records appears high in view of the relative complexity of the estate.
 - (iv) The estate appears to have a sizeable surplus of assets over liabilities and there is little incentive for the practitioner to speedily finalise matters.
32. Negotiated settlements are only an option available if both parties agree and both are willing to compromise.

Service standards

33. Bankruptcy Regulation aims to complete investigations within 28 days of receiving all relevant information, and will respond to the complainant on our findings and advise what action they or the Inspector-General may take.
34. Where a complaint takes longer than 28 days to finalise, the complainant will be given an interim report on the progress of the complaint every 28 days.
35. The complainant will be provided with a written response and a copy of that response is given to the trustee or administrator. Bankruptcy Regulation aims to complete this within 60 days of receipt of the complaint.

Costs relating to a complaint

36. Bankruptcy Regulation does not charge for handling complaints against trustees and administrators.
37. Registered trustees are generally entitled to charge for the time reasonably spent on a particular administration. In respect to time spent dealing with Bankruptcy Regulation, the Inspector-General supports the Insolvency Practitioner Association code of conduct in respect to whether a trustee should charge for time spent relating to dealing with Bankruptcy Regulation on a complaint, which states:

“A practitioner should not claim remuneration for the time spent:

- *communicating with regulators concerning complaints about the Practitioner or the conduct of a particular administration, except where the complaint is spurious*
 - *on regular surveillance, professional audits or inspection of files, or peer reviews or*
 - *unsuccessfully defending a breach of the law or this code”*
38. In respect to what is considered spurious, Bankruptcy Regulation will advise parties when it is considered appropriate for a trustee to charge for their time.
 39. By way of example: Bankruptcy Regulation completes its enquiries and decides that a matter is not justified and no further action is required. The complainant may not accept the outcome and may seek further enquiries on the same issues. Bankruptcy Regulation will firstly be responsible for deciding whether the trustee needs to be further queried at additional expense or not. Generally Bankruptcy Regulation will attempt to minimise any unnecessary expense and not re-raise matters previously examined. However should further trustee involvement be necessary, it would most likely give rise to a decision that the trustee is entitled to be remunerated from the estate for the additional work involved in responding.
 40. Should new issues be raised by the same complainant then Bankruptcy Regulation will handle the matter as a new complaint and it is Bankruptcy Regulation’s expectation that in responding to new queries the trustee will not attempt to charge the estate for time spent responding to Bankruptcy Regulation.
 41. It is also the Inspector-General’s expectation that the time and costs associated with a practitioner taking any remedial action in respect to an error made will not to be charged to the estate or administration.

Feedback on Bankruptcy Regulation services

42. Bankruptcy Regulation endeavours to maintain high standards and to model best practice in the way it deals with complaints. To this end, contentious or complex complaints and those chosen at random from time to time are subject to peer and management review.
43. We are grateful to receive feedback from any stakeholder about the level of service they receive from Bankruptcy Regulation throughout the complaint investigation period. Your feedback will improve the service we provide. Please provide your feedback to the Director Bankruptcy Regulation in your local region or if you continue to be dissatisfied

[Contacts](#) section of ITSA’s website.

Table 1

The types of outcomes that may result from an inquiry or complaint to Bankruptcy Regulation:

| | Nature & Type of Outcome |
|---|---|
| 1 | <p>A person who has been made bankrupt by sequestration order complains as they believe there has been a miscarriage of justice and they should not have been made bankrupt.</p> <p>Bankruptcy Regulation does not have the power to determine if a sequestration order has been validly made. In such a case it is likely Bankruptcy Regulation will refer the bankrupt to other possible avenues including an application to court under either sections 153B or 178 of the Act.</p> |
| 2 | <p>A bankrupt or trustee complains about the content or operation of the Bankruptcy Act. For example, a bankrupt may believe that a 3 year period for bankruptcy is too long and she should only be bankrupt for 1 year.</p> <p>Bankruptcy Regulation will refer suggestions to improve the operation of the Act to ITSA’s Legal and Practice Support area for consideration.</p> |
| 3 | <p>A debtor complains that whilst they have finished the payments set out in their debt agreement, their debt agreement administrator is asking for more money to pay additional creditors and their extra fees.</p> <p>Bankruptcy Regulation would ascertain whether any breaches of the law have taken place. If the debt agreement has been complied with and the administrator is seeking additional funds outside the agreement then it is likely that Bankruptcy Regulation would inform the administrator that they have no legal basis for requesting further payments and should provide the debtor with confirmation and release. Bankruptcy Regulation would also examine whether this has been a regular issue with the administrator and if so would consider counselling or disciplinary action.</p> |
| 4 | <p>A person complains regarding property and assets claimed by a trustee and the way a trustee has treated same.</p> <p>Bankruptcy Regulation will look to see if breaches of law or standards have occurred. If none occurred, Bankruptcy Regulation has no power to direct a trustee in how they should exercise their power, discretion or commercial judgment relating to property claimed. In these cases complainants will be advised of the alternative remedies available to challenge a decision of a trustee regarding property. This may include application to the Court but could involve alternative dispute resolution covered in detail elsewhere in this document.</p> |

| | Nature & Type of Outcome |
|----|---|
| 5 | <p>A person complains as the practitioner appears to be showing bias, and is taking a heavy handed approach.</p> <p>Bankruptcy Regulation will ascertain if the practitioner is in breach of the requirement to act impartially without conflict of interest and in accordance with the legislative standards required. If Bankruptcy Regulation decides there is a conflict and the law or standards have been breached there are several options available depending on the seriousness of the issue and the practitioner's willingness to remedy same. Bankruptcy Regulation may counsel the practitioner, ask the practitioner to voluntarily arrange a replacement or may take legal action seeking orders to that effect and may commence disciplinary action concerning their registration.</p> |
| 5. | <p>A debtor complains that the practitioner is not responding to requests for information.</p> <p>There is specific legislation requiring provision of information and responding to reasonable requests for same. Bankruptcy Regulation will examine whether this legislation has been complied with. If not, Bankruptcy Regulation will request that the practitioner addresses the requests properly.</p> |
| 6. | <p>A creditor complains that a trustee has not properly investigated the financial affairs and property dealings of the bankrupt and had acted for the bankrupt prior to bankruptcy in attempting to negotiate a settlement.</p> <p>As in example 4 Bankruptcy Regulation will ascertain if there practitioner is in breach of the requirement to act impartially without conflict of interest and in accordance with the legislative standards required.</p> |