



**Australian Government**

**Insolvency and Trustee Service Australia**

## **INSPECTOR-GENERAL PRACTICE DIRECTION No 18**

### **Trustee Remuneration Notifications**

**PLEASE NOTE: This draft Practice Direction contains references to proposed amendments to the Bankruptcy Regulations. These amendments were issued in draft form for public consultation in July 2010. In light of comments received during the consultation process, the Government is considering whether any changes to the draft amendments are warranted. It is therefore possible that the content of this Practice Direction may change.**

**Release Date<sup>1</sup>: August 2010**

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<sup>1</sup> Note released in August 2010 in draft for comment.

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## **Acknowledgements**

Sections of this Inspector-General Practice Direction have been written with reference to the guidance given in the Insolvency Practitioners Association of Australia (IPA) [Code](#) of Professional Practice.

DRAFT

## Introduction

1. The purpose of this Inspector-General Practice Direction (“IGPD”) is to outline the position of the Inspector-General in Bankruptcy, in regard to the notices a registered trustee in bankruptcy is required to send to the bankrupt<sup>2</sup> and creditors in relation to his or her remuneration or in paying third party costs in the course of administering a bankrupt or Part X estate.
2. This Practice Direction does not relate to the Official Trustee whose entitlement to remuneration is set out in the Bankruptcy Act and detailed in the fact sheet “[ITSA's Fees and Charges](#)” published on the ITSA internet. It does however relate to the Official Trustee in terms of notices to be sent in relation to third party payments. It has application to all bankruptcies that commence and Personal Insolvency Agreements that are executed on or after 1 October 2010.
3. It is recommended that this Practice Direction be read in conjunction with IGPD 6 and Inspector-General Practice Statements 15 and 16 – which are also closely related to Trustee Remuneration.

## Types of Trustee Remuneration Notices

4. Pursuant to subsection 162(6A) of the Act and the Bankruptcy Regulations, registered trustees may be required to issue to the bankrupt and the creditors, three (3) different types of notices relating to their remuneration depending on the stage and progress of an estate. The different notices required by the Regulations are:
  - (i) Initial Remuneration notice (see paragraphs 6 to 14)
  - (ii) Remuneration Approval notice (see paragraphs 15 to 23)
  - (iii) Remuneration Claim notice (see paragraphs 24 to 36)
5. Both Registered Trustees and the Official Trustee will be required to send notices in respect of payments to third parties to the bankrupt and the creditors in certain circumstances (see paragraphs 37 to 48).

## ***Initial Remuneration notice (IRN) – Regulation 8.12A***

6. A recommended IRN precedent for Registered Trustees to use is attached to this IGPD as “Appendix 1.”

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<sup>2</sup> Or debtor if a Part X estate

## Contents of the IRN

7. The IRN must contain the following information:
  - (i) a brief explanation of the types of methods that may be used to calculate remuneration;
  - (ii) the method chosen by the trustee and why it is appropriate;
  - (iii) details of the rate of remuneration; and
  - (iv) an estimate of the expected amount of the trustee's remuneration.
8. With reference to paragraph 7(ii) above, if the trustee chooses the time-cost basis method the notice must include details about the respective rates at which the remuneration of the trustee and the other persons who will be assisting, or will be likely to assist, the trustee in the performance of his or her duties are to be calculated.
9. When choosing the most appropriate remuneration method and advising creditors of why that method was chosen, it is expected that Registered Trustees will consider factors such as cost effectiveness, efficiency and the level of debt and or expected realisations in the estate.
10. Trustees are also expected to indicate in the IRN that, if the total remuneration they expect to claim is less than the Statutory Minimum under section 161B of the Act (\$5,000), creditor approval will not be required.

## When to send the IRN

11. A Registered Trustee is required to send an IRN to the bankrupt and creditors within 28 days of the appointment of the trustee.

Note 1: Comments received in response to the draft regulation amendments indicated a preference to have the time period for issuing the IRN run from the date the trustee receives the statement of affairs or, if no statement of affairs is received within 60 days from the date of bankruptcy – from this date. It is understood the Government is considering whether changes along these lines are appropriate.

Note 2: Controlling trustees appointed under Part X of the Bankruptcy Act have an obligation under Bankruptcy Regulation 10.04 to provide information of a similar nature to that contained in the IRN. The Government is examining ways to ensure there is no duplication of notification requirements for controlling trustees.

12. It is mandatory to provide the IRN to the bankrupt and creditors in every estate. It does not matter if the estate has no funds or that the trustee does not intend having creditors approve their remuneration.
13. There is no prescribed or approved form for this notice. Trustees are expected to take guidance from the recommended precedent attached as Appendix 1. This has been modelled on information in Chapter 20 of the IPA [Code](#).

## What can affected parties do if dissatisfied with the IRN?

14. If the bankrupt (or debtor under a Part X arrangement) or creditors are dissatisfied with the content of the IRN they should first endeavour to resolve their concerns directly with the trustee. If this does not result in a satisfactory outcome then they have the right to:
- (i) Complain to ITSA Regulation [Inspector-General Practice Statement 10](#); and/or
  - (ii) Seek a change of trustee by asking the trustee to convene a meeting pursuant to section 64.

## Remuneration Approval Notice (RAN) – Regulation 8.12B

15. A recommended RAN precedent for Registered Trustees to use is attached to this IGPD as “Appendix 2.”

## Contents of the RAN

16. If a Registered Trustee proposes to have his or her remuneration “fixed” (ie approved) by creditors or the committee of inspection, the trustee must give the creditors or committee a RAN that includes the following information:
- (i) A description of the work, including the details of particular tasks that the trustee or the person assisting the trustee has undertaken;
  - (ii) A description of the work that the trustee will, or is likely to, undertake;
  - (iii) The number of hours to be charged by the trustee and each person assisting the trustee;
  - (iv) The hourly rate charged by the trustee and each person assisting the trustee;
  - (v) The proposed total amount of remuneration for the work in the estate;
  - (vi) A statement that the costs incurred or to be incurred are *necessary and reasonable* having regard to the value and complexity of the estate;
  - (vii) A report on work that has been completed, that is in progress and that is yet to be undertaken.
17. For guidance on what constitutes “necessary and reasonable” for the purposes of paragraph 16 (vi) above, trustees are referred to Performance Standard 2.13 of Division 2.4 of Schedule 4A to the Regulations which states:

## **“Remuneration and costs**

### **2.13 Costs incurred to be necessary and reasonable**

*In conducting an administration, the trustee must:*

- (a) incur only those costs that are necessary and reasonable; and*
- (b) before deciding whether it is appropriate to incur a cost, compare the amount of the cost likely to be incurred with the value and complexity of the administration.*

18. Further guidance with respect to “necessary and reasonable” is provided in [Inspector-General Practice Direction 6.1](#) and the IPA [Code](#).

### **When to send the RAN**

19. If the trustee proposes to have his or her remuneration fixed at a meeting of creditors the RAN must be sent at the same time as the notice to creditors advising of the date and time of the meeting.
20. It is acceptable for trustees to send the IRN and RAN at the same time provided it is sent to the bankrupt and creditors within 28 days of the trustee’s appointment.

*Note: Please refer to the notes under paragraph 11 regarding the Government’s consideration of changes to the timing requirement for sending IRNs.*

21. Provided the time frame is met, it is also acceptable that the IRN and RAN be sent as part of an initial report to creditors and a remuneration approval request pursuant to section 64ZBA of the Act.
22. There is no prescribed or approved form for this notice. Trustees are expected to take guidance from the recommended precedent attached as Appendix 2. This has, in part, been modelled on information in Chapter 20 of the IPA [Code](#).

### **What can affected parties do if dissatisfied with the RAN?**

23. If the creditors or committee of inspection are dissatisfied with the content of the RAN they should firstly endeavour to resolve their concerns directly with the trustee. If this results in an unsatisfactory outcome then they have the right to:
- (i) Either abstain or vote against the resolution for approval of the trustee’s remuneration;
  - (ii) Complain to ITSA Regulation [See IGPS 10 at this link](#); and/or
  - (iii) Seek a change of trustee by asking the trustee to convene a meeting pursuant to section 64.

## **Remuneration Claim Notice (RCN) – Regulation 8.12C**

24. A recommended RCN precedent for Registered Trustees to use is attached to this IGPD as “Appendix 3.”

### **Contents of the RCN**

25. The RCN must include the following information:
- (a) The total amount of remuneration claimed;
  - (b) Details of the work performed for which the remuneration is claimed;
  - (c) The names of the persons who performed the work;
  - (d) The number of hours charged by each person for the work;
  - (e) The hourly rate charged by each person for the work;
  - (f) An explanation of any variation from the amounts set out in the RAN in relation to the remuneration claimed, the number of hours charged, the hourly rate charged and the persons performing the work; and
  - (g) A statement advising the bankrupt and the creditors that they may, within 28 days after receiving the notice, request the Inspector-General to review the amount of remuneration claimed by the trustee.
26. For the purposes of paragraph 25(a) above, “claimed” refers to remuneration already drawn or intended to be drawn by the trustee.
27. It is expected that each RCN is accompanied by either a Form 2 (Trustee’s Accounts of Receipts and Payments) or receipts and payments summary in the estate so the bankrupt and creditors can compare the value of receipts that have been taken in fees and other items.
28. From direct reference to Chapter 20.7 of the IPA Code the RCN should clearly:
- *state the precise terms of the agreement sought from the committee or the resolution(s) sought from creditors;*
  - *set out the total remuneration previously determined; and*
  - *indicate whether they will be seeking the determination of further remuneration at some time in the future.*
29. The RCN should also refer back to the relevant RAN.
30. In respect of paragraph 25(g) above, guidance on how to request the Inspector-General to review the trustee’s remuneration is provided in Inspector-General Practice Statement 16.

### **When to send the RCN**

31. A trustee must send the RCN to the bankrupt and the creditors within 14 days upon either of the following events occurring:
- (a) When the remuneration reaches the amount approved pursuant to the RAN for the relevant time period; or
  - (b) Where the remuneration has not reached the approved amount:

- (i) at the time the trustee declares a final dividend; or
  - (ii) at the time the administration of the estate is finalised and the trustee determines that no final dividend will be declared.
- 32. With respect to paragraph 31 (b)(ii) above, “*at the time the administration of the estate is finalised*” has a meaning consistent with subsection 145(1) of the Act. That is, the trustee has realised all property of the bankrupt or debtor, or so much of it as can, in his or her opinion, be realised without needlessly protracting the trusteeship.
- 33. In the course of trustee inspections, dealing with complaints and Inspector-General Remuneration review requests, ITSA Regulation will monitor this requirement to ensure the RCN is sent as soon as practical.
- 34. Where it is determined that a trustee has needlessly drawn out the finalisation of an estate by neither actioning appropriate tasks in a timely manner or not determining that a dividend will not be declared when in a position to do so, ITSA Regulation will require an explanation from the trustee. Depending on the response from the trustee, ITSA Regulation may take disciplinary action against the trustee as deemed appropriate on a case by case basis and in accordance with [Inspector-General Practice Statement 8](#) paragraph 8.
- 35. There is no prescribed or approved form for this notice. Trustees are expected to take guidance from the recommended precedent attached as Appendix 3. This has been modelled on information in Chapter 20 of the IPA [Code](#).

### **What can affected parties do if dissatisfied with the RCN?**

- 36. If the bankrupt (or debtor under a Part X arrangement) or creditors are dissatisfied with the trustee’s remuneration claim contained in the RCN they have the right to request the Inspector-General to undertake a review of the trustee’s claim (refer paragraph 25(g) above). Note that specific requirements must be met prior to the Inspector-General accepting a request for remuneration review. These are detailed in Inspector-General Practice Statement 16.

### **Notice of payment to a third party (NPTP) - Regulation 8.12D**

*Note: The draft amendments to the Bankruptcy Regulations relating to notification of third party payments were the subject of substantial comment during the consultation process. In light of these comments, the Government is considering whether changes to the notification requirements are warranted.*

- 37. A recommended NPTP precedent for Registered Trustees and the Official Trustee to use is attached to this IGPD as “Appendix 4.”

### **Contents of the NPTP**

- 38. The NPTP must include the following information:
  - (a) A description of the work performed by the third party;
  - (b) The amount of the payment to be made to the third party;

- (c) A statement advising the bankrupt and the creditors that they may, within 14 days after receiving the notice, request the trustee to request the Inspector-General to review the amount payable to the third party.
39. A copy of the claim for payment must be attached to the NPTP if available. Ideally this would take the form of an invoice.
40. In respect of paragraph 39(c) above, guidance on requests to the Inspector-General to review the amount payable to a third party is provided in Inspector-General Practice Statement 16.

### When to send the NPTP

41. A NPTP is required to be sent when the trustee receives a request for payment for services provided by another person in relation to the administration of the estate. Typically this will take the form of “outlays” or “disbursements.”
42. The Registered Trustee or Official Trustee is required to send the NPTP to the bankrupt and creditors within 7 days after receiving the claim.
43. It may be sent simultaneously with the RCN.
44. There is no prescribed or approved form for this notice. Trustees are expected to take guidance from the recommended precedent attached as Appendix 4.
45. A NPTP does not need to be sent if:
- (i) the services provided by the third party are routine; or
  - (ii) the proposed payment does not exceed \$100.
46. The following table provides guidance on what the Inspector-General considers to be or not to be “*routine*”.

Third party payment	Routine
Search fees – one off	√
Valuation fees – one off	√
Related party payments	x
Legal or counsel fees	x
Outsourcing (eg debt collection)	x
Expert specialist advice	x
Real estate agents commission	√
Real estate agent’s marketing costs	√
Travelling costs of trustees and staff	√
Repairs and maintenance to vesting assets prior to sale	√

### What can affected parties do if dissatisfied with the NPTP?

47. If the bankrupt (or debtor under a Part X arrangement) or creditors are dissatisfied with the claim of

the third party they have the right to request the trustee to request the Inspector-General to undertake a review of the amount payable to the third party.

48. The trustee is not obliged to request the Inspector-General to review the amount of payment to be made to the third party. It is expected nonetheless that the trustee will have a valid reason for not referring the request for review to the Inspector-General.

## Summary of all Notification requirements for Trustees

49. A summary of the notification requirements for trustees is shown in the table below.

Notice	Who to send to?	When to send?	What practitioner applies to?
Initial Remuneration Notice (IRN)	Bankrupt and creditors	Within 28 days of appointment	RT & CT ^
Remuneration Approval Notice (RAN)	Creditors or Committee of Inspection	At discretion of the trustee ie when seeking approval	RT & CT ^
Remuneration Claim Notice (RCN)	Bankrupt and creditors	Within 14 days of occurrence of events in paragraph 31.	RT & CT ^
Notice of Payment to a Third Party (NPTP)	Bankrupt and creditors	Within 7 days of receiving the claim	RT, OT & CT ^

^ RT = Registered Trustee; CT = Controlling Trustee and OT = Official Trustee

## Conclusion

50. This IGPD outlines the Inspector-General's position with respect to the obligations on trustees to issue notifications in regard to remuneration and third party payments. It will be against the principles outlined in this IGPD, the Act and the Regulations (including the Performance Standards contained in Schedule 4A of the Regulations) that a trustee's conduct of an administration will be assessed by ITSA Regulation and Enforcement.
51. When there are other specific issues where clarification is required, following consultation with the IPA, the Inspector-General will continue to develop policy and practice statements to assist practitioners.

## Appendix 1 - Initial Remuneration Notice

<Bankrupt/Part X> estate of: <enter name>  
Estate Number: <enter number>

### Initial Remuneration Notice

Section 162  
Regulation 8.12A

#### Remuneration Methods

As trustee/s of the abovenamed <bankrupt estate/Part X estate>, I/we, <Registered Trustee/s name/s>, advise pursuant to section 162 of the Bankruptcy Act that there are different methods<sup>3</sup> that may be used to calculate a trustee's remuneration.

#### Remuneration Method chosen

Given the nature of this estate I/we propose that my/our remuneration be calculated <insert remuneration method>. I/we believe this method to be appropriate because <state reason for method chosen.>

#### Explanation of method chosen

<Time based / Hourly rates>

The rates for <my/our> remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration.

Title ^	Description #	Hourly rate (incl GST)
Registered Trustee		
Director / Consultant		
Senior Manager		
Manager 1		
Manager 2		
Supervisor		
Senior 1		
Senior 2		
Intermediate 1		
Intermediate 2		
Secretary		

<sup>3</sup> The different methods of trustee remuneration calculation are:

- (i) Time-based /hourly rates – the total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.
- (ii) Fixed fee – the total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration.
- (iii) Commission – the total fee is based on a percentage rate of moneys received by the trustee. See Regulation 8.07.
- (iv) If the trustee's total remuneration is less than \$5,000, the trustee may claim that amount without creditor approval. See section 161B

<i>Clerk</i>		
<i>Junior</i>		

*^ This list is a guide only - Registered Trustees should use titles appropriate to their practice.  
 # Information that should be contained in the description column includes years of experience, qualifications, education, staff supervised.*

**<Fixed Fee>**

*If charging on a fixed fee basis, a fixed amount quote for the cost of the administration, details of what services are included as part of the fixed fee and the basis upon which the balance of services will be charged should be set out. If it is intended that some services will be provided on a different basis, each basis should be clearly explained as it relates to each particular service.*

**<Commission>**

*If using a percentage of realisations method, the percentage to be applied, clearly documenting what the percentage is to be applied to, when the remuneration will be paid and the expected range of remuneration outcomes.*

**Estimate of Total Remuneration**

*I/we expect to claim a total amount of remuneration of approximately <\$> in the administration of this estate.*

**Date:** *<within 28 days of date of trustee appointment>*

**Signed:** *<Registered Trustee/s signature/s>*

## Appendix 2 - Remuneration Approval Notice (RAN)

<Bankrupt/Part X> estate of: <enter name>  
Estate Number: <enter number>

### Remuneration Approval Notice

Section 162  
Regulation 8.12B

As trustee/s of the abovenamed <bankrupt/Part X estate>, <I/we>, <Registered Trustee/s name/s>, propose to have <my/our> remuneration fixed by creditors or the committee of inspection.

This approval is sought for work undertaken or to be undertaken from <enter period of time from and to.>

#### Calculation of remuneration

<Replicate table from page 73 of the IPA [Code](#) and insert here>

#### Description of work completed

<Replicate table from pages 68-72 of the IPA [Code](#) and insert here – making changes as necessary to unique aspects of personal insolvency work<sup>4</sup>>

I/we declare that the costs incurred, or to be incurred, are necessary and reasonable having regard to the value and complexity of the administration.

**Date:** <enter date>

**Signed:** <Registered Trustee/s signature/s>

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<sup>4</sup> For example – income contribution assessments; filing objections to discharge; investigating and referring potential offences to ITSA Regulation and Enforcement

## Appendix 3 - Remuneration Claim Notice (RCN)

<Bankrupt/Part X> estate of: <enter name>  
Estate Number: <enter number>

### Remuneration Claim Notice

Section 162  
Regulation 8.12C

I/we refer to the Remuneration Approval Notice dated <enter date> which was approved or fixed by <creditors or committee> or <decided by the Inspector-General> on <enter date> in the amount of <\$>.

The amount <I/we> have claimed as remuneration in this estate reached the above amount on <enter date>.

*or*

I/we have claimed as total remuneration the amount of <\$> which is below the statutory minimum of \$5,000 provided for in section 161B of the Bankruptcy Act. Prior approval from creditors is not required where the total amount of remuneration claimed is below the statutory minimum.

#### Calculation of remuneration

<Replicate table from page 73 of the IPA [Code](#) and insert here>

#### Description of work completed

<Replicate table from pages 68-72 of the IPA [Code](#) and insert here – making changes as necessary to unique aspects of personal insolvency work<sup>5</sup>>

#### Explanation of variation from Remuneration Approval Notice (if applicable)

The amount claimed has varied from the amounts set out in the Remuneration Approval Notice as follows.

<i>Description</i>	<i>Remuneration Approval Notice</i>	<i>Remuneration Claim Notice</i>	<i>Variation</i>	<i>Reasons for variation</i>
Remuneration claimed				
Number of hours charged				

<sup>5</sup> For example – income contribution assessments; filing objections to discharge; investigating and referring potential offences to ITSA Regulation and Enforcement

Hourly rate charged				
Persons performing the work				

**Summary of Remuneration Approvals and Claims to date**

<i>Period</i>	<i>Remuneration Approval notice</i>	<i>Remuneration Claim Notice</i>
<b>TOTAL:</b>	<enter total>	<enter total>

**Right of review**

Within 28 days after receiving this notice, you may request the Inspector-General in Bankruptcy to review the amount of remuneration claimed. Requests for review should be marked to the attention of ITSA Regulation and be addressed to <address of relevant ITSA office>

**Date:** <within 14 days of the amount claimed reaching the approved amount or, where the fixed amount has not been reached, at the time a final dividend is declared or the administration of the estate is finalised (where it is determined that no final dividend will be declared)>

**Signed:** <Registered Trustee/s signature/s>

**Attachments**

- (i) Remuneration Approval Notice to which this Remuneration Claim Notice relates.
- (ii) Summary of receipts and payments in this estate from <enter commencement date> to <enter most current date possible>.

## Appendix 4 - Notice of payment to a third party (NPTP)

*<Bankrupt/Part X> estate of: <enter name>  
Estate Number: <enter number>*

### Notice of Payment to a Third Party

Section 166  
Regulation 8.12D

As trustee/s of the abovenamed estate, *I/we, <Registered Trustee/s name/s>*, advise that on *<enter date received>*, *I/we* received a claim for payment for services provided by a third party service provider *<name of third party service provider>*.

*I/we* advise that the work performed by the third party service provider in respect of this claim in the amount of *<\$>* included:

*<Enter here the detail of the work performed by the third party service provider>*

A copy of the claim for payment is attached.

*I/we* advise that it is *my/our* intention to pay this claim.

#### **Right to review**

Within 14 days after receiving this notice, you may request a review of this claim by asking *me/us* to seek a review of the claim by the Inspector-General in Bankruptcy. However, the decision to seek such a review is at *my/our* discretion.

**Date:** *<within 7 days of receiving the claim>*

**Signed:** *<Registered Trustee/s signature/s>*