

IGPS 10 – Complaints handling process for complaints against practitioners and debtors

1. Introduction

1.1 AFSA Regulation and Enforcement ([R&E](#)) performs the functions and exercises the regulatory powers of the Inspector-General in Bankruptcy ([Inspector-General](#)) under the [Bankruptcy Act 1966](#) (the Act). We maintain high national standards of personal insolvency practice and procedure 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~~ [personal insolvency practitioners](#)
- monitoring the standard of bankruptcy trustees (including the Official Trustee) and debt agreement administrators and their administrations through a targeted program of inspections of systems and practices and other compliance monitoring activities
- investigating complaints made by creditors or debtors against bankruptcy trustees, debt agreement administrators and solicitor controlling trustees
- conducting statutory reviews of some bankruptcy trustees' decisions at the request of bankrupts or as initiated by the [Inspector-General](#)
- working with bankruptcy trustees and debt agreement administrators to improve Bankruptcy Act knowledge and practice.

1.2 This practice statement seeks to clarify our role in investigating complaints received against registered trustees, the Official Trustee, debt agreement administrators, solicitors acting as controlling trustees and debtors.

1.3 This practice statement should be read together with AFSA's website fact page titled [Resolving complaints](#).

1.4. The professional bodies representing personal insolvency practitioners also prescribe complaint handling standards for their members. These include the Accounting Professional and Ethical Standards Board (APESB), Australian Restructuring Insolvency & Turnaround Association (ARITA), Personal Insolvency Professionals Association (PIPA), Certified Practising Accountants Australia (CPA), Chartered Accountants Australia and New Zealand (CAANZ) and Institute of Public Accountants (IPA).

1.5 Most personal insolvency practitioners are members of at least one of these bodies which require their members to implement policies, procedures and systems to ensure effective complaints management.

2. Reviewing practitioners' decisions

2.1 ~~AFSA Regulation and Enforcement R&E~~ has broad powers of inquiry. We can require Ppractitioners can be required to and can require practitioners to undertake remedial action or, where a breach of duty and/or power is identified, respond to

~~disciplinary proceedings. it can commence disciplinary proceedings where a breach of duties and/or powers is identified.~~ However, in most cases where practitioners are entitled to exercise a statutory discretion, we have no power to direct how they decide issues or action matters.

2.2 It is important to emphasise that we may not be able to resolve every concern raised about regulated practitioners or their administrations. ~~In such cases, A~~ complainant ~~in such cases~~ may not achieve their desired outcome and may have to consider alternative remedies. A guide to expected outcomes in different scenarios is shown in Annexure A to this practice statement.

2.3 Complainants affected by decisions of trustees to extend their bankruptcy period or assess income contribution liabilities have rights of review by the Inspector-General. Please refer to AFSA's website fact page titled [Can I appeal? Review and appeal of trustee and administrator decisions](#) for further details.

3. Who can complain to AFSA?

3.1 Usually it will be a debtor, bankrupt or creditor who contacts AFSA. ~~Regulation and Enforcement, with a concern or complaint~~ The complaint or concerns may be about the decisions or conduct of:

- registered trustees
- the Official Trustee (a statutory office within AFSA)
- solicitors acting as controlling trustees
- registered debt agreement administrators ~~(registered and unregistered)~~
- debtors or bankrupts.

3.2 Other parties affected by decisions or conduct of practitioners may also complain to us. These often include referrals by AFSA's Debt Agreement ~~Team~~, the Commonwealth Ombudsman, the Inspector-General or the Attorney-General.

3.3 For privacy reasons, any complaints received from third-parties acting on behalf of a complainant must be accompanied by an appropriate authority to act signed by the complainant (e.g. letter of authority, power of attorney or solicitor engaged by the complainant).

3.4 In the first instance, a complainant is expected to have raised their concerns through the practitioner's internal complaints handling process. However, ~~the~~ Inspector-General ~~we~~ recognises that there are may be circumstances where it is appropriate and necessary to raise serious concerns directly with ~~AFSA Regulation and Enforcement~~ AFSAR&E. ~~However, in most instances complainants are expected to have firstly raised their concerns with the practitioner and that the practitioner will have taken relevant steps to resolve the matter using their internal complaint handling process.~~

3.5 Practitioners who are members of ARITA, PIPA, CPA or CAANZ are required by their professional bodies and relevant professional and ethical standards to implement policies, procedures and systems to ensure effective complaints

management. The relevant standards applying to members of the following professional bodies are outlined below:

- for CPA and CAANZ and IPA members the applicable standards are [APES 330 Insolvency Services](#), [APES 320 Quality Control for Firms](#) and [APES 110 Code of Ethics for Professional Accountants](#)
- for ARITA members the applicable standard is the [ARITA Code of Professional Practice](#)
- for PIPA members the applicable standard is the [PIPA Code of Professional Practice](#).

3.6 Where the practitioner's internal complaint handling process has not been successful in addressing the concerns of the complainant, the complainant may then consider referring the matter to [AFSA Regulation and Enforcement R&E](#).

3.7 While [AFSA Regulation and Enforcement R&E](#) deals with complaints against the Official Trustee, we do not handle complaints against the services provided by other AFSA business areas. Please refer to the fact page titled [AFSA's complaints handling procedure](#) on our website for further details.

4. Receipt of complaints

4.1 Enquiries and complaints can be made to [AFSA Regulation and Enforcement R&E](#) by telephone ([1300 364 785](#)), post, ~~facsimile~~, email, in person if an appointment is made, or via the internet contact us form. Your complaint may be dealt with in any of the AFSA offices nearest the state or territory where the practitioner is located will typically deal with the matter.

Online: Please use the "Send us feedback form" (<https://www.afsa.gov.au/about-us/complaints-and-reviews/resolving-complaints-about-trustees-and-administrators>)

- **Email:** regulation.allocations@afsa.gov.au
- **Phone:** 1300 364 785
- ~~Fax: (02) 8233 780507 3360 5402~~
- **Post:** Regulation & Enforcement, Australian Financial Security Authority, ~~GPO Box 548, SYDNEY NSW 2001~~10443, Adelaide Street, Brisbane -QLD 4000.

4.2 Oral complaints may be received and handled without them needing to be in writing. In such cases, complainants may remain anonymous or provide a pseudonym according to Australian Privacy Principle 2 of the [Privacy Act 1988](#). However, we may decide after initial inquiry that the issues raised are serious enough to warrant formal investigation ~~and request further details in writing along with documentation substantiating any allegations.~~ At this time point, we may require the complainant to provide contact details, a written complaint and documentation substantiating the allegation.

4.3 When a complaint is received in writing (or further details are requested after a telephone discussion) we will acknowledge receipt of the complaint in writing and enclose a copy of AFSA's fact sheet titled [Resolving complaints](#).

5. How AFSA will handle the complaint

5.1 ~~AFSA Regulation and Enforcement~~We takes all complaints seriously and endeavours to treat all parties professionally, with dignity and respect. Complainants who believe this has not occurred should ask to speak to the relevant ~~AFSA Regulation and Enforcement~~R&E Director. We welcome feedback regarding our service.

5.2 Where a complainant behaves in an inappropriate or unacceptable manner in their dealings with our staff, AFSA will take proactive and decisive action to manage the conduct of the complainant in accordance with the unreasonable complainant conduct – model policy.

Confidentiality and the Privacy Act

5.32 In the interests of natural justice, the practitioner against whom the complaint is made will be provided with details of the issues raised. This is, subject to the requirements of the *Privacy Act 1988* relating to the use and disclosure of personal information.

5.43 In cases where the complaint is in writing, we will seek the consent of the complainant before copies of correspondence are provided to other parties involved.

5.54 We will not provide the practitioner/party concerned with the complainant's name without his/her consent. However, we will provide the complainant's name and contact details to law enforcement agencies if required for law enforcement purposes.

5.56 If we request the practitioner to provide ~~AFSA Regulation and Enforcement~~us with a written response to the issues raised, a copy will not be provided to the complainant without the practitioner's consent. However, details of the practitioner's response will be provided to the complainant when we communicate our findings.

Resolution without investigation

5.67 When a complaint is received, we will quickly review the issues raised. If the complaint is outside the scope of our power or jurisdiction we will provide information regarding alternative options and explain why we are unable to take further action. On occasion, we may be able to assist quickly without the need for formal investigation, for example by explaining a practitioner's powers and duties under the law. In other cases inquiries may be finalised during an initial telephone conversation (or shortly afterwards) by providing complainants with information and/or alternatives.

5.78 We usually quickly contact the person against whom the complaint has been made to seek their comments about the issues raised. In some cases this results in the practitioner taking prompt action to address the issues with no further inquiry or action being required.

Assistance with investigation

5.98 If an initial inquiry reveals a substantive complaint exists which is within our power, a formal investigation will be conducted. In these cases it is important that both the complainant and practitioner provide us with all relevant information and/or documents.

5.109 We expect that practitioners will provide access to all administration records, promptly provide all relevant information to investigate complaints and address any findings in a timely manner. Likewise, we expect that complainants will provide details in writing when requested and any substantiating documentation in a timely manner.

The outcome a complainant may expect

5.110 ~~AFSA Regulation and Enforcement R&E~~ will initially focus its inquiries on whether there have been breaches of the law and/or the standards expected of trustees and administrators. This includes cases where the exercise of a power or discretion breaches fiduciary duties, such as failing to demonstrate impartiality, acting without due care or with negligence.

5.124 We may find that action taken by the practitioner is lawful, appropriate or reasonable in the circumstances. In such cases the complaint will be classified as not justified. We will not require the practitioner to take any remedial action and, advise the parties of our findings, ~~and take no further action.~~

5.123 If a practitioner's action or decision is beyond our jurisdiction or does not breach the law and/or standards, we will inform the complainant of other options available. These may include a negotiated settlement and/or legal action. Some examples and options are listed in [Annexure A](#).

5.134 We may determine that a practitioner has breached their fiduciary duties, the legislation or required standards ~~required~~. These types of complaints will be classified as justified and (where appropriate) ~~AFSA Regulation and Enforcement~~we may:

- request the practitioner to take remedial action
- counsel the practitioner
- prepare a formal report under subsection 12(1B) regarding the results of the investigations. Copies of this report may be provided to creditors, the debtor, other disciplinary bodies and/or relevant professional bodies
- take disciplinary ~~action~~, deregistration or legal action against the practitioner if the breach identified is sufficiently serious.

5.145 Except for statutory reviews of objections to discharge and income contribution assessments, ~~AFSA Regulation and Enforcement~~we cannot direct a practitioner to take certain action or make a decision – as only courts have this power.

~~5.15 Where AFSA Regulation and Enforcement cannot reverse a practitioner's action or decision, the complainant will be informed of alternative legal options. We will also consider disciplinary action if the practitioner has breached the law or standards, which, if a significant breach occurred, could result in their deregistration.~~

5.166 Records are kept of all complaints received and analysed, with trends reported in AFSA's [annual report](#) and [personal insolvency practitioners compliance report](#).

Alternative dispute resolution

5.177 While ~~AFSA Regulation and Enforcement~~our inspectors are not qualified mediators, they are independent, experienced in negotiation and well-versed in the practical application of the Act.

5.188 We will intervene in appropriate situations where having an independent party to facilitate a ~~negotiation process~~negotiated outcome which may assist with the speedier settlement of issues or resolution of disputes, ~~with the aim of~~will be to reducing costs of ongoing complaints and litigation that quite often follows. Some examples are listed below:

- (i) Breakdown of the relationship and of communication between a debtor or creditor and the practitioner which has the potential to escalate, thereby increasing costs.
- (ii) Disputes involving property where both parties indicate they are willing to resolve the dispute by negotiation.
- (iii) Claims of over-charging or over-servicing with respect to a practitioner's remuneration. We will inform the complainant of their right of formal review of the costs. However, ~~AFSA Regulation and Enforcement~~R&E can require a reduction where the fees do not comply with the requirements of the Act. We may also be able to facilitate a negotiated reduction in the amount being claimed ~~where, if~~ where the amount charged—while legally incurred and supported by records—appears high given the relative simplicity 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~~quickly finalise matters.

5.199 Negotiated settlements are only an available option if both parties agree and both are willing to compromise.

5.20 Debtors or bankrupts have the option to raise concerns or lodge a complaint against a bankruptcy trustee with their professional body if the practitioner is registered as a member, such as the Australian Restructuring Insolvency and Turnaround Association.

Service standards

5.2021 Where a complaint does not require a formal investigation, we will aim to complete the complaint and respond to the complainant with **five** working days of receiving the complaint.

5.212 Where a complaint requires a formal investigation, such as requesting further information from the practitioner, we will aim to complete the investigation and respond to the complainant within 60 **calendar** days of receiving the complaint.

Costs relating to a complaint

5.232 ~~AFSA Regulation and Enforcement R&E~~ does not charge for handling complaints against trustees and administrators.

5.243 Registered trustees are generally entitled to charge for the time reasonably spent on a particular administration. However, a registered trustee should not claim remuneration for time spent communicating with R&E concerning:

- complaints about the practitioner or the conduct of a particular administration, except where the complaint is spurious
- regulator surveillance, professional audits or inspection of files, or on peer reviews; or
- defending a breach of the law or the ARITA Code.

~~In respect to time spent dealing with AFSA Regulation and Enforcement, the Inspector General supports the ARITA Code of conduct professional practice, 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.'~~

5.254 Practitioners who are members of ARITA can refer to the Code of Professional Practice for further guidance regarding their professional obligations in respect of reasonable fees and expenses when performing insolvency services.

Members of CPA, CAANZ or IPA-ARITA can also refer are also referred to APESB Standard APES 330 Insolvency Services:

- section 240 (Fees and Other Types of Remuneration) and
- section 8 (Professional Fees and Expenses)

~~for further guidance to their professional obligations in respect of reasonable fees and expenses when performing insolvency services.~~

5.265 As to what is considered 'spurious', we will advise parties when it is considered appropriate for a trustee to charge for their time.

Example: ~~AFSA Regulation and Enforcement~~R&E completes its inquiries and decides that a complaint is not justified and no further action is required. The complainant does not accept the outcome and ~~seeks~~ makes further inquiries about the same issues. We will firstly be responsible for determining whether to query the trustee further. Generally, we will attempt to minimise unnecessary cost and not raise issues previously examined. However, if the trustee needs to be further involved he/she would likely be entitled to remuneration from the estate for the additional work done to respond.

5.276 Should new issues be raised by the same complainant, we will handle these issues as a new complaint. It is our expectation that, in responding to new queries, the trustee will not attempt to charge the estate for time spent responding.

5.287 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 be charged to the estate or administration.

6. Feedback about AFSA regulation's services

6.1 ~~AFSA Regulation and Enforcement~~R&E aims to maintain high standards and to model best practice in the way it handles complaints. To this end, contentious or complex complaints and those chosen at random by us from time to time are subject to peer and management review.

6.2 We welcome feedback from stakeholders about the level of service they receive during the complaint process through completion of the online feedback form available on AFSA's website www.afsa.gov.au or through one of the channels outlined in the section [How to contact us](#) on that website.

—Annexure A – the types of outcomes that may result from an inquiry or complaint to AFSA Regulation and Enforcement

1. A person who has been made bankrupt by sequestration order complains as he/she believes there has been a miscarriage of justice and he/she should not have been made bankrupt. ~~AFSA Regulation and Enforcement~~R&E does not have the power to determine if a sequestration order has been validly made. In such a case it is likely that ~~AFSA Regulation~~

~~and Enforcement we~~ will refer the bankrupt to other possible avenues including an application to court under either sections 153B of the Act or sections 90-10, 90-15 or 90-20 of the Insolvency Practice Schedule (Bankruptcy) to the Act.

~~2. A bankrupt or trustee complains about the content or operation of the Bankruptcy Act. For example, a bankrupt may believe that a three-year period for bankruptcy is too long and she should only be bankrupt for one year.~~

~~AFSA Regulation and Enforcement will refer suggestions to improve the operation of the Act to AFSA's Legal and Governance area for consideration.~~

~~3.2.~~ **A debtor complains that, although he/she has finished the payments set out in the debt agreement, the debt agreement administrator is asking for more money to pay additional creditors and extra fees.**

~~AFSA Regulation and Enforcement R&E~~ 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, it is likely that ~~AFSA Regulation and Enforcement we~~ would inform the administrator that they have no legal basis for requesting further payments and should provide the debtor with confirmation of release. ~~AFSA Regulation and Enforcement We~~ would also examine whether this has been a regular issue with the administrator and, if so, would consider counselling or disciplinary action.

~~4.3.~~ **A person complains regarding property and assets claimed by a trustee and the way a trustee has treated him/her.**

~~AFSA Regulation and Enforcement R&E~~ will look to see if breaches of law or standards have occurred. If none occurred, ~~AFSA Regulation and Enforcement has we have~~ 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 ~~Ce~~ourt but could involve alternative dispute resolution covered in detail elsewhere in this document.

~~5.4.~~ **A person complains that a practitioner appears to be showing bias, and is taking a heavy handed approach.**

~~AFSA Regulation and Enforcement R&E~~ 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 ~~AFSA Regulation and Enforcement we~~ 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. ~~AFSA Regulation and Enforcement We~~ may counsel the practitioner, ask the practitioner to voluntarily arrange a replacement, take legal action to replace the trustee and/or commence disciplinary action concerning the practitioner's registration.

~~6.5.~~ **A debtor complains that the practitioner is not responding to requests for information.**

There is specific legislation requiring provision of information and responding to reasonable requests for information. ~~AFSA Regulation and Enforcement R&E~~ will examine whether this legislation has been complied with and, if not,

~~AFSA Regulation and Enforcement~~we will request that the practitioner addresses the requests properly.

7.6. 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.

As in example 45, ~~AFSA Regulation and Enforcement~~R&E will ascertain if the practitioner is in breach of the requirement to act impartially and without any conflict of interest and according to the legislative