



November 2009

Can I Appeal?

Review and appeal of trustee and administrator decisions

ABOUT ITSA REGULATION

ITSA Regulation 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 administrators.

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 office (see overleaf)
- through the Administrative Appeals Tribunal
- by application to a Court.

You cannot apply to the Administrative Appeals Tribunal for review unless:

- a prior request for a review has been made to ITSA Regulation
- the request for a review has been assessed

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.

DECISIONS WHICH CAN BE REVIEWED

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

- filing of a notice of objection to discharge
- issuing an income contribution assessment
- rejecting a hardship application with respect to an income contribution assessment
- using a supervised bank account to collect income contributions.

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

DECISIONS WHICH CANNOT BE REVIEWED

ITSA Regulation 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, your only remedy may be to apply to the Court.

For example, a creditor or bankrupt may apply to the Court for a review of a decision by a trustee to admit or reject a proof of debt. The application to the Court must be made within 21 days from the date of the decision.

WHAT DOCUMENTATION DO I NEED?

Your request for a review must be lodged with ITSA Regulation and 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.

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 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 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 FEES

A creditor or bankrupt who is dissatisfied with a private bankruptcy trustee's claim for fees and costs may either:

- **lodge a complaint with ITSA Regulation**
 - ITSA Regulation may examine the legality of the fees and whether the trustee has complied with standards set out in the Bankruptcy Act. However, they may not be able to direct the trustee to vary their fee.
- **request ITSA to undertake a review of the trustee's fees**
 - This process is called a 'taxation of costs'. A fee is charged for this service and you may also be required to pay the trustee's costs if you are unsuccessful in having the fees significantly reduced.

For more information telephone 1300 364 785 and ask for ITSA Regulation.

ITSA CONTACTS

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