



Australian Government

Australian Financial Security Authority



CREDITOR INFORMATION SHEET

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Approving a trustee's remuneration

If you are a creditor in a bankruptcy or personal insolvency agreement you may be asked to approve the trustee's remuneration.

This information sheet gives general information to help you understand the process of approving a trustee's remuneration and your rights in this process. This information covers the approval of a trustee's remuneration in a bankruptcy, personal insolvency agreement, controlling trusteeship, or a composition following the annulment of a bankruptcy. Other forms of insolvency administration such as debt agreements and corporate insolvencies are beyond the scope of this information sheet.

About trustees

If a person goes bankrupt, authorises their property to be subject to control, or enters into a personal insolvency agreement, an independent trustee is appointed to oversee the estate. They are called a 'trustee of the regulated debtor's estate' and include a trustee in bankruptcy, a controlling trustee or a trustee of a personal insolvency agreement, depending on the type of administration involved. In this information sheet, they are simply referred to as a 'trustee'.

The duties of a trustee are specified in legislation and trustees must adhere to certain standards while administering the estate.

All trustees are required by law to undertake certain tasks which may not benefit creditors directly (for example, investigating whether any offences have been committed).

Trustee's remuneration and costs

Trustees are entitled to be paid for the necessary work they properly perform in the administration.

A trustee is entitled:

- to be paid reasonable remuneration for the work they perform, once this remuneration has been approved
- to be paid for internal disbursements they incur in performing their role (these costs do need approval where a related entity may obtain a profit or advantage)
- to be reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need approval).

Common internal disbursements are stationary, photocopying and telephone costs.

Commonly reimbursed out-of-pocket costs include:

- legal fees
- a valuer's, real estate agent's and auctioneer's fees
- trading costs involved in running the bankrupt's business during the administration (for example, for the purchase of stock)
- postage costs
- retrieval costs for recovering the bankrupt's computer records
- storage costs for the bankrupt's books and records.

Creditors have a direct interest in the amount of a trustee's remuneration and costs, as these will generally be paid from the estate before any payments are made to creditors.

Remuneration and internal disbursements must be approved in accordance with the Bankruptcy Act and Insolvency Practice Rules (Bankruptcy) before it can be paid.

If there is a shortfall between the trustee's remuneration and the assets available from the estate, in certain circumstances the trustee may arrange for a third party to pay the shortfall. As a creditor, you will be provided details of any such arrangement.

If there are not enough assets to pay the trustee's remuneration and costs, and there is no third party payment arrangement, the trustee remains unpaid.

Calculating remuneration

A trustee may calculate their remuneration using one (or a combination) of the following methods:

- an hourly rate, on the basis of time spent working on the administration
- a quoted fixed amount, based on an estimate of the costs or
- a percentage (usually of asset realisations) with the rate set under the *Bankruptcy Act 1966* and Insolvency Practice Rules (Bankruptcy) 2016.

Charging on the basis of time spent is the most common method used. Trustees have a set of hourly rates that they will seek to charge. These rates are set to reflect the seniority, skills and experience of staff and, where applicable, the complexity and risks of the bankruptcy. They cover staff costs and overheads.

The trustee must keep time sheets noting the number of hours spent on the tasks performed.

Creditors have a right to question the trustee about the remuneration and the rates to be charged. They also have a right to question the trustee about the fee calculation method used and how the calculation was made. The trustee must justify why the chosen fee calculation method is appropriate for the estate.

Information you will receive

There are different types of remuneration reports that you may receive during the course of a bankruptcy or personal insolvency agreement. The table on the next page details the reports and when you might receive them.

Document	Information it contains	When you will receive it	
		Bankruptcy	Controlling trustee / personal insolvency agreement
Initial remuneration notice (IRN)	<ul style="list-style-type: none"> A brief explanation of the types of methods that may be used to calculate remuneration. The trustee's chosen remuneration calculation method and why it is appropriate. Details of the trustee's rates, including hourly rates if time spent basis is used. An estimate of the trustee's remuneration. The method that will be used to calculate disbursements. 	Within 20 business days after receipt by the trustee of statement of affairs (SOA). If SOA not received within 60 days, then must be sent within 7 days after the end of the 60-day period.	<p>A controlling trustee is required to send an IRN.</p> <p>If the trustee of the personal insolvency agreement (PIA) was also the controlling trustee, an IRN is not required.</p> <p>If the trustee of the PIA was not the controlling trustee, then the IRN must be sent within 20 business days of the signing of the PIA.</p>
Remuneration approval report (RAR)	<ul style="list-style-type: none"> A summary description of the major tasks performed, or likely to be performed. The costs associated with each of those major tasks and the method of calculation. The periods at which the trustee proposes to withdraw funds from the estate for remuneration. An estimated total amount, or range of total amounts, of the trustee's remuneration. An explanation of the likely impact of that remuneration on the dividends (if any) to creditors. The right of the creditor to request a remuneration claim notice. Where internal disbursements are being claimed, the trustee will report to creditors on the amount and method of calculation of these disbursements. 	<p>Sent at the same time as the notice to creditors of the meeting at which approval of remuneration will be sought; or the notice to creditors of the proposal without a meeting by which approval of remuneration will be sought.</p> <p>If approval of remuneration is not being sought, a RAR will not be provided.</p>	Same as bankruptcy.

Document	Information it contains	When you will receive it	
		Bankruptcy	Controlling trustee / personal insolvency agreement
Remuneration claim notice (RCN)	<ul style="list-style-type: none"> • The total amount of remuneration claimed. • Details of: <ul style="list-style-type: none"> ○ the work performed for which remuneration is claimed and the method of calculation. ○ the amount of expenses claimed and the method of calculation. • An explanation of any variation from the RAR. • A statement about rights to have the remuneration reviewed. 	<p>Sent before finalising the administration to a regulated debtor or a creditor who elects to receive a RCN within 20 business days after receiving a RAR.</p>	Same as bankruptcy.

Approving remuneration

The meeting of creditors (or committee of inspection) gives a chance for those participating to ask questions about the trustee's remuneration. Fees are then approved by a vote of the creditors. Alternatively, the trustee may seek approval of remuneration via a proposal without a meeting. Whichever method is used, the trustee must provide the same report to creditors about their remuneration.

Creditors may be asked to approve remuneration for work already performed and/or a fee estimate for work not yet carried out. If the work is yet to be carried out, the trustee must set a maximum limit (cap) on the future remuneration approval. For example, 'future remuneration is approved, calculated on hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X'.

If the remuneration for work done then exceeds this figure, the trustee will have to ask the creditors to approve a further amount of remuneration, after accounting for the amount already incurred.

If a trustee can't get the creditors' approval, an application can be made to the Inspector-General to determine their remuneration.

When there are limited funds available in the estate, or the trustees remuneration is below a statutory threshold, a trustee is entitled to draw a one-off amount of up to that threshold plus GST, without creditor approval.

The statutory threshold will depend on when the trustee was appointed. Information in relation to the thresholds that apply can be found on the Indexed amounts page on the AFSA website (www.afsa.gov.au).

Who may approve remuneration?

Committee of inspection approval

A committee of inspection will generally only be established where there are a large number of creditors and/or complex matters which make having a committee desirable. Committee members are chosen by a vote of all creditors and work with the trustee to represent the creditors' interests.

If there is a committee, the trustee will ask it to approve the remuneration. A committee makes its decision by a majority in number of its members present in person at a meeting, but it can only vote if a majority of its members attend.

In approving the remuneration, it is important that committee members understand that they represent all the creditors, not just their own individual interests.

Creditors' approval

Creditors approve remuneration by passing a resolution at a creditors' meeting. Creditors may vote according to their individual interests.

To approve a trustee's remuneration, a resolution is put to the meeting to be decided on the voices or by a 'poll' (if requested by the trustee or a person participating and entitled to vote at the meeting). A poll requires a count of each vote and its value to be taken and recorded for each creditor present and voting.

A proxy is a document whereby a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a general proxy or a special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the trustee as a proxy to vote on the creditor's behalf. If the resolution is for the approval of remuneration, the trustee may only exercise a special proxy, which directs how they are to vote on the resolution.

There are provisions for a resolution to be passed by creditors without a meeting. This still requires a majority in value and number of creditors voting in favour of the resolution. Creditors representing at least 25% in value of those responding to the trustee's proposal can object to the proposal being resolved without a meeting of creditors.

Deciding if remuneration is reasonable

If you are asked to approve a trustee's remuneration, your task is to decide if the amount of remuneration is reasonable, given the work carried out in the administration and the results of that work.

You may find the following information from the trustee useful in deciding if the remuneration claimed is reasonable:

- the method used to calculate remuneration
- the major tasks that have been performed, or are likely to be performed, for the remuneration
- the remuneration/estimated remuneration (if applicable) for each of the major tasks
- the size and complexity (or otherwise) of the estate
- the amount of remuneration (if any) that has previously been approved
- if the remuneration is calculated, in whole or in part, on a time basis:
 - the period over which the work was, or is likely to be performed
 - if the remuneration is for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - if the remuneration is for work that is yet to be carried out, whether the remuneration is capped.

ARITA's Code of Professional Practice ('the Code') outlines the steps trustees should take to make sure they fulfil their responsibilities to creditors when asking creditors to approve remuneration, including when those creditors are acting in their capacity as committee members. The Code is available on the ARITA website at www.arita.com.au.

If you need more information about remuneration than is provided in the trustee's report, you should let them know before the meeting at which remuneration will be voted on.

What can you do if you think the remuneration is unreasonable?

If you think the remuneration being claimed is unreasonable, you should raise your concerns with the trustee. It is your decision whether to vote in favour of, or against, a resolution to approve remuneration. You may also choose to not vote on the resolution (abstain).

You also have the power to put a resolution to the meeting. For example, you could put forward a resolution to change the way the trustee charges for remuneration, or the periods at which the trustee may withdraw funds. Any amending resolution must occur before the vote being taken on the resolution to approve remuneration. If the amended proposal is passed, the resolution is binding on the trustee. However, such an amendment may result in the trustee seeking to be replaced by another trustee.

If the trustee is seeking approval of remuneration via a resolution without a meeting, and more than 25% in value of the creditors responding object using the form provided by the trustee, the proposal will not pass. If the trustee wants the proposal passed, a meeting will need to be convened and any creditor entitled to participate in the meeting has the right, before the vote is taken, to put a resolution to the meeting as mentioned above.

The bankrupt or a creditor may apply to the Inspector-General for a review of remuneration claimed by a trustee. A review by the Inspector-General of a trustee's claim for remuneration will cover the trustee's remuneration and certain disbursements. The process of reviewing remuneration is explained in Inspector-General Practice Statement 16, which is available from the AFSA website (www.afsa.gov.au).

You have 20 business days after receiving a RCN from the trustee (if you elected to receive one), or otherwise within 20 business days after the end of the administration, to give written notice to AFSA that you require a claim for remuneration to be reviewed. There is a form for this purpose on the AFSA website (www.afsa.gov.au).

Reimbursement of out-of-pocket costs

A trustee should be very careful incurring costs that must be paid from the estate; as careful as if they were incurring the expenses on their own behalf. Their RAR sent to creditors must also include information on the out-of-pocket costs of the administration (disbursements).

Where these out-of-pocket costs are internal disbursements paid to the trustee's firm (for example, photocopying and phone calls), the trustee will request creditor approval of these amounts. The trustee may also ask for approval of internal disbursements in advance. If they do so, creditors will set the rates for those disbursements and a cap on the maximum amount that can be drawn.

If you have questions about any of these costs, you should ask the trustee and, if necessary, bring it up at a creditors' or committee meeting. If you are still concerned, you have the right to ask the trustee to have the expenses reviewed by the Inspector-General.

The trustee may (at their own initiative or at the request of a creditor or bankrupt) apply to the Inspector-General for a review of a bill of costs for services supplied to the trustee by a third party.

Enquiries and complaints

You should first raise any enquiries or complaints with the trustee or their firm. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ARITA at www.arita.com.au or with AFSA at www.afsa.gov.au. ARITA is only able to deal with complaints in respect to their members.

More information

The ARITA website contains the ARITA Code of Professional Practice, which is applicable to all its members. ARITA also provides general information to assist creditors at www.arita.com.au/creditors.

The AFSA website contains information on trustees' obligations in relation to remuneration, including **Inspector-General Practice Statements** 15 and 16 and **Inspector-General Practice Directions** 6 and 18. This information is relevant for all AFSA stakeholders or anyone affected by personal insolvency.

References

Information in this information sheet reflects collectively, the requirements of the *Insolvency Law Reform Act 2016*, *Bankruptcy Act 1966* (including the Insolvency Practice Schedule (Bankruptcy)), Insolvency Practice Rules (Bankruptcy) 2016, Bankruptcy Regulations 1996, Inspector-General Practice Statements, Inspector-General Practice Directions and the ARITA Code of Professional Practice.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.