

Registered Trustee remuneration in the personal insolvency system
Best practice report 2019

DRAFT

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Glossary

Administration	<p>A personal insolvency—a debt agreement, personal insolvency agreement, Part IV bankruptcy or Part XI deceased estate.</p> <p>The effective and efficient management of a debtor's or bankrupts financial affairs in accordance with the <i>Bankruptcy Act 1966</i>.</p>
AFSA	Australian Financial Security Authority
ARITA	Australian Restructuring & Insolvency Turnaround Association
Bankruptcy	<p>A legal status in which a person who cannot pay his or her debts obtains protection from further action by most unsecured creditors. The person may lodge his or her own petition to become bankrupt (a debtor's petition) or a creditor may lodge a petition to make the debtor bankrupt (a sequestration order). When a person becomes bankrupt, his or her property is administered by the trustee to allow for the fair distribution of property among creditors.</p>
Bankruptcy Act 1966	<p>The Commonwealth legislation that provides for bankruptcy, Part IX (debt agreements), Part X (personal insolvency agreements) and Part XI deceased estate administrations. It deals with individual or personal insolvency.</p>
Creditor	<p>A person, organisation, company or other entity who/which is owed money</p>
Creditor vote	<p>The vote of a creditor to a matter about an insolvency administration, raised in a formal meeting of creditors or through the debt agreement voting process.</p>
Creditors meeting	<p>A meeting of the creditors of a debtor or bankrupt that is convened by the controlling trustee or trustee so that certain issues can be put to creditors for their consideration and a vote.</p>
Debt	<p>An amount owed.</p>
Debtor	<p>A person who owes a debt.</p>
Dividends	<p>A distribution of funds that is made to creditors from any asset or income</p>

	<p>realisations in an administration under the <i>Bankruptcy Act 1966</i>.</p>
Estate	<p>A person's estate is comprised of his or her property. When a person becomes bankrupt, ownership of most property and the rights attached to this property transfers to the trustee, and the trustee deals with this property (the trustee administers the estate) for the benefit of creditors.</p>
Financial Counsellor	<p>A person who gives confidential and independent assistance to people with financial problems. Financial counselling services are usually provided by community or welfare organisations and are often provided free of charge.</p>
IG	<p>Inspector-General</p>
IGPD6	<p>Inspector-General Practice Direction 6</p> <p>IGPDs assist regulated entities, by explaining how the law should be interpreted, giving both guidance and direction on specific insolvency practice. IGPD 6 addresses remuneration.</p>
Income	<p>This is the income of the bankrupt that is used for assessing his or her income contributions liability. It is not necessarily the same as the bankrupt's taxable income for taxation purposes, as certain amounts are specifically included in, or excluded from, income for bankruptcy purposes—see section 139L of the <i>Bankruptcy Act 1966</i>.</p>
Independent Trustee	<p>A trustee that lacks bias as the trustee has no relationship with any beneficiary of a trust and is not to receive any proceeds from the trust property.</p>
Initial Remuneration Notice (IRN)	<p>The IRN must contain the following information: a brief explanation of the types of methods that may be used to calculate remuneration; the method that the trustee proposes to use to calculate remuneration and an explanation of why it is appropriate; details of the rate of remuneration; an estimate of the expected amount of the trustee's remuneration; and the method to be used to calculate disbursements.</p>

Insolvent	A person or entity who is unable to pay his or her debts as and when they fall due.
Inspector-General reviews	Under powers in the Bankruptcy Act 1966, AFSA's independent Regulation and Enforcement division—as delegates of the Inspector-General in Bankruptcy—may review decisions made by a bankruptcy trustee about: income contribution assessments; hardship applications; supervised account notices; objections to discharge; trustee remuneration and costs by a third party.
Legislation	A law or body of laws formally made or enacted. The term includes statute law or Acts of Parliament, but also encompasses law made by other bodies under the authority of Parliament.
Matter	An application that is registered in an AFSA insolvency system/s that may or may not result in an administration. A subject or situation under consideration.
Official Trustee	A body corporate that administers bankruptcies and other personal insolvency arrangements when a private trustee or other administrator is not appointed
Own initiative	An action undertaken which is not consequential on a formal referral, and that falls within the scope of the Australian Financial Security Authority
Personal insolvency	The state of being insolvent. One of the types of administrations provided under the <i>Bankruptcy Act 1966</i>.
Practitioner	A party who is responsible for administering an insolvency. Can include the Official Trustee in Bankruptcy, registered trustees, registered debt agreement administrators and controlling trustees (including solicitor controlling trustees).
RCN	Remuneration Claim Notice
Realisation	An incoming receipt in a personal insolvency. This could be from the sale of an asset, the recovery of income contributions, a debtor paying instalments from income, a

	receipt in relation to an Official Receiver notice, the Australian Taxation Office paying a tax return to the trustee, settling litigation etc.
Realisations Charge	A levy on the money received by bankruptcy, composition, debt agreement, personal insolvency agreement and deceased estate administration practitioners
Registered Trustee (RT)	A person registered with AFSA on the National Personal Insolvency Index permitted to have control of the administration of bankruptcies, personal insolvency agreements under Part X or debt agreements under Part IX of the <i>Bankruptcy Act 1966</i>.
Regulated Debtor	Includes a bankrupt, a person whose property is subject to control under Part X of the Act, a debtor under a personal insolvency agreement and a deceased person whose estate is being administered under Part XI of the Act.
Remuneration	Money paid for work or a service.
Remuneration Approval Report (RAR)	Before creditors (or a committee of inspection) make a remuneration determination under section 60-10 of the Schedule of the Act, the RT must prepare a RAR setting out such matters that will enable an assessment as to whether the proposed remuneration is reasonable and the right of the regulated debtor and creditors to elect to receive a Remuneration Claim Notice.
Remuneration Claims Notice (RCN)	A regulated debtor or a creditor may elect to receive a RCN within 20 business days after receiving a RAR.
Trustee	A person or body who administers a bankruptcy or personal insolvency agreement. They can be either the Official Trustee (AFSA) or a registered trustee. See registered trustee and Official Trustee in Bankruptcy.
WIP	Work in progress – the term that practitioners give to their chronological detailed bill of charges

Foreword

For the personal insolvency system to work effectively, trustee remuneration must be fair to all parties. Insolvency practitioners should, when funds are available, be appropriately rewarded for their highly skilled and, often, complex work. Creditors and debtors must not be overcharged and should feel confident that the returns they receive are optimised.

This is why AFSA, as a regulator, maintains a close interest in remuneration. It is an area that, if not appropriately supervised, has the potential to undermine confidence and trust in the system.

In recent years, evidence from complaints, review requests and AFSA's inspection and compliance programs suggests that the remuneration process does not always work effectively. Our 2016-17 survey of creditors found that, while creditors had a general confidence in the skill of practitioners, they wanted assistance in constraining what, in some matters, they thought were unreasonable charges – despite having the option of voting against remuneration proposals. We can see the same issue in play with the increasing numbers of registered trustees asking AFSA to approve their remuneration because creditors have refused to either approve remuneration or engage in the process of setting it.

To better understand why the market is not operating as effectively as expected, this report considers the process by which remuneration is set in the personal insolvency system and AFSA's approach to monitoring its efficacy. It summarises the key findings of AFSA's various monitoring mechanisms, describes some examples of poor practice and identifies best practice principles around remuneration by practitioners. Finally, it makes recommendations for both registered trustees, creditors and debtors to address the issues identified.

Although the report finds no evidence to suggest systemic issues, it is clear that some unacceptable remuneration practices need to be addressed to bring up overall standards in pockets of the insolvency profession. At the same time, creditors should play a more engaged role in the process. It is only when all stakeholders affected by insolvency, and the profession itself, play their part that the system works effectively.

We hope the data and analysis provided in this report will help all parties to understand their roles in setting appropriate remuneration that is fair to all.

**Hamish McCormick
AFSA Chief Executive and Inspector-General in Bankruptcy**

Executive Summary

As part of AFSA's Compliance Program, AFSA surveyed a number of creditors, debtors and bankrupts in 2016-17. A number of concerns were raised, particularly around registered trustee remuneration and creditor lack of engagement in the process of setting reasonable remuneration.

Registered trustees usually calculate their remuneration using hourly rates, based on time spent by them and their staff working on the administration. They also have the option of quoting a fixed amount or a legally set percentage of asset realisations. Hourly rates are charged when they cover staff costs and overheads. In these circumstances the registered trustee must keep time sheets noting the number of hours spent on the tasks performed.

AFSA proactively monitors the market, conducting both random and requested inspections of registered trustees and their systems and administrations, and attending creditor meetings.

AFSA also considers remuneration reactively when asked by the creditors or more commonly, bankrupts.

Since 2015, remuneration and costs have been the subject of only 10% of complaints about registered trustees and most of these complaints have been by bankrupts. However, AFSA's various monitoring mechanisms have recorded evidence to suggest that the level of dissatisfaction with registered trustee remuneration and costs is higher and the market is not always operating as effectively as expected.

Findings and Guidance

One issue identified is that the number of instances where registered trustees seek AFSA's approval of remuneration, has more than doubled since 2015. The number of creditors not voting is also increasing, along with creditors abstaining from voting or voting against the proposed remuneration.

Another issue is the rise in pockets of poor practice amongst registered trustees.

AFSA offers the following guidance around registered trustee remuneration:

- Remuneration should be proportional to the circumstances and complexity of the matter.
- Ensure creditors, bankrupts and debtors are treated fairly and in accordance with the law.
- If an estate has a surplus of assets over liabilities, while being careful to safeguard assets, make sure staff are informed to take a minimalist approach to give the debtor the opportunity to achieve an early annulment.
- Handle the assets with a view to achieving the maximum return from the assets to satisfy the claims of the creditors and to provide the best surplus possible for the bankrupt or debtor.
- 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.

- **Ensure that staff time billed in conducting an administration is charged at the appropriate rate for the level of staff who would be reasonably expected to undertake the task.**
- **Ensure that proper records are kept that adequately describe the nature of the work.**
- **If the registered trustee's remuneration is worked out wholly or partly on a time cost basis, provide evidence of the time spent on the work done in conducting an administration.**
- **Exercise judgement to save the estate unnecessary expenditure.**
- **Be especially careful incurring costs that must be paid from the estate – as careful as if they were incurring the expenses on their own behalf.**

Recommendations

Registered trustees

Ensure creditors are positioned to make informed decisions.

- **Keep working to put the right information in front of creditors including at the start of the administration, their right to seek a review of remuneration, expressed in simple terms.**
- **Ensure information provided to creditors is clear and expressed in simple terms.**
- **Make sure that information clearly sets out the costs and implications of the decision they make as creditors.**
- **Provide a cover page checklist of actions required to engage with the process of setting remuneration.**
- **Maintain close engagement with creditors and explain the rationale for doing different types of work.**
- **Engage with creditors early on to answer questions about remuneration and, if needed, negotiate a more acceptable remuneration proposal.**
- **Encourage counter-proposals and negotiation rather than fail to get remuneration approved.**
- **Keep creditors informed of progress and likely costs.**

Ensure debtors are sent remuneration notices (including the remuneration claim notice if they elect to receive one) and are informed in simple terms of their right to seek a review of remuneration.

- **Review internal WIPs before seeking approval of remuneration and constantly monitor staff to ensure charges are reasonable.**

Creditors

Actively engage in setting reasonable remuneration by:

- **Using your vote and supporting other creditors during insolvency meetings.**

- **Raise your concerns with the registered trustee if you think the remuneration being claimed is unreasonable.**
- **If needed, put forward another resolution for creditors to vote on.**

Be a watchdog for the regulator:

- **Review the correspondence and report any concerns to AFSA.**

Debtors

Fully cooperate with the registered trustee to minimise the time and costs the registered trustee needs to spend administering the estate.

Be informed of your rights as a debtor, to seek a review of the registered trustee remuneration, particularly if there is the possibility of a surplus from the estate being paid to you and if appropriate to do so, exercise that right.

Everything creditors and debtors report feeds into AFSA's ongoing risk scanning and decision making for our regulatory actions.

The Report

Background to the review

AFSA's review of registered trustee remuneration is consistent with our vision to deliver improved and equitable financial outcomes for consumers, business and the community. It is also consistent with our purpose to maintain confidence in Australia's personal insolvency system by delivering fair, efficient and effective trustee and registry services, and risk based regulation.

The aim of this review is to develop a better understanding of current remuneration practices, call out potential risks, and provide guidance and recommendations.

As part of AFSA's Compliance Program in 2016-17, we surveyed a number of creditors, debtors and bankrupts. A number of concerns were raised, including creditors' ability to constrain what they saw as unreasonable fees. Creditors said that while many registered trustees are good at their job and, for the most part, are highly professional, their fees are uniformly – and in some instances – unaccountably high, and, in some instances, they didn't feel confident to challenge the basis on which the registered trustee charged fees.

AFSA's role is to ensure public trust in the insolvency system. This includes creditors, debtors and bankrupts having trust in the remuneration process.

Registered trustee remuneration background

If a person goes bankrupt or enters into a personal insolvency agreement, an independent trustee is appointed to oversee the estate, including to sell assets to repay creditors.

Roles and responsibilities

AFSA, registered trustees, creditors and debtors all have a role to play in ensuring remuneration is fair to all parties.

- **AFSA regulates the personal insolvency system, publishes guidance for registered trustees, deals with complaints about remuneration and considers registered trustee requests to approve remuneration when creditors have not done so. AFSA also conducts reviews of remuneration in appropriate cases and periodically inspects the administrations of registered trustees including the trustee's remuneration.**
- **Registered Trustees (RT) are highly skilled practitioners who are entitled to be fairly paid for the work they perform in administering the estate and reimbursed for out-of-pocket costs. Generally, the only sources of funds for their remuneration are the funds from sale of assets or other property recovered by the registered trustee and from income contributions from the minority of bankrupts on relatively high incomes. Registered trustees necessarily have a priority over those funds for their remuneration before the funds are available for creditors.**

At the start of the administration, registered trustees prepare an Initial Remuneration Notice with an estimate of their remuneration, indicating the methods available to be remunerated, which one they are choosing and why. The report is sent to the creditors and the debtor.

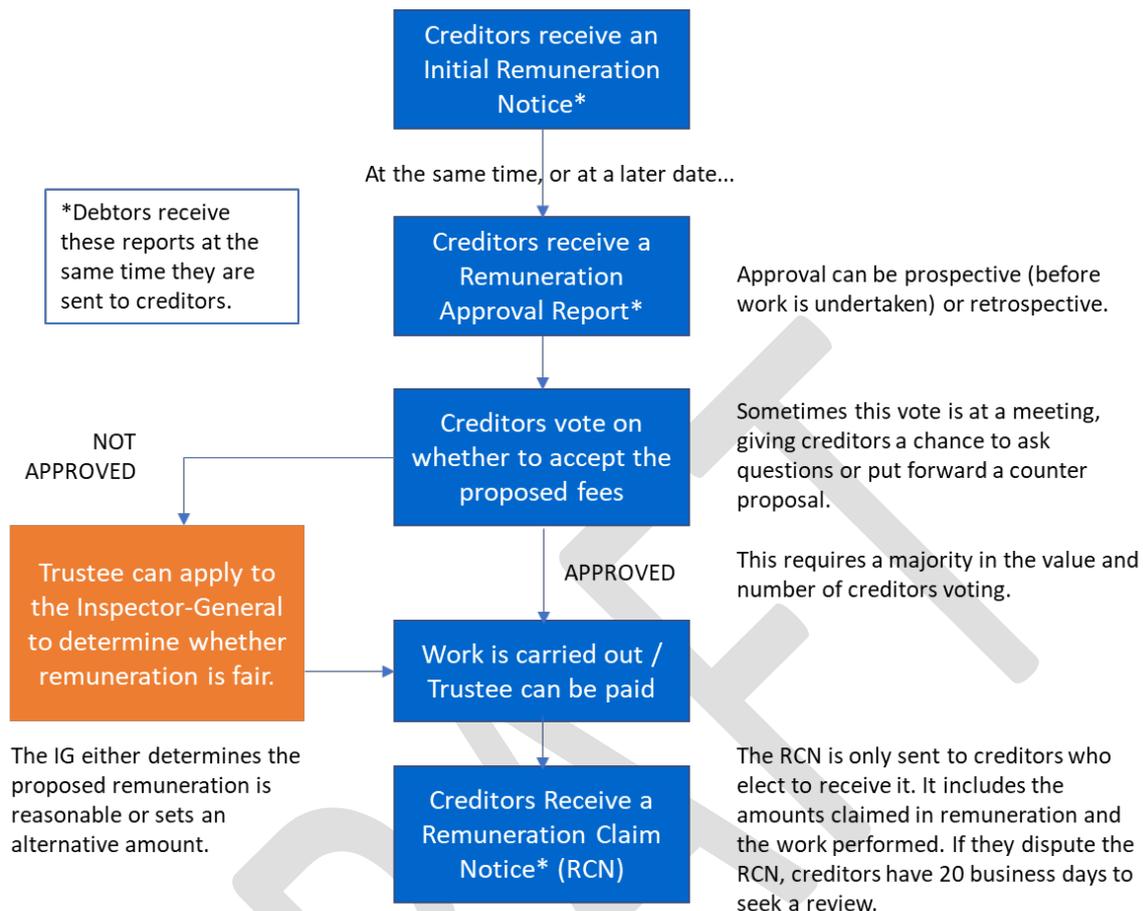
Either at the same time that the Initial Remuneration Notice is sent out, or at a later time, when the registered trustee seeks approval of their remuneration, a Remuneration Approval Report is sent to the creditors and the debtor. The approval by creditors of remuneration can be either prospective (before work is undertaken) or retrospective (after work is undertaken).

- **Creditors have a direct interest in the amount of a registered trustee's remuneration and costs, because these will generally be paid from the estate before any payments are made to creditors. They can question the registered trustee about how remuneration is calculated and the basis for the rate being charged. They have a right to approve, not approve or abstain from voting on the Remuneration Approval Report.**
- **Debtors may have a direct interest in the amount of the registered trustee's remuneration and costs. If there is sufficient property in the estate to pay out all debts, and the remuneration and costs of the registered trustee, then any surplus funds go back to the debtor.**

How remuneration is calculated and monitored

Registered trustees usually calculate their remuneration using hourly rates, based on time spent by them and their staff working on the administration. They also have the option of quoting a fixed amount or a legally set percentage of asset realisations. When hourly rates are charged, they cover staff costs and overheads and the registered trustee must keep time sheets noting the number of hours spent on the tasks performed.

The process for approving registered trustee remuneration



A basic principle of the personal insolvency regime is that creditors should have primary control over remuneration in the administration of a regulated debtor's estate. However, there are circumstances where:

- **It may not be practical or cost-effective for the registered trustee to seek creditors' approval of remuneration.¹**
- **The registered trustee and creditors disagree about the amount of remuneration sought.**
- **None of the creditors vote on a registered trustee proposal for remuneration.**

In all of these circumstances, rather than having an impasse delaying the administration, registered trustees can apply to AFSA to determine their remuneration.

AFSA's approach to monitoring remuneration

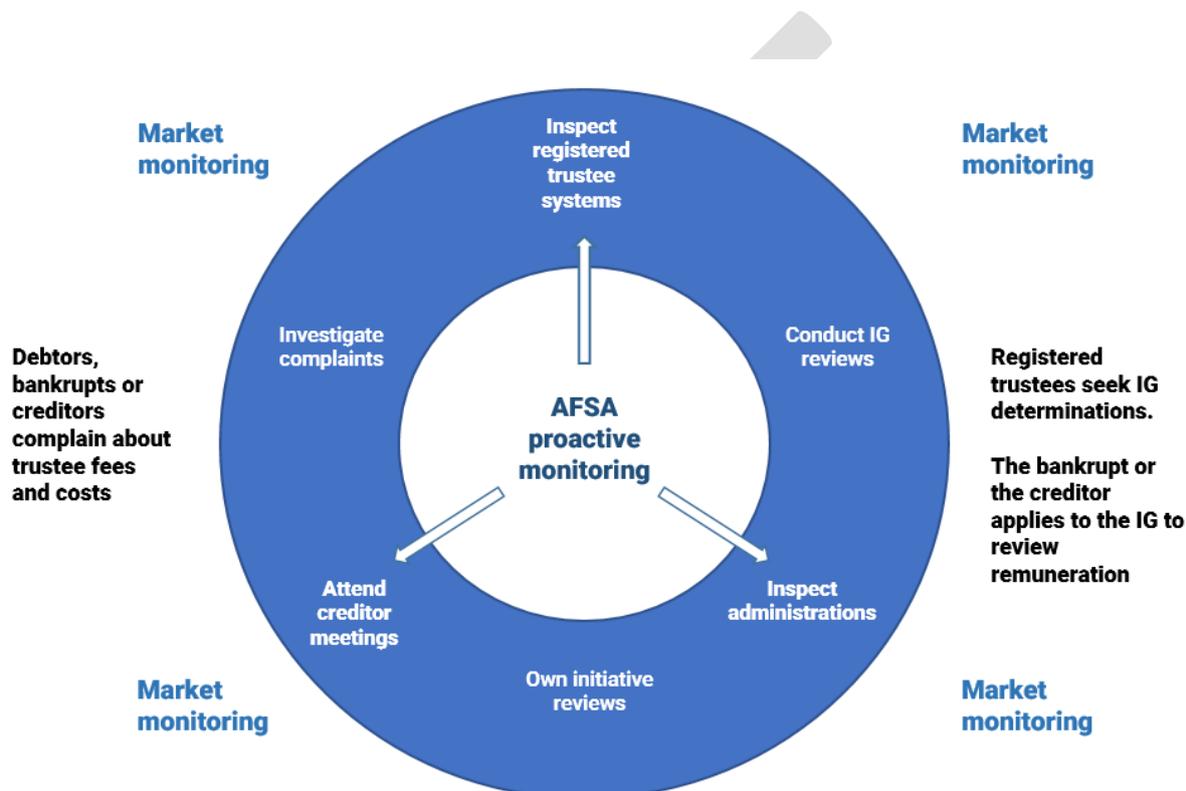
Under the Bankruptcy Act, AFSA is responsible for monitoring the standards of registered trustees. In regulating trustee services, AFSA relies on signals from the market as well as its own ongoing surveillance activities:

- **AFSA proactively monitors the market (registered trustees, debtors and creditors), conducting both random and programmed inspections of registered trustees and their**

¹ Rule 60-5 of the *Insolvency Practice Rules (Bankruptcy) 2016*

systems and administrations – and attending creditor meetings. Part of AFSA's focus in these inspections is to ensure reasonable remuneration is charged and estates are administered efficiently. If at any time, information comes to AFSA's attention, indicating over-charging the Inspector-General may exercise his power to conduct an own initiative review of remuneration.

- AFSA also considers remuneration reactively when asked to by the creditors, or more commonly, bankrupts. AFSA also considers remuneration when registered trustee themselves seek AFSA's approval of their remuneration, when creditors fail to approve the proposed remuneration.



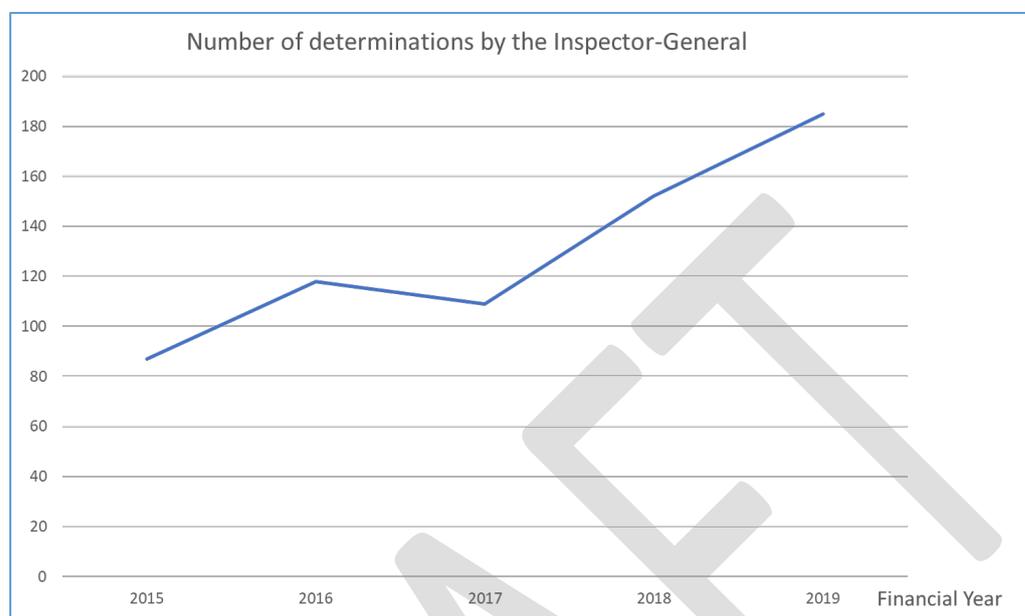
Findings

Since 2015, remuneration and costs have been the subject of only 10% of complaints against registered trustees and most of these complaints have been by bankrupts. However, AFSA's various monitoring mechanisms have recorded evidence to suggest that the level of dissatisfaction with registered trustee remuneration and costs is higher and the market is not always operating as effectively as expected. We have identified three issues:

- Increased applications to AFSA to approve remuneration
- Lack of creditor engagement
- Pockets of poor practice.

1. Increased applications to AFSA to approve remuneration

Since 2015, the number of instances of registered trustee seeking AFSA approval of remuneration has more than doubled, as creditors increasingly either do not vote, abstain from voting or vote against the proposed remuneration.



AFSA's 2016-17 survey of creditors found that while many registered trustees perform effectively, creditors consider registered trustee remuneration to be high. Some also said that estates and projects felt overly handled. They were suspicious about the way in which a large number of registered trustee staff appeared to 'touch' investigations.

These perceptions are indicative of the general sentiment held by creditors – that they want assistance in constraining what, in some matters, they believe are unreasonable charges.

In 2018-19, of the \$230.35 million distributed by registered trustees, 32.2 % was paid in dividends to creditors while 40 % was paid in practitioner remuneration. In the same year, in 63% of bankruptcies administered by registered trustees, no remuneration was recovered at all (in that particular year). The average remuneration drawn by registered trustees in each matter in 2018-19 was \$4804 (including matters in which no remuneration was drawn).

2. Lack of creditor engagement

Although an increasing number of creditors are failing to engage with the approval of remuneration, they are also not engaging in the process of setting reasonable remuneration. Our research found that, for smaller creditors (individuals and small businesses) this was because they didn't feel able or confident to challenge the basis on which registered trustees charged remuneration. Some didn't have a standard or benchmark by which to judge or argue whether registered trustee remuneration was reasonable. Others felt it wasn't 'in their commercial interest'. If they felt remuneration was too high, they just abstained from voting.

Creditors are not complaining about remuneration or seeking reviews. For example, all ten remuneration review applications in the 2018-19 financial year were by debtors. Similarly, all of the matters in which remuneration reviews have been carried out in the last three years have been at the request of the debtor or on the Inspector-General's own initiative.

An observation based on AFSA's engagement with creditors is that the low number of complaints received from creditors about remuneration is not an indication of satisfaction. Rather, the low numbers seem to be a product of creditors questioning the value of engaging with the process.

If creditors were more engaged in setting and negotiating levels of remuneration, this may result in increased returns to creditors and more dividends paid.

3. Pockets of poor practice

Since 2015, the issues that gave rise to reviews and led to reductions in remuneration have included:

- **Remuneration well in excess of the liabilities that caused the bankruptcy.**
- **Over-servicing despite guidance from the Inspector-General in IGP6 to take a minimalist approach in relation to insolvent estates.**
- **Unnecessary delays in annulling the estate, relying for example, on the bankrupt not having filed all of their tax returns as the basis to delay annulment.**
- **Excessive numbers of staff involved in the administration, adding layers of charges.**
- **Work carried out at too senior a level given the nature of the task.**
- **Unnecessary or excessive travel.**
- **Excessive time charged for preparing what should be standard correspondence.**
- **Time charged for work not carried out properly.**
- **Insufficient description of work performed.**
- **Lack of evidence of work performed – especially lengthy phone calls not supported by contemporaneous notes.**
- **Remuneration being drawn post-annulment.**

In cases where remuneration was reduced, many of the issues outline above were prevalent, to varying degrees, in the administration.

AFSA REVIEWS OF REMUNERATION – CASE STUDIES WHERE REMUNERATION WAS REDUCED

FY 2016-17: Remuneration reduced by \$24,000 (from approximately \$48,000 to \$24,000)

AFSA found that the registered trustee had:

- **Failed to give creditors an opportunity to approve the registered trustee's remuneration before applying to AFSA for approval.**
- **Made errors in calculating the amount required to annul the bankruptcy.**
- **Included unnecessary work, especially given the limited complexity of the estate.**

FY 2017-18: Remuneration reduced by \$20,000 (from approximately \$60,000 to \$40,000)

AFSA found:

- **The remuneration was nearly double the amount owed to the bankrupt's unsecured creditors.**
- **Inadequate file notes of numerous staff discussions and meetings.**
- **An inadequate description of the work performed.**
- **The affairs were very simple, requiring little investigation by the registered trustee**

FY 2018-19: Remuneration reduced by \$65,000 (from \$270,000 to \$205,000)

AFSA found:

- **Excessive charging by senior staff and the registered trustee in preparing, reviewing and editing creditor reports.**
- **Overcharging in post annulment costs, including adjudicating previously settled creditor claims, processing dividends, reporting to creditors and administration.**
- **Inefficiencies in dealing with multiple estate issues resulting in further overcharging.**

FY 2018-19: Remuneration reduced by \$28,000 (from approximately \$107,000 to \$79,000)

AFSA found:

- **Repeated and unnecessary charging for senior staff reviewing junior staff work; for example, proof reading emails that acknowledge receipt of correspondence.**
- **Lack of supporting records, particularly contemporaneous notes of meetings/conversations.**
- **A large number of professional and administrative staff involved in the administration resulting in inefficiencies, including the unnecessary duplication of discussions.**
- **The registered trustee incorrectly seeking lodgement of income tax returns and ATO clearance as a prerequisite to achieving an annulment.**
- **The registered trustee incorrectly charging for communicating with AFSA.**

In each of these case studies, apart from achieving the reduction in remuneration, AFSA is monitoring ongoing compliance by the relevant trustee and will take further action – including disciplinary action - as appropriate.

Guidance

Based on Australia’s legislative requirements and common law principles, and with reference to the Australian Restructuring & Insolvency Turnaround Association (ARITA) Code of Professional Practice, AFSA offers the following guidance around registered trustee remuneration.

Founding principles of registered trustee remuneration

Registered trustees are entitled to be paid remuneration that is reasonable for necessary work, properly performed in administering a regulated debtor’s estate. A registered trustee is not entitled to be remunerated for work other than in their capacity as the registered trustee of a regulated debtor’s estate.

Registered trustee responsibilities with regard to remuneration and performance

AFSA expects registered trustees will:

- **Proportion remuneration relative on the circumstances and complexity of the matter.**
- **Ensure creditors, bankrupts and debtors are treated fairly and in accordance with the law. If an estate has a surplus of assets over liabilities, while being careful to safeguard assets, make sure staff are informed to take a minimalist approach to give the debtor the opportunity to achieve an early annulment.**
- **Handle the assets with a view to achieving the maximum return from the assets to satisfy the claims of the creditors and to provide the best surplus possible for the bankrupt or debtor.**
- **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.**

- Ensure that staff time billed in conducting an administration is charged at the appropriate rate for the level of staff who would be reasonably expected to undertake the task.
- Ensure that proper records are kept that adequately describe the nature of the work.
- If the registered trustee's remuneration is worked out wholly or partly on a time cost basis, provide evidence of the time spent on the work done in conducting an administration.
- Exercise judgement to save the estate unnecessary expenditure.
- Be especially careful incurring costs that must be paid from the estate – as careful as if they were incurring the expenses on their own behalf

AFSA accepts that registered trustee remuneration needs to do more than cover costs. However, AFSA's focus is on ensuring profit is not the dominant driver. The system needs to serve the public good if it is to remain relevant and enjoy the support of the general public.

Creditor responsibilities with regard to setting remuneration

As a possible beneficiary in a personal insolvency administration, creditors are encouraged to play a significant role in ensuring an efficient and effective insolvency system.

AFSA encourages creditors to:

- **Decide if the amount of remuneration is reasonable, given the work carried out in the administration and the results of that work.**
- **Raise any concerns with the registered trustee if the remuneration for which approval is being sought, appears to be unreasonable.**
- **If appropriate, put a counter proposal for remuneration to the meeting.**
- **Vote in favour of, or against, a resolution to approve remuneration. While creditors can abstain, this is not a constructive use of their vote.**
- **If approved remuneration appears to be unreasonable, raise your concerns with the registered trustee and if you remain dissatisfied, apply to AFSA for a review.**
- **Elect to receive a Remuneration Claim Notice (RCN), enabling final remuneration to be checked.**
- **Review the RCN and, if concerned, apply to AFSA for remuneration to be reviewed.**
- **In the case of ongoing concerns about the professional conduct of a registered trustee, lodge a complaint with AFSA at www.afsa.gov.au or alternatively, if the registered trustee is a member of ARITA, at www.arita.com.au.**

Note: These principles are guidelines – not a strict rule-based approach. They are designed to provide a level of flexibility to accommodate different situations.

What is reasonable remuneration?

Remuneration, costs and expenses are considered reasonable if:

1. It was necessary and reasonable for the work claimed to be done².
2. The work was done and charged at an appropriate level of seniority.³
3. The work done took a reasonable amount time, considering its nature, importance and complexity. For example, the time spent by an appropriately qualified and experienced practitioner in drafting a statement of claim should be proportionate to the amount in issue.⁴

Recommendations

The insolvency system only works well if everyone engages in its fair and efficient operation.

To support the best practice principles in a practical way, AFSA recommends that:

Registered trustees

Ensure creditors are positioned to make informed decisions.

- Keep working to put the right information in front of creditors including at the start of the administration, their right to seek a review of remuneration, expressed in simple terms.
- Make sure that information clearly sets out the costs and implications of the decision they make as creditors.
- Provide a cover page checklist of actions required to engage with the process of setting remuneration.
- Maintain close engagement with creditors and explain the rationale for doing different types of work.
- Engage with creditors early on to answer questions about remuneration and, if needed, negotiate a more acceptable remuneration proposal.
- Encourage counter-proposals and negotiation rather than fail to get remuneration approved.
- Keep creditors informed of progress and likely costs.

Ensure debtors are sent remuneration notices (including the remuneration claim notice if they elect to receive one) and are informed in simple terms of their right to seek a review of remuneration.

² Rule 42-60 of the *Insolvency Practice Rules (Bankruptcy) 2016*

³ Rule 42-65 of the *Insolvency Practice Rules (Bankruptcy) 2016*

⁴ McLure JA in *Conlan as liquidator of Rowena Nominees Pty Ltd (in liquidation) v Adams* [2008] WASCA 61; (2008) 65 ACSR 521 at [47]

- **Review internal WIPs before seeking approval of remuneration and constantly monitor staff to ensure charges are reasonable.**

Creditors

Actively engage in setting reasonable remuneration

- **Use your vote and support other creditors during insolvency meetings.**
- **If you think the remuneration being claimed is unreasonable, raise your concerns with the registered trustee.**
- **If needed, put forward another resolution for creditors to vote on.**

Be a watchdog for the regulator:

- **Review the correspondence and report any concerns to AFSA.**

Debtors

Cooperate fully with the registered trustee to minimise the time and costs the registered trustee needs to spend administering the estate. Become informed of your right to seek a review of the registered trustee remuneration particularly, if there is the possibility of a surplus from the estate being paid to you and if appropriate to do so, exercise that right.

Everything creditors and debtors report, feeds into AFSA's ongoing risk scanning. If we see the same issue raised frequently, we will investigate the party in question.

Conclusion

Although our findings do not suggest any systemic issues in the personal insolvency system, they do highlight some unacceptable practices that needs to be addressed to bring up the overall standard in pockets of the registered trustee profession. The profession has a role to play in working with creditors – including, in some cases, educating or negotiating with them – to determine remuneration that all parties consider to be reasonable.

We note that, when returns are low and registered trustee remuneration is high, some creditors and debtors feel understandable angst – even when the complexity of the estate necessitates considerable work. However, we are more concerned about creditor apathy. The mechanism for setting remuneration gives creditors the power to address any concerns about remuneration levels. If creditors actively engage in the process, we believe their perception of registered trustee remuneration may change.

Next steps for AFSA

AFSA will:

1. **Monitor take-up of our recommendations and assess whether a further response is needed by AFSA.**

2. **Continue to identify and investigate potential cases of registered trustee over-charging or over-servicing administrations and subsequently taking appropriate regulatory/disciplinary action.**
3. **AFSA will also continue to engage creditors in determining and reviewing registered trustee remuneration, including meeting with key creditor groups to promote our expectations of the role they should perform within the system.**

Feedback

For enquiries about this report or to provide feedback, please email regulation@afsa.gov.au or phone 1300 364 785.

DRAFT