



Can I Appeal?

Review and appeal of trustee and administrator decisions

ABOUT ITSA REGULATION AND ENFORCEMENT

ITSA Regulation and Enforcement is an independent branch of ITSA which reports directly to the Inspector-General in Bankruptcy.

It is responsible under the Bankruptcy Act for monitoring the standards of trustees and debt agreement administrators.

Its role includes, on behalf of the Inspector-General in Bankruptcy, dealing with requests for review of certain decisions made by trustees and dealing with complaints against trustees and administrators¹.

REVIEW PROCEDURES

Trustees

Trustees may make decisions which affect the rights of people whose estates are being administered under the Bankruptcy Act, their creditors and other people.

If you have a query or concern about a trustee decision you should first contact them directly to seek resolution. If you do not resolve the matter you may be able to use the review process within the Act.

You may ask for a review of certain decisions:

- through your nearest ITSA Regulation and Enforcement office (see the ITSA website www.itsa.gov.au)
- through the Administrative Appeals Tribunal
However you cannot apply to the Administrative Appeals Tribunal for review unless:
 - a prior request for a review has been made to ITSA Regulation and Enforcement
 - the request for a review has been assessed
- by application to a Court.

Debt agreement administrators

If you are a debtor, a creditor or someone who is party to a specific debt agreement and you have a query or concern about the conduct of an administrator you should first contact them directly to seek resolution.

If you do not resolve the matter you may refer it to ITSA Regulation and Enforcement.

DECISIONS WHICH CAN BE REVIEWED BY ITSA

ITSA Regulation and Enforcement may review the following decisions made by any bankruptcy trustee:

- filing of a notice of objection to discharge
- issuing an income contribution assessment
- deciding on and or refusing to consider a hardship application with respect to an income contribution assessment
- using a supervised bank account to collect income contributions
- paying trustee's remuneration and third party costs (eg legal costs).

ITSA Regulation and Enforcement must also review these decisions if requested by the Commonwealth Ombudsman.

DECISIONS WHICH CAN ONLY BE REVIEWED BY A COURT

ITSA Regulation and Enforcement does not have the authority to review any other decision made by a trustee, such as:

- selling an asset (eg house, property, stock, plant and equipment, motor vehicle etc)
- admitting or rejecting a proof of debt.

If you are unable to resolve the matter with the trustee, and the decision cannot be reviewed by ITSA Regulation and Enforcement, your only remedy may be to apply to the Court.

The application to the Court must be made within 21 days from the date of the decision.

However, you may nevertheless be able to make a complaint to ITSA about the conduct of a trustee if for example; you feel the trustee has acted unreasonably.

For information about making a complaint please refer to fact sheet *Resolving Complaints about Trustees and Administrators*.

¹ A review is a statutory power to change a decision.

WHAT DOCUMENTATION DO I NEED?

Your request for a review to ITSA Regulation and Enforcement must:

- be in writing, and
- be accompanied by:
 - i. a copy of the document showing the trustee's decision
 - ii. an explanation of why you consider the decision should be reviewed
 - iii. any documents to support your request

WHAT DOES IT COST?

There is no charge for reviews undertaken by ITSA Regulation and Enforcement.

WHAT IS THE PROCESS?

If you wish to lodge a request for a review, you must do so within **60 days** of the date the trustee informs you of their decision. However ITSA Regulation and Enforcement may choose to review the decision outside this time frame if you were not informed of your right of review by the trustee.

Your request for a review will be acknowledged in writing within 7 days of receipt.

Your trustee will be contacted to find out if further documents are available to assist the review process. You may need to provide further documents if required.

You will be informed of the progress of the investigation within 28 days. If ITSA Regulation and Enforcement has not completed the review within 60 days, the trustee's decision is automatically confirmed.

If your request for a review is not granted, you will be advised of your further rights of appeal.

REVIEW OF TRUSTEE'S REMUNERATION AND THIRD PARTY COSTS

If the bankruptcy² commenced prior to 1 December 2010

A creditor or bankrupt who is dissatisfied with a registered trustee's claim for remuneration and third party costs may either:

- complain to ITSA Regulation and Enforcement, or
- request ITSA to undertake a review of the trustee's remuneration

This process is called a 'taxation of costs' and it examines the nature of work undertaken, time taken and the amount charged. A fee is charged for this service and you may also be required to pay the trustee's costs if the remuneration is not significantly reduced.

ITSA Regulation and Enforcement can examine the legality of the remuneration and whether the trustee has complied with standards set out in the Bankruptcy Act and can only require the trustee to vary their remuneration if it has not been legally taken or in accordance with regulated standards.

If the bankruptcy³ commenced on/after 1 December 2010

A creditor or bankrupt who is dissatisfied with a registered trustee's claim for remuneration may apply to ITSA Regulation and Enforcement for a review. A review will only be appropriate where the creditor or bankrupt can demonstrate failure to follow legislative requirements in the fee approval process, improper conduct by or on behalf of the trustee or similar exceptional circumstances. The person applying for a review must also demonstrate that they have an interest in the outcome of the review.

A creditor or bankrupt who is dissatisfied with a trustee's⁴ bill of costs for services provided by a third party may request the trustee to apply to ITSA Regulation and Enforcement for a review.

The outcome of ITSA Regulation's and Enforcement review may be appealed to Court.

ITSA POLICIES AND PRACTICE

For further information on ITSA Regulation and Enforcement's role in reviewing certain trustee decisions please refer to the Inspector-General's Practice Statement 12.

For further information on ITSA Regulation and Enforcement's role in reviewing trustee remuneration and third party costs please refer to the Inspector-General's Practice Statement 16.

Both Practice Statements can be found on ITSA's website at www.itsa.gov.

² This extends to personal insolvency agreements and section 188 authorities in Part X

³ This extends to personal insolvency agreements and section 188 authorities in Part X

⁴ A review of third party costs includes those costs incurred by ITSA in its capacity as the Official Trustee. A review in respect of fees does not extend to the Official Trustee as its fees are determined by statute

HOW TO CONTACT US

For all enquiries call 1300 364 785 or visit www.itsa.gov.au