

Chapter 12: Personal Insolvency Agreements

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Summary

This Chapter does not cover the advantages and disadvantages of a Personal Insolvency Agreement (PIA). For information about what a PIA is, the implications of a PIA and who may be suitable for a PIA see **Chapter 5 Part 3**.

This section covers:

- The process of entering a PIA
- Varying a PIA, terminating a PIA
- Making a complaint about a Controlling Trustee or a trustee administering a PIA

This section is very brief because financial counselling clients are rarely suitable for a PIA.

[Contact AFSA for more information or an appropriate referral.](#)

Part 1: What is the process for entering into a PIA?

Step 1 – Appointing a Controlling Trustee

After getting advice, the debtor appoints a Controlling Trustee by signing a Section 188 Authority. The Authority becomes effective when the proposed Controlling Trustee consents to the appointment and signs it. Only a registered trustee, a suitably qualified solicitor or the Official Trustee (AFSA) can be appointed as a Controlling Trustee.

The debtor must be given a copy of the prescribed information and provide a signed acknowledgement that they have received and read that information before a Controlling Trustee can consent to accept the appointment.

Note: Unlike the prescribed information in a Debtor's petition, the prescribed

information that the Controlling Trustee is obliged to give the debtor is set out in section 29 of the *Bankruptcy Regulations*.

The debtor must lodge with the proposed Controlling Trustee, a statement of affairs and a draft PIA proposal.

The Controlling Trustee must give the Official Receiver (AFSA) a copy of the Section 188 Authority and statement of affairs within 2 business days of consenting to the Authority. Normally, the Official Receiver is also given a copy of the draft PIA.

Once appointed, the proposed Controlling Trustee will consult with the debtor in the first instance and assist in the formulation of the terms of the proposal to be made to creditors. The debtor and/or the proposed Controlling Trustee may also 'sound out' the major creditors to ascertain whether they will give the proposal favourable consideration. If the major creditors indicate that they will not accept the proposal there is little utility in proceeding with the proposal.

Step 2 – Preparing the Proposal and Report to Creditors

Once appointed, the Controlling Trustee takes control of the debtor's property, looks into the debtor's affairs and examines the debtors' proposed PIA. The Controlling Trustee will also call a meeting of the debtor's creditors to consider the debtor's affairs and proposed PIA. The meeting must be held not more than 30 business days from the Controlling Trustee's appointment and notice must be given not less than 10 business days before the day of the meeting. The notice of the meeting is to be given to the Inspector-General (AFSA) in accordance with the approved form and will be [published on the AFSA website](#).

When giving notice of the meeting, the Controlling Trustee must give the Official Receiver, the debtor and all creditors copies of the debtor's statement of affairs, the Controlling Trustee's report and the Controlling Trustee's statement in relation to the special resolution expected to be passed at the meeting. The Controlling Trustee's report must summarise and comment on the debtor's affairs, state whether the Controlling Trustee believes that the creditor's interests would be better served by accepting the PIA proposal or the debtor's bankruptcy, and name each creditor identified as a related entity of the debtor.

The main purpose of the report is to inform creditors of the amount of any dividend (that is, how many cents in the dollar) they can expect if they accept the proposal compared with the amount of dividend they would receive if the debtor went bankrupt instead. The Controlling Trustee makes a recommendation as to whether he or she is of the view that it is in the interests of the creditors to accept the proposal. Since creditors must receive notice of the meeting and the report not less than 10 business days before the meeting, the Controlling Trustee has a very limited time span in which to undertake the investigations and compile a comprehensive report to creditors. Most of the investigating time is spent on determining what could be expected from the debtor's bankruptcy, which would involve possible voidable antecedent transactions and income contributions.

Due to the limited time available to conduct the investigations and compile the report, the Controlling Trustee will often employ several staff to spend considerable time completing the exercise. Consequently, the Controlling Trustee's remuneration and expenses can be substantial if the debtor's affairs are complex. Generally, in Sydney an upfront payment of not less than \$15,000 is often required. The Official Trustee (AFSA) would charge \$62.50 per 15 minutes or part thereof (as at 15 April 2025, [check the AFSA website for up-to-date fees](#)).

Step 3 – The creditors' meeting

The meeting of creditors is held to consider the debtor's proposal. Creditors can attend in person, by proxy or attorney or by telephone if they cannot attend in person. The debtor must also attend the meeting unless excused by the Controlling Trustee.

Creditors may ask questions of the Controlling Trustee and pass on information about the debtor's affairs (such as information the creditor thinks is relevant and may not have been disclosed by the debtor). Likewise, the creditors can question the debtor and discuss the proposal before voting.

For the PIA to be accepted, a 'special resolution' must be passed, which comprises at least the majority of unsecured creditors (by number) who represent at least 75% of the dollar value of the total debts of the creditors who attend the meeting and vote on the resolution.

Accordingly, the debts of those unsecured creditors who either do not attend the meeting or who attend the meeting but abstain from voting are not taken into consideration for resolution purposes.

The debtor can be given the opportunity at the meeting to increase his or her offer. If all the known creditors are represented at the meeting (usually unlikely), the creditors can vote on the increased offer. However, in the absence of all creditors, the meeting can be adjourned to enable all the creditors to be informed of the increased offer and given an invitation to attend the adjourned meeting to vote on the increased offer.

Step 4 – Voting

Creditors may vote, by special resolution, to:

1. resolve the debtor's property no longer by subject to the Controlling Trustee's control;
or
2. require the debtor to execute a PIA; or
3. require the debtor to present a Debtor's Petition within 7 days.

Acceptance of the PIA

If a special resolution is passed at the meeting to accept the PIA proposal, creditors then vote on the appointment of a trustee to administer the PIA. The trustee of the PIA must have lodged a written consent to act as trustee of the PIA with the Controlling Trustee prior to meeting to vote on the proposed PIA. Commonly, the Controlling Trustee will also be appointed as trustee to administer the PIA. The trustee can be either the Official Trustee or a registered trustee – it cannot be a solicitor unless they are also a registered trustee.

The trustee of the PIA and the debtor (and any other person who is a party to the PIA such as the provider of the funds to be offered to creditors) must execute the PIA (in the form of a deed) within 21 days of the resolution being passed. Once the PIA is executed, all creditors are bound by the terms of the Personal Insolvency Agreement. The controlling trusteeship is also terminated upon execution and the Controlling Trustee must notify the Official Receiver and each creditor that a PIA has been executed.

The rights of secured creditors to repossess and/or sell their security are not affected.

Rejection of the PIA or failure to pass any resolution

If the creditors do not pass a special resolution to accept the PIA, they may instead vote to end the controlling trusteeship or require the debtor to present a Debtor's Petition within 7 days. As noted in **Chapter 5**, even if the controlling trusteeship ends, the debtor has still committed an act of bankruptcy which can support a Creditor's Petition that will be difficult for the debtor to oppose.

If the creditors fail to pass any special resolution, the Controlling Trusteeship comes to an end after 4 months and the debtor regains control of his or her property. Alternatively, the Inspector-General, a creditor, or the Controlling Trustee may make an application to the Court under s 221 for a sequestration order.

Where the proposal has been rejected or lapses, the debtor can only appoint another Controlling Trustee after six months have passed or with the leave of the court (to do so within a shorter period).

Step 5 – Administration of the PIA

How a PIA agreement is administered will depend on its terms. Generally speaking, the tasks of the trustee of a PIA will be similar to that of a trustee in bankruptcy and may include selling assets, gathering payments/property from the debtor or third parties, recovering funds/property from void antecedent transactions (where the PIA provides that the antecedent transaction provisions of the Act apply), determining the creditors' claims and paying a dividend to unsecured creditors. The trustee will also be required to issue a certificate, on the debtor's request, if it is satisfied that all obligations under the PIA have been discharged.

The trustee's remuneration for the administration of the PIA is usually approved at the meeting of creditors and is usually capped at a maximum amount. If additional and unexpected work is required, the trustee seeks approval from the creditors for the additional remuneration.

If creditors do not approve the remuneration in either of the above instances, the trustee can have the Inspector-General decide the amount of the remuneration.

When the trustee's remuneration reaches either the amount approved by creditors or decided by the Inspector General, the trustee is required to notify creditors by way of a Remuneration Claim Notice, which also informs creditors and the debtor that they can apply to the Inspector-General for a review of the trustee's remuneration within 20 business days after receiving the notice. There is also a government levy, called a realisations charge, ([currently 7% as at May 2024](#)) payable on any funds realised by the trustee. The interest earned on the funds held in the bank account for the PIA is payable to the government.

Part 2: Variation of a PIA

The Act provides that creditors can approve a variation of a PIA by way of special resolution and with the debtor's written consent.

In practice, the debtor usually puts forward a proposal to the trustee to vary the terms of the PIA that is then presented by the trustee. The trustee must then give a notice to all creditors (who would be entitled to receive notice of a creditors' meeting) including:

- a statement of the reasons for the variation and the likely impact it will have on creditors;
- specification of a date (at least 14 days after the notice is given) from which the proposed variation will take effect; and

- state that any creditor may, by written notice to the trustee at least 2 days before the specified date, object to the variation taking effect without there being a meeting of creditors.

If the terms of the variation are reasonable, creditors generally raise no objection. The variations usually relate to a reduction of the amount of periodic payment with a corresponding increase in the number of payments in which case, the total amount paid remains the same. In some instances, a lump sum might be offered instead of the remaining periodic payments.

If an objection is raised, then a creditors' meeting will need to be called to vote on the proposal (or the variation may not be pursued).

Part 3: Termination of a PIA

A PIA can be terminated in a number of ways:

- the occurrence of an event stipulated in the PIA such as the unemployment or death of the debtor
- following the default of a term of the PIA, the trustee can propose the termination of the PIA by giving notice to creditors which, among other things, specifies a date (at least 14 days after the notice is given) for which it is proposed that the termination will take effect. The termination will take effect from that date unless, at least 2 days before the specified date, a creditor objects in writing that the termination should take effect without a meeting of creditors
- the passing of a resolution by creditors that the PIA be terminated at a meeting called for that purpose. Creditors can only do so on the basis that the debtor is in default, if property of the debtor is covered by a restraining order or forfeiture order, or a pecuniary penalty order made against the debtor is in force
- by an order of the court on the application of the debtor or their executor/executrix, the trustee or a creditor (or creditors).

Part 4: Complaints

Complaints about Controlling Trustees and administering trustees in relation to PIAs are handled by AFSA Regulation. [Information about lodging complaints is contained in Inspector-General Practice Statement No 10, Process for handling complaints against practitioners and debtors.](#)

Enquiries and [complaints can be made to AFSA's Enforcement and Practitioner Surveillance division](#) by telephone (on [1300 364 785](#)), post, e-mail or through an online form.