



Australian Government

Australian Financial Security Authority

OFFICIAL RECEIVER PRACTICE STATEMENT 10

REFUNDS OF UNCLAIMED MONEYS UNDER SECTION 254 OF THE BANKRUPTCY ACT

DRAFT

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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 practice@afsa.gov.au.

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1. INTRODUCTION

- 1.1. Where a party claims to be entitled to unclaimed moneys that were paid to the Consolidated Revenue Fund by a trustee, an application can be made to the Official Receiver for a determination that the person is entitled to the moneys. Such an application is made pursuant to subsection 254(3) of the [Bankruptcy Act 1966](#). The Official Receiver will determine the application and, if satisfied that the person is entitled to the moneys, payment will be facilitated.
- 1.2. Any applications to the court for refunds of such moneys that had been filed before legislative changes came into effect on 27 June 2019 remain subject to section 254 as it applied before the amendments came into effect.

The legislation

- 1.3. Section 254 of the Bankruptcy Act provides as follows.

Payment of unclaimed moneys to the Commonwealth

(1) *In this section, trustee means:*

- (a) *a trustee of the estate of a bankrupt; or*
- (aa) *the administrator of a debt agreement; or*
- (b) *a trustee of a personal insolvency agreement; or*
- (c) *a trustee of a composition or a scheme of arrangement; or*
- (d) *a trustee of the estate of a deceased person in respect of which an order has been made under Part XI of this Act;*

and includes the Official Trustee.

(2) *Where a trustee has under his or her control:*

- (a) *any dividends or other moneys that have remained unclaimed for a period exceeding 6 months, in circumstances where the trustee has identified the person entitled to the dividends or other moneys but has been unable to locate the person after making all reasonable efforts to do so; or*
- (b) *any moneys that it is proposed not to distribute or pay to any person; he or she shall forthwith pay those moneys to the Commonwealth.*

(2A) *Where:*

- (a) *the Court has, after the presentation of a creditor's petition against a debtor, directed the Official Trustee, an Official Receiver or a registered trustee to take control of the property of the debtor;*
- (b) *the petition has been withdrawn or dismissed;*
- (c) *the Official Trustee, Official Receiver or registered trustee, as the case may be, has moneys under its control in pursuance of the direction; and*

- (d) *it is not reasonably practicable to pay those moneys to the person entitled to them;*
the Official Trustee, Official Receiver or registered trustee, as the case may be, shall pay those moneys to the Commonwealth.

Application for entitlement determination

- (3) *A person who claims to be entitled to any moneys that have been paid to the Commonwealth under subsection (2) or (2A) may make an application, in the approved form, to the Official Receiver for a determination that the person is so entitled.*

Official Receiver satisfied person entitled to moneys

- (4) *If a person makes an application in accordance with subsection (3) and the Official Receiver is satisfied that the person is entitled to those moneys or a part of those moneys, the Official Receiver must:*
- (a) *make a written determination to that effect; and*
 - (b) *specify in the determination the amount to which the person is so entitled; and*
 - (c) *give the person notice of the determination.*

- (5) *The Commonwealth must pay to the person an amount equal to the amount referred to in paragraph (4)(b). That amount is a repayment for the purposes of section 77 of the Public Governance, Performance and Accountability Act 2013.*

Official Receiver not satisfied person entitled to moneys

- (6) *If a person makes an application in accordance with subsection (3) and the Official Receiver is not satisfied as mentioned in subsection (4), the Official Receiver must:*
- (a) *make a written determination to that effect; and 7*
 - (b) *give the person notice of the determination.*

Review by the Court

- (7) *The person may apply to the Court for review of a determination under subsection (4) or (6).*
- (8) *After reviewing the determination, the Court must:*
- (a) *affirm the determination; or*
 - (b) *vary the determination; or*
 - (c) *set aside the determination and substitute another determination.*

Official Receiver's determination not a legislative instrument

- (9) *A determination under subsection (4) or (6) is not a legislative instrument.*

2. PAYMENTS TO THE CONSOLIDATED REVENUE FUND

The Consolidated Revenue Fund

- 2.1. Section 81 of the [Commonwealth of Australia Constitution Act](#) provides for one Consolidated Revenue Fund (“CRF”), formed from all revenues or moneys raised or received by the Executive Government of the Commonwealth.
- 2.2. The CRF is self-executing, meaning all moneys paid to the Commonwealth (or any person or organisation acting on behalf of the Commonwealth) automatically form part of the CRF.
- 2.3. Moneys form part of the CRF upon receipt by, or on behalf of, the Commonwealth. This includes taxes, charges, levies, borrowings, loan repayments and money held in trust.

Payments to the Consolidated Revenue Fund

- 2.4. Trustees and administrators are required to make payments to the CRF, pursuant to section 254 of the Bankruptcy Act, where:
 - a. any dividends or other moneys have remained unclaimed for a period exceeding six months
 - b. the trustee holds moneys that it does not propose to distribute or pay to any person.
- 2.5. More information about the section 254 procedure is provided in [IGPD20 – Guidelines for the payment of moneys to the Commonwealth pursuant to section 254 of the Bankruptcy Act 1966](#).

3. REFUND OF MONEYS FROM THE CONSOLIDATED REVENUE FUND

When a claim to a refund may arise

- 3.1. Where a person believes that moneys that were transferred to the CRF are in fact moneys to which he or she is entitled, a claim to the moneys can be made to the Official Receiver.
- 3.2. Examples of where this may be the case can include:
 - where the claimant was a creditor in a bankrupt estate and where the trustee intended to pay a dividend to the creditor, but was unable to locate him or her
 - where there were moneys remaining in an administration that were due to be returned to a former bankrupt but where the former bankrupt could

not be located

- where a person entitled to the moneys had died and a beneficiary of that person's estate claims the moneys.

Making a claim

- 3.3. Where a party wishes to claim entitlement to moneys that were transferred to the CRF pursuant to section 254 of the Bankruptcy Act, the claim is to be submitted to the Official Receiver by using the <Form X> form, available on the AFSA website.
- 3.4. The form is an approved form, which means that it is required to be used in order to make a claim. Use of the form will also ensure that all necessary information is provided to enable the Official Receiver to consider the request.
- 3.5. When the form has been completed, it is to be sent to the Official Receiver at info@afsa.gov.au (preferred) or via post to:
Australian Financial Security Authority
GPO Box 1550
ADELAIDE SA 5001

The decision process

- 3.6. Following receipt of the form, the Official Receiver will then consider the information provided on the form and will make a decision. If all necessary information and evidence have been provided, the decision will be made within 21 business days of receipt of the form. Where further information or evidence is required, a request for this will be made within 21 business days.
- 3.7. The Official Receiver will consider the information provided by the person and must be satisfied that the person is entitled to the moneys in order for a refund to be provided. The Official Receiver will take into account factors such as:
 - if the person claims to be a creditor in an administration, whether the trustee admitted the claim and for how much
 - the person is who he or she claims to be
 - if the claim is being made on behalf of an entity, that the person making the claim is authorised to act for the entity.
- 3.8. As part of the decision process, the Official Receiver will consider the trustee's statement in accordance with Bankruptcy Regulation 12.01 that was provided to the Official Receiver when the funds were paid to Consolidated Revenue.

Obtaining further information from the trustee

- 3.9. Where additional information is required from the trustee regarding the payment of the funds to Consolidated Revenue, the Official Receiver will contact the trustee's office. This may need to occur in situations where:
- the trustee's regulation 12.01 statement was deficient
 - the amount being claimed is significant and the Official Receiver requires additional information to make a decision with certainty.

Notifying the claimant of the Official Receiver's decision

- 3.10. Where the Official Receiver is satisfied that the person who made the claim does have an entitlement to the moneys, or to part of the moneys claimed, the reasons for this decision and a notice of determination will be provided to the person.
- 3.11. Where the Official Receiver is not satisfied that the person who made the claim does have an entitlement to the moneys, the reasons for this decision and a notice of determination will be provided to the person. A person whose claim was denied in full or in part has a right of review to the court.

Facilitating the refund to the claimant

- 3.12. Where a decision is made to refund an amount to the claimant, this will be processed as an account payable in the next AFSA departmental payment run. While the decision regarding the claimant's entitlement to the funds will be made within 21 days of the receipt of all necessary evidence, the payment may take an additional 21 days to process.
- 3.13. Refunds will be made via electronic funds transfer.

Limitation of liability

- 3.14. It is the responsibility of the claimant to ensure that the financial institution account details provided in the <Form X> are accurate. Where a decision is made to refund an amount to the claimant, and where the funds are transferred to the account specified in the claimant's <Form X> but where those account details were incorrect, the Official Receiver will not be liable. If those funds are returned back to AFSA, the Official Receiver will take action to have them paid to the claimant; however, if the funds are not returned to AFSA, the Official Receiver will take no further action.

4. RESOURCES

- [*Bankruptcy Act 1966*](#)
- [<Form X> – Official Receiver's section 254 form – in development.](#)