



February 2011

Resolving Complaints about Trustees and Administrators

ABOUT ITSA REGULATION AND ENFORCEMENT

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

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

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

WHO MAY COMPLAIN TO ITSA REGULATION AND ENFORCEMENT?

Anyone may complain if they are concerned about an action taken by a:

- bankruptcy trustee, including the Official Trustee;
- debt agreement administrator including any person who provides assistance in setting up a debt agreement;
- controlling trustee of a Part X arrangement
- trustee of a Personal Insolvency Agreement.

Enquiries about voting on a debt agreement proposal, or varying or terminating a debt agreement should be directed to ITSA's Debt Agreement Service on 1300 364 785.

HOW TO COMPLAIN?

First try and resolve your concerns with the trustee or administrator. If you remain dissatisfied or feel unable to raise the issue with them, contact ITSA Regulation and Enforcement. All complaints are treated seriously.

WHAT DOES IT COST?

There is no charge for this service.

HOW IS MY COMPLAINT HANDLED?

Your enquiry may be resolved immediately over the phone or resolved quickly with the trustee or administrator. Should ITSA Regulation and Enforcement decide the matter requires further investigation you may be requested to provide additional information in writing or evidence to assist.

Written complaints will be acknowledged in writing within 7 days of receipt.

If you wish to remain anonymous, or have concerns about your details being made available, please make this clear to ITSA Regulation and Enforcement.

ITSA Regulation and Enforcement aims to finalise the investigation within 60 days of receiving your complaint and will keep you informed of the progress of the investigation monthly.

If your complaint is beyond ITSA Regulation and Enforcement's powers to investigate, or it cannot be resolved, you will be advised of your options, such as making an application to the Court. Meetings between parties can also be facilitated with a view to quicker resolution of disputes. You should indicate when making the complaint if you wish to consider this option.

HOW IS MY COMPLAINT INVESTIGATED?

Where the matter is not able to be resolved through discussions with the trustee, a written response is obtained from the trustee or administrator addressing the issues of your complaint and their file may be inspected.

REPORT ON THE INVESTIGATION

You and the trustee or administrator will be provided with a copy of any complaint report.


DECISIONS WHICH CAN BE REVIEWED BY ITSA REGULATION AND ENFORCEMENT

In some instances ITSA Regulation and Enforcement can review a trustee's decision eg

- 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 account for recovering income contributions
- paying trustee's remuneration and third party costs (eg legal costs)

HOW TO CONTACT US

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



If your complaint relates to a decision of a trustee that is reviewable, you should follow the procedure set out in the fact sheet *Can I Appeal?*

REVIEW OF TRUSTEE'S REMUNERATION AND THIRD PARTY COSTS

If the bankruptcy¹ 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 bankruptcy² 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's³ 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 and Enforcement's review may be appealed to Court.

WHAT IF ITSA REGULATION AND ENFORCEMENT CANNOT HELP?

If your complaint cannot be resolved by the intervention of ITSA Regulation and Enforcement your only remedy may be to apply to the Court. You will be informed if this is the case.

If you do not feel you have been treated with dignity and respect or are otherwise dissatisfied with the way that ITSA Regulation and Enforcement has handled your complaint, please raise your concerns further by asking to speak with the actioning officer's manager. If you remain dissatisfied you have a right to complain to the Commonwealth Ombudsman.

RECORDS OF COMPLAINTS

A record of all complaints is retained by ITSA Regulation and Enforcement. The record is kept as valuable feedback to assist in:

- ongoing monitoring of the standard of that trustee or administrator
- determining the scope of ITSA Regulation and Enforcement's monitoring of trustees and administrators
- education of trustees and administrators
- advising Government on personal insolvency policy issues

Further information about what you can expect from ITSA Regulation and Enforcement and ITSA generally is available in the Client Service Charter.

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.

CONTACTING ITSA REGULATION AND ENFORCEMENT

ITSA Regulation and Enforcement may be contacted by calling ITSA's Information Service on 1300 364 785.

Complaints and requests for reviews of remuneration may be lodged with ITSA Regulation and Enforcement by mail, fax or email. Please see the ITSA website for details.

¹ This extends to personal insolvency agreements and section 188 authorities in Part X

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³ 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