

Inspector-General Practice Statement 13

IGPS 13 - ~~Trustee registered under the Bankruptcy Act registration application process~~Processes for registration of registered trustees

1. Introduction

1.1 This practice statement outlines the process for becoming registered as a trustee under the [Bankruptcy Act 1966](#) (‘the 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. The Act incorporates, as Schedule 2 to the Act, the Insolvency Practice Schedule (Bankruptcy) (‘the Schedule’) and the Insolvency Practice Rules (‘the Rules’) which contains the registration provisions.

Overview of a trustee’s duties

1.2 Registered 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.

1.3 Registered trustees also have statutory duties set out in the 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 Act (see below). Trustees are also required to maintain proper accounts and records, have proper money-handling processes and assist when required with inquiries or investigations conducted by the Inspector-General.

1.4 Registered trustees are also required to comply with the legislative standards set out in Division 42 of the Practice Rules.

Overview of the registration process

1.5 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 below.

1.6 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.

1.7 The committee must consist of the Inspector-General or delegate, a person appointed by the Minister and a registered trustee, registered for more than five years, nominated by the Australian Restructuring Insolvency and Turnaround Association (ARITA). 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. [Committee members may also choose to contact referees or request additional referees as part of the application process to confirm the fit and proper test that forms part of the eligibility requirements.](#)

1.8 The committee will decide whether or not to register an applicant as a trustee and provide reasons for its decision to both the applicant and the Inspector-General. The Inspector-General must give effect to the decision of the committee.

1.9 To complete the registration process, the successful applicant must pay the prescribed registration fee and provide evidence that they have obtained, or will obtain, adequate and appropriate professional indemnity and fidelity insurance.

1.10 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.

2. The application

2.1 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 \(ie dated no more than 3 months prior to the date of application\)](#)
- [two referee reports attesting to the applicant being a fit and proper person in business who displays honesty and integrity and is of good fame and character \(the referees used may be the same as those attesting to current knowledge and ability\)](#)
- a statement setting out the applicant's experience, knowledge and abilities
- [a National Police Certificate issued by the Australian Federal Police \(AFP\), evidencing that the applicant has not been convicted of fraud and dishonesty covering the previous ~~within~~ 10 year ~~s~~period prior to ~~of~~ making the application](#)
- [an overseas police check from any country where the applicant has been resident in for at least one year in the last 10 years](#)
- the prescribed application fee.

2.2 Applications must be made on [Form 10](#) Application for Registration as a Trustee. This ~~is form may be downloaded~~ [available on from](#) the forms page of ~~fn~~ the AFSA website [and is submitted online](#).

2.3 An application will not be considered as having been received if all these aspects are not addressed.

2.4 Once a complete application is received the application is accepted for lodgement and a committee convened to consider the application.

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

2.5 The statement should set out the applicant's experience, knowledge and abilities relevant to dealing with insolvency and bankruptcy matters. The statement should describe and/or confirm:

- the applicant having engaged in at least 4000 hours of relevant employment at a senior level –in the preceding five years
- the applicant's ability to perform satisfactorily the duties of a registered trustee immediately after registration.

2.6 In outlining any relevant employment history, the applicant should list any employment that, based on the definition of "relevant employment":

(a) involves assisting a registered trustee in the performance of his or her duties as trustee under the Act; and

(b) involves the providing of advice in relation to the matters under the Act; and

(c) provides exposure to the external administration of companies and receivership and receivership and management.

2.7 In particular, applicants should provide the following details of their employment history:

- the position the applicant has occupied and the duties they have performed
- a list of the personal and/or corporate insolvency files the applicant has been involved in, including the type of administration, the level of responsibility held on the file and the time spent administering each matter.

Evidence of qualifications

2.8 The approved application form (Form 10) requires that an applicant provide 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 their application, as proof of the qualifications required by Division 20 of the Insolvency Practice Rules—namely:

(a) the academic requirements for the award of a tertiary qualification that includes at least 3 years of full-time study (or its equivalent) in commercial law and accounting and

(b) the academic requirements for at least 2 course units accredited under the Australian Qualifications Framework Level 8 (or equivalent study) in the practice of external administrators of companies, receivers, receivers and managers, and trustees under the Act.

2.9 If the applicant believes they have equivalent tertiary qualifications covering accountancy and commercial law, they should provide similar evidence for consideration. It is important to note that the committee may decide that an applicant should be registered even if the committee is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed. [This is on the proviso](#)

~~that~~ the committee is satisfied that the applicant would be suitable to be registered as a trustee if the applicant complied with conditions specified by the committee.

Referee reports

2.10 The application must contain two referees' reports as described below.

2.11 Applicants should ensure that each referee report provided in support of their application contains the following details:

- a. the referee's name, address, email 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:
 - i. the applicant's abilities in oral and written communication
 - ii. the applicant's knowledge of the powers, duties and functions of a registered trustee or registered liquidator
 - iii. the applicant's knowledge of business matters and his or her ability to successfully conduct business activities
 - iv. the applicant's honesty and integrity and whether they are of good fame and character
- e. 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
 - ii. the length of the period of time during which the applicant carried out those activities
 - iii. whether the applicant carried out those activities in a competent manner
 - iv. the referee's reasons for supporting the application.

2.12 Each referee's comments should relate to the applicant's current ability to perform the duties of a registered trustee and/or their opinion about the applicant's honesty and integrity. Where a reference does not contain these particulars (either together or separately), the committee will request that the applicant 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

2.13 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 ensuring their independence when discharging their duties as a registered trustee.

2.14 In this respect, an applicant should ensure that their application addresses the issues detailed by the court in the decided cases of [Re David Hurt Ex Parte: David Hurt \[1988\] FCA 85](#) and [Re Tracy Joy Dare; Ex Parte Tracy Joy Dare Art \[1992\] FCA 509](#). These issues are usually addressed by a letter from the employer confirming that in the event that the applicant is successful in becoming a registered trustee:

(1) That the applicant will not be subject to direction from the applicant's employer as to the performance of the applicant's work as a trustee - including directions as to the manner in which the work will be done and decisions to be taken in the exercise of discretion as a trustee.

(2) That the employer understands and accepts the requirement for the applicant's independence and undertakes to respect it.

(3) That fees earned by the applicant by way of remuneration as a trustee shall belong to the applicant and be the applicant's sole property save that the applicant will be required to pay over to the employers firm sufficient monies earned from such fees to reimburse the employer for the applicants salary, an appropriate portion of salaries of any staff used in administering personal administrations and an appropriate portion of overheads.

(4) That both the applicant and employer are aware of possible conflicts of interests between the duties of the trustee as such and the applicant's duties as an employee

(5) The applicant will have the right to refuse and/or relinquish any appointment or trusteeship.

(That is, should circumstances show that there would be a conflict between the applicant's role as employee and duties as trustee if the applicant were to take on a trusteeship in those circumstances).

(6) Further, the applicant's terms of employment will allow the applicant as a trustee the use of the firm's premises, equipment and other staff as necessary to enable the applicant to discharge the applicant's duties as a trustee. The employers firm will render to the applicant an account for use of these facilities and staff

(7) That the applicant would not be required or expected to act as trustee of a bankrupt or debtor of whom the firm was a creditor.

Payment of the application fee

2.15 The prescribed [application fee](#) is required before AFSA can accept any application. Payment is usually made by [cheque-direct deposit](#) although payment by [electronic-other](#) means [are available if requiredis also an option](#). Please contact the Regulation and Enforcement Regulation Practitioner Officer on [07-3360-5416-1300 364 785](#) to find out more details about [electronic](#) payment.

~~2.16 Any cheque should be made payable to the 'Australian Financial Security Authority' and forwarded with the application to:~~

~~The Regulation Practitioner Officer
Regulation and Enforcement, AFSA
PO Box 10443
Adelaide Street
BRISBANE QLD 4000.~~

3. Processing or non-acceptance of application

3.1 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.

3.2 This may occur if:

- payment does not accompany the application
- the approved form (Form 10) is not used
- a statement of experience, knowledge and ability is not provided
- referees' reports are not provided
- no proof of tertiary accounting and commercial law qualifications is provided.
- ~~Proof of completion of the postgraduate study?~~
- a National Police Certificate or overseas police check (as relevant) is not provided.

3.3 The committee will also need to consider if there are any issues that prevent the applicant being registered as set out in subsection 20-20 of the ~~Insolvency Practice~~ Schedule namely, that the applicant:

(a) has been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; and

(b) is or has been been within 10 years before making the application, an insolvent under administration; and

(c) has had his or her registration as a trustee under this Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and

(d) has had his or her registration as a liquidator under the [Corporations Act 2001](#) cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and

(e) is disqualified from managing corporations under Part 2D.6 of the [Corporations Act 2001](#), or under a law of an external Territory or a law of a foreign country; and

(f) *is not otherwise a fit and proper person*¹; and

(g) *is not resident in Australia or in another prescribed country.*

Note: The committee may decide that the applicant should be registered even if the committee is not satisfied of a matter mentioned in paragraph (c), (d), or (g), provided the committee is satisfied that the applicant would be suitable to be registered as a trustee if the applicant complied with conditions specified by the committee.

Insurance requirements

3.4 The Committee must be satisfied that the applicant will take out:

- (i) adequate and appropriate professional indemnity insurance; and
- (ii) adequate and appropriate fidelity insurance;

against the liabilities that the applicant may incur working as a registered trustee.

3.5 The level of professional indemnity insurance to be taken out is expected to comply with the professional standards scheme of the national occupational association to which the trustee (or the trustee's firm) belongs. If the trustee (or the trustee's firm) does not belong to a national occupational association then a level of insurance equivalent with either of the schemes of Chartered Accountants Australia and New Zealand (CAANZ) or CPA Australia is considered adequate. There is no particular expectation about the level of fidelity insurance except that it be adequate and appropriate for the trustee's circumstances.

3.46 In practice, ~~the Regulation Practitioner Officer in Regulation and Enforcement assists the Inspector-General by obtaining~~ this information is obtained prior to the committee being formed. Applicants will be requested to assist by providing a National Police Certificate and overseas police check if relevant. The Inspector-General will undertake checks of the National Personal Insolvency Index and the relevant Australian Securities and Investments Commission database.

3.75 The applicant will be informed ~~by the Regulation Practitioner 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.

3.86 Once the committee convenes the fee is non-refundable.

3.97 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 20-20(5) of the

¹ A police check that evidences offences that do not relate to fraud or dishonesty but include e.g. repeated traffic offences may also indicate a lack of honesty or integrity and therefore a failure to meet the fit and proper test.

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

3.108 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.

4. Convening a committee to consider an application

4.1 After receiving a properly made application the Inspector-General must convene a committee to consider the application.

4.2 The committee convened consists of the Inspector-General or delegate as chairperson, a person appointed by the Minister and a registered trustee [chosen by ARITA](#) who has practiced as a trustee for more than five years ~~and is chosen by ARITA~~.

The interview

4.3 The committee will consult with the applicant to arrange a convenient time and place for the interview.

4.4 Interviews are recorded electronically 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 [and whether the fit and proper person test is met](#). The list of questions will be provided to the applicant approximately 30 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. During the reading time, applicants may consult any printed material including legislation, text books and written notes. Applicants are not permitted to access any electronic devices (such as a tablet or laptop) or access their mobile telephone (except in the case of an emergency). An AFSA employee will be present in the allocated room during the reading time.

4.5 During the interview, applicants can refer to the *Bankruptcy Act 1966* (including *Bankruptcy Regulations 1996* and *Insolvency Practice Rules (Bankruptcy) 2016*) and the ARITA Code of Professional Practice if needed. The questions and any additional questions asked of an applicant are not meant to test the applicant's memory, but rather allow an applicant to demonstrate to the committee that he or she has the requisite ability and knowledge [and is of good fame and character](#) evidenced in the manner in which they address and identify issues and apply the provisions of ~~both~~ the Act, ~~and~~ common law [and ethical](#) principles relevant to a trustee. (As to the expected demonstrated knowledge required of a trustee, applicants should refer to paragraph 4.7 below).

Written examination

4.6 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

4.7 Applicants will need to demonstrate:

- a. detailed knowledge of the fiduciary duties of a trustee and the duties and powers provided by the bankruptcy legislation
- 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
- 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
- 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 ARITA Code of Professional Practice)
- 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.

4.8 Applicants will also need to demonstrate both through interview and referees' comments that they have the following abilities:

- a. high level communication, negotiation and advocacy skills
- b. high level of judgement
- c. high level of professionalism
- d. [high level of honesty](#) and integrity.

Information from [p](#)Professional [b](#)Bodies

[4.9](#) In considering your application for registration, the committee may refer to information held or made available by a relevant professional body such as the ARITA or the Personal Insolvency Professionals Association (PIPA). Applicants who are current members of ARITA or PIPA are also advised that the material they provide in their application may be shared by the committee with the relevant professional bodies in order to seek their views on the applicant. The response provided by those professional bodies may form part of the information the committee will consider to arrive at their decision on the application.

Information from other regulators and external dispute resolution schemes

4.10 In considering your application for registration, the committee may also refer to publicly available information held or made available by other regulators and external dispute resolution schemes, such as ASIC, Australian Financial Complaints Authority (AFCA) etc. The information made available to record outcomes such as enforceable undertakings or complaint findings may form part of the information the committee will consider to arrive at their decision on the application.

The decision

4.119 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 certain requirements have been met.

4.120 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:

- a. the applicant be required to research and submit a paper on a specific area of law
- b. completion of certain courses or qualifications
- c. only consenting jointly with an experience registered trustee for a certain period
- d. limiting the volume of administrations taken on in the first 12 months following registration, and
- e. 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.

4.134 The committee is required to make a decision within 45 business days after interviewing the applicant, (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.

5. Right of review

5.1 If an applicant is dissatisfied with the committee's decision, they may seek a review of the decision by the Administrative Appeals Tribunal (the AAT) under section 96-1 of the Schedule. An application to the AAT for a review of the

committee's decision must be in writing, must 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 <http://www.aat.gov.au/>.

6. Registration

6.1 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 [registration fee](#) for the first three years
- evidence that the applicant has taken out insurance against liabilities that may be incurred by the applicant working as a registered trustee (both professional indemnity and fidelity 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 ~~confirming such cover will be requested, will be sufficient.~~

6.2 The payment and insurance details should be forwarded to rpo@afsa.gov.au:

~~The Regulation Practitioner Officer
Regulation and Enforcement, AFSA
PO Box 10443
Adelaide Street
BRISBANE QLD 4000.~~

6.3 Once the relevant [registration](#) fee has been paid and the professional indemnity and fidelity insurance has been confirmed, ~~the Regulation Practitioner Officer will register the~~ successful applicants ~~will be registered~~ and issued ~~them~~ with a certificate of registration for a period of three years.

6.4 The trustee's name, firm details, preferred contact details and any conditions on registration will appear on a Register of Trustees, which is publicly accessible on AFSA's website. ~~In addition, AFSA Regulation and Enforcement will need the applicant's personal contact telephone number and personal business email address.~~

6.5 For more information please contact [AFSA Regulation and Enforcement](#).