



Australian Government

Insolvency and Trustee Service Australia

**INSPECTOR-GENERAL
PRACTICE STATEMENT 13**

**Trustee Registered under Bankruptcy Act
Registration Application Process**

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Introduction

1. This document outlines the process for becoming registered as a private trustee under the Bankruptcy Act, the Inspector-General's expectations as to the capabilities applicants will be expected to demonstrate and the decision making process followed by the Inspector-General's .

Overview of a Trustee's Duties

2. Bankruptcy trustees are required to maintain the utmost professionalism, independence, impartiality, honesty and ethics in their dealings. They are considered officers of the Court and in exercising powers and discretions and making decisions no lesser standard is to be expected of them than of a court or judge. They play a central role in the administration of estates and are under a general duty to exercise the powers in such a fashion that the objects of the Act, including those of equality between creditors and fairness to bankrupts and debtors are served.
3. Bankruptcy trustees also have statutory duties set out in the Bankruptcy Act. They have a fundamental duty when administering an estate to carry out certain investigations and undertake certain tasks and functions as set out in [section 19](#) of the Bankruptcy Act (see below). Trustees are also required to maintain proper accounts and records, have proper money handling processes and assist the Inspector-General in his investigations when required.
4. Bankruptcy trustees are also required to comply with the legislative standards set out in [Schedule 4A](#) of the Act.

Overview of the Registration Process

5. To become a registered trustee, a person must lodge an application with the Inspector-General in Bankruptcy. The application must be accompanied by the prescribed application fee and certain documents which are listed in the Bankruptcy Regulations and outlined below.
6. Once a complete application has been received with the required documents and application fee, the Inspector-General will convene a committee to consider the application.
7. The Committee must consist of the Inspector-General or delegate, an officer of the Australian Public Service (APS) and a registered trustee, registered for more than five years, nominated by the Insolvency Practitioners Association (IPA). The Committee will consider the application, including all the supporting documents, and interview the applicant. The applicant may also be asked to sit an examination.
8. The Committee will decide whether or not to register an applicant as a bankruptcy trustee and provide reasons for its decision to both the applicant and the Inspector-General. The Inspector-General must accept and action the decision of the Committee.

9. To complete the registration process, the successful applicant must pay the prescribed registration fee and provide evidence that they have obtained, or will obtain, professional indemnity insurance.
10. If the applicant is not satisfied with the Committee's decision, they may apply to the Administrative Appeals Tribunal for a review of the decision.

The Application

11. In order to be accepted and processed an application must be on the approved form together with proof of the qualifications relied on, two referee reports attesting to the applicant's current knowledge and ability, a statement setting out the applicant's experience, knowledge and abilities and the prescribed application fee.
12. Applications must be made on [Form 10](#). These forms may be obtained from Bankruptcy Regulation or downloaded from the [Forms](#) page on the ITSA website.
13. An application will not be considered as having been received if all these aspects are not addressed.
14. Once a complete application is received the application is registered and a Committee convened to consider the application.

A statement setting out the applicant's experience, knowledge and abilities

15. The statement should set out the applicant's experience, knowledge and abilities relevant to dealing with insolvency and bankruptcy matters. The statement should describe:
 - the applicant's engagement in relevant employment on a full-time basis for a total of not less than two years in the preceding five years; and
 - the applicant's ability to perform satisfactorily the duties of a registered trustee immediately after registration.
16. In outlining any relevant employment history, the applicant should list any employment which:
 - involves assisting a liquidator or trustee in the performance of his or her duties as a liquidator or trustee; and
 - involves providing advice in relation to bankruptcy matters and other personal insolvency matters; and
 - provides experience in insolvency administrations outside bankruptcy and other personal insolvency matters, including administration of receiverships, the winding up of corporations and any other similar functions.
17. In particular, applicants should provide the following details of their employment history:
 - the position the applicant has occupied and the duties they have performed; or

- a list of the personal and/or corporate insolvency files the applicant has been involved in, including the type of administration and the level of responsibility held on the file.

Evidence of Qualifications

18. Regulation 8.01 requires that an applicant provides an original statement or certified copy from an Australian university (or college of advanced education or other Australian tertiary institution of an equivalent standard), with the application, as proof of the qualifications required in regulation 8.02, namely, the completion of the academic requirements for a degree (or diploma or similar qualification) that includes:
 - a course of study in accountancy of not less than three years' duration; and
 - a course of study in commercial law of not less than two years' duration.
19. If the applicant believes they have equivalent tertiary qualifications covering accountancy and commercial law they should provide similar evidence for consideration.

Referee reports

20. The application must contain two referees' reports as described below. If the application does not contain two reports, it cannot be considered further by the Inspector-General.
21. Applicants should ensure that each referee report provided in support of their application contains the following details:
 - a) the referee's name, address and telephone number;
 - b) the referee's occupation;
 - c) the period during which, and the circumstances under which, the referee has known the applicant;
 - d) the referee's opinion about the following matters:
 - e) the applicant's abilities in oral and written communication;
 - f) the applicant's knowledge of the powers, duties and functions of a registered trustee or registered liquidator;
 - g) the applicant's knowledge of business matters and his or her ability to successfully conduct business activities;
 - h) whether, in the referee's opinion, the applicant has experience in assisting a registered trustee or a registered liquidator within the meaning of the Corporations Act in carrying out the functions of the trustee or liquidator and, if so:
 - i) the nature of the activities that the applicant was required to carry out in acquiring that experience; and
 - ii) the length of the period of time during which the applicant carried out those activities; and
 - iii) whether the applicant carried out those activities in a competent manner;
 - iv) the referee's reasons for supporting the application.

22. The referee's comments should relate to the applicant's current ability to perform the duties of a registered trustee. Where a reference does not contain these particulars the Committee will request the applicant to obtain a further reference before proceeding to interview.

Obligations of an applicant who is an employee rather than a sole proprietor or a partner in a firm

23. If an applicant is an employee, they will need to demonstrate to the Committee that the arrangements between the applicant and their employer will enable them to have independence and be free of any influence, particularly from an employer. They will need to have an agreement with their employer that when discharging their duties as a registered trustee:
- a) they will have independence as to the manner in which work is to be done, the decisions made and discretion used,
 - b) they will have access to and control over other staff as needed to properly administer their Bankruptcy Act estates,
 - c) remuneration earned in their capacity as a registered trustee is theirs and is to be accounted for on their behalf less any contribution to cover overheads and salary.
24. In this respect, an applicant should ensure that their application addresses the issues detailed by the court in the decided case of *Re Dare* (1992) 110 ALR 659.

Payment of the application fee

25. The prescribed application fee is required before ITSA can accept any application. It is currently set at \$2,000. Payment is usually made by cheque although payment by electronic means is also an option. Please contact the BR Registration Officer on 07 3360 5404 to find out more details on electronic payment.
26. Any cheque should be made payable to the "Insolvency & Trustee Service Australia" and forwarded with the application to:

The Registration Officer
Bankruptcy Regulation Branch
ITSA
PO Box 10443 Adelaide Street
Brisbane Queensland 4000

Processing or non-acceptance of application

27. Should it be apparent that the application is not complete the Inspector-General will not accept the documents and any application fee will be refunded.
28. This may occur if:
- payment does not accompany the application; or

- Form 10 is not used; or
 - Statement of experience, knowledge and ability is not provided; or
 - referees reports are not provided; or
 - no proof or tertiary accounting and commercial law qualifications are provided.
29. The Committee will also need to consider if there are any issues that prevent the applicant being registered as set out in sub-section 155A(4), namely that the applicant:
- a) will not take out insurance against liabilities that the applicant may incur working as a registered trustee; or
 - b) has been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; or
 - c) has been a bankrupt or a party (as debtor) to a debt agreement or a Part X administration within 10 years before making the application; or
 - d) has had his or her registration as a trustee cancelled within 10 years before making the application on the ground that:
 - i) he or she contravened any conditions imposed by a committee on his or her practice as a registered trustee; or
 - ii) he or she failed to exercise the powers of a registered trustee properly; or
 - iii) he or she failed to carry out the duties of a registered trustee properly; or
 - iv) he or she failed to properly carry out the duties of an administrator in relation to a debt agreement; or
 - e) has had his or her registration as a debt agreement administrator cancelled under section 186K, within 10 years before making the application, on the ground that he or she failed to properly carry out the duties of an administrator in relation to a debt agreement; or
 - f) has had his or her registration as a debt agreement administrator cancelled, within 10 years before making the application, as a result of an order under section 185ZCA.
30. In practice the Registrations Officer in ITSA Bankruptcy Regulation branch assists the Inspector-General by obtaining this information prior to the Committee being formed. Applicants will be requested to assist by providing police data base searches. The Inspector-General will undertake checks of the National Personal Insolvency Index and the relevant ASIC database.
31. The applicant will be informed by the Registrations Officer should one of these grounds be established. If the application is subsequently withdrawn before being referred to a Committee the application fee will be refunded.
32. Once the Committee convenes the fee is non-refundable.
33. It should be noted that if a Committee once formed considers that the applicant is suitable to be registered as a trustee, it may pursuant to subsection 155A (3) of the Act decide that

the applicant should be registered even if it is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed.

34. Accordingly where there is some doubt as to the validity or relevance of qualifications relied on by the applicant, the Inspector-General will convene a Committee to consider this aspect in the context of the full application.

Convening of a Committee to consider the application

35. After receiving a properly made application the Inspector-General must convene a Committee to consider the application.
36. The Committee convened consists of the Inspector-General or delegate as chairperson, an APS employee and a registered trustee who has practiced as a trustee for more than five years and chosen by the Insolvency Practitioner's Association of Australia.

The interview

37. The Committee will consult with the applicant to arrange a convenient time and place for the interview.
38. Interviews are professionally recorded and consist of a series of questions. These questions will cover a range of technical and ethical issues and responses will be used along with the application and referees comments to assess the applicant's current knowledge and abilities. The list of questions will be provided to the applicant approximately 20 minutes prior to the interview to enable applicants to prepare their responses. Some additional questions may be asked to assess the applicant's depth of knowledge or to clarify answers.
39. Applicants can bring any written material into the interview and refer to this during the interview if needed.

Written Examination

40. Should the Committee need further evidence of the knowledge and abilities of an applicant the Committee may require the applicant to undertake a written examination. This may occur in instances where the committee requires further clarification or information and needs to be satisfied that the applicant has the requisite knowledge.

Knowledge and Abilities Required

41. Applicants will need to demonstrate:
 - a) high level knowledge of the fiduciary duties of a trustee and the duties and powers provided by the Bankruptcy Legislation; and
 - b) detailed knowledge of Bankruptcy legislation pertaining to administration of estates and debt agreement administrations under the Act including the practical issues arising during the course of an administration; and

- c) an understanding of general business concepts, commercial law and other related legislation, for example, the interaction of the Bankruptcy Act and State legislation in areas such as partnership and property law; and
 - d) an understanding of the ethical issues confronted by registered trustees such as conflict of interest and how to deal with these (applicants should familiarise themselves with the IPA Code of Professional Conduct); and
 - e) a thorough knowledge of the requirements involved in running their own business as a trustee and trading on a business operated by a bankrupt or debtor to whose estate they may be appointed as trustee, particularly in deciding whether the business is best sold as a going concern.
42. Applicants will also need to demonstrate both through interview and referee's comments that they have the following abilities:
- a) high level communication, negotiation and advocacy skills;
 - b) high level of judgment; and
 - c) high level of professionalism and integrity.

The Decision

43. As mentioned the Committee must decide that the applicant should not be registered if it is satisfied that the applicant:
- a) will not take out insurance against liabilities that the applicant may incur working as a registered trustee; or
 - b) has been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; or
 - c) has been a bankrupt or a party (as debtor) to a debt agreement or Part X administration within 10 years before making the application; or
 - d) has had their registration as a trustee cancelled within 10 years before making the application on the ground that the applicant:
 - e) contravened any conditions imposed by a committee on their practice as a registered trustee; or
 - f) failed to exercise the powers of a registered trustee properly; or
 - g) failed to carry out the duties of a registered trustee properly.
44. If none of these criteria apply the Committee will register the applicant if it is satisfied that the applicant has the necessary qualifications, experience, knowledge and abilities.
45. If the Committee believes that the applicant is not suitable it will decide not to register the applicant. As mentioned the Committee has some discretion if it considers the applicant is suitable to be registered, even if it is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed. Historically committees have used this discretion sparingly and usually only in cases where the applicant has demonstrated sound

knowledge and the required abilities, is experienced and has some relevant qualifications although not precisely what is prescribed.

46. The Committee may also, if it thinks fit, impose conditions on an applicant's practice as a registered trustee. This might occur when an applicant has been assessed as suitable but is deficient in a specific area of law, or is awaiting the outcome of a relevant event such as completion of qualifications. Conditions imposed historically have included:
 - the applicant required to research and submit a paper on a specific area of law;
 - completion of certain courses or qualifications;
 - only consenting jointly with an experienced registered trustee for a certain period;
 - limiting the volume of administrations taken on in the first 12 months following registration; and
 - limiting the type of matters accepted. For example, an applicant with limited knowledge of Debt Agreements who indicates they do not intend handling these types of matters may have a condition imposed that they not consent to administer any debt agreements.
47. The Committee is required to make a decision within 60 days of first convening which is usually the day of the interview, regardless of whether the applicant is also required by the Committee to sit a written examination, and provide a report of its decision to both the Inspector-General and the applicant.
48. The Committee has 14 days from reaching a decision to provide a report of its decision to the applicant and the Inspector-General.

Right of review

49. If an applicant is dissatisfied with the Committee's decision, they may appeal to the Administrative Appeals Tribunal (the AAT). An application to the AAT for a review of the Committee's decision must be in writing, set out the reasons for the application and must be made within 28 days of the date the Committee's report is received by the applicant. Full information about applications to the AAT can be obtained from the local AAT Registry or from the internet at www.aat.gov.au.

Registration

50. If the Committee decides to register an applicant as a trustee, the Inspector-General will give effect to that decision following the receipt of:
 - the \$1,200 registration fee for the first 3 years; and
 - evidence that the applicant has taken out insurance against liabilities that may be incurred by the applicant working as a registered trustee (also known as professional indemnity insurance) or evidence that the applicant will be covered by such insurance once registered as a trustee. A copy of a letter from the applicant's insurer confirming such cover, or a copy of the relevant insurance policy schedule, will be sufficient.

51. The cheque and insurance details should be forwarded to:

The Registration Officer
Bankruptcy Regulation Branch
ITSA
PO Box 10443 Adelaide Street
Brisbane 4000

52. Once the relevant fee has been paid and the professional indemnity insurance has been confirmed, the Registrations Officer will register the successful applicant on the National Personal Insolvency Index (NPII) and issue them with a certificate of registration for a period of three years.
53. The trustee's name, firm details and preferred contact details are registered on the NPII and also recorded on ITSA's website for public use. In addition BR will need the applicant's personal contact telephone number and personal business email address.
54. For more information please contact your local [Bankruptcy Regulation Branch](#).