



# Meeting of Creditors Guidance

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*Disclosure: This is **guidance only** and is intended to provide a list of general considerations for a trustee when holding a meeting of creditors. It is not an exhaustive list. These are not designed to replace checklists, but rather, enhance existing checklists for trustees.*

## Introduction

Trustees call meetings of creditors for various reasons, the most common being to:

- Consider an offer of composition or scheme of arrangement in full settlement of debts
- Consider a personal insolvency agreement
- Inform creditors about the conduct of the administration, or
- Change trustees.

**Note:** In this document:

- “Act” – Bankruptcy Act 1966
- “Schedule 2” – Schedule 2 of the Bankruptcy Act 1966
- “Rules” – Insolvency Practice Rules (Bankruptcy) 2016
- “Inspector-General” – Inspector-General in Bankruptcy

## Further guidance:

- [Form 38 – Notice of Meeting of Creditors](#)
- [Form – Statement of Claim](#)
- [Form 36 – Appointment of Proxy](#)
- [About Meeting of Creditors](#)
- [Fee for Publishing Creditors Meeting](#)
- [Inspector-General Practice Statement 11: Monitoring and inspection of bankruptcy trustees and debt agreement administrators](#)
- [Inspector-General Practice Direction 21: Lodging notice of s73 or Part X meeting with the IG for publication](#)
- [Meeting of Creditors: Casting Vote Flowchart](#)

## When can a meeting of creditors be convened?

*When is a trustee compelled to convene a meeting of creditors in response to a request?*

	Commentary
By the trustee	A trustee may convene a meeting of creditors <b>at any time</b> <a href="#">[s75-10 of Sch 2]</a>
By creditors	Trustee must convene a meeting if: <ul style="list-style-type: none"> <li>• A committee of inspection directs the trustee</li> <li>• Creditors directs the trustee, either               <ul style="list-style-type: none"> <li>○ By resolution, or</li> <li>○ At least 25% in value of creditors directs the trustee in writing, or</li> <li>○ Less than 25% in value of creditors directs the trustee in writing, and security for the cost of holding the meeting is given to the trustee before the meeting is convened</li> </ul> </li> </ul> <p>“Value of creditors” is worked out by reference to the value of known creditors’ claims at the time the direction is given <a href="#">[s75-15(4) of Sch 2]</a></p> <p>If a trustee is compelled to convene a meeting, they do not have to comply if it is not <b>reasonable</b>. Consider whether the request would be reasonable under <a href="#">r75-250 IPR</a>.</p>
By Inspector-General	Trustee must convene a meeting if required by the Inspector-General <a href="#">[s75-20 of Sch 2]</a>

## Holding a meeting of creditors

*This list is **not** an exhaustive list. These are not designed to replace checklists, but rather, enhance existing checklists for trustees*

*Where a trustee appoints a person to represent them at a meeting of creditors under section 75-25 of the Sch 2, replace references to the trustee for the trustee’s representative*

	Commentary
<b>Before the meeting of creditors</b>	
Determining time and place of the meeting	Trustee must convene at a time most convenient to a majority of persons Meetings can take place across separate venues, so long as technology is available for attendees to participate <a href="#">[r75-30 IPR]</a>
Notifying creditors of the meeting	At least 10 business days’ notice to creditors before the day of the meeting <a href="#">[r75-20 IPR]</a> If this is the first meeting of creditors convened under section 73 or Part X, the trustee must lodge a <a href="#">notice of meeting of creditors</a> . Details of upcoming meetings of creditors will be published on the <a href="#">AFSA website</a> .

	<b>Commentary</b>
	<p>For more information on advertising meetings of creditors on AFSA website, see <a href="#">Inspector-General Practice Direction 21</a>.</p> <p>Send notice to all known creditors, including:</p> <ul style="list-style-type: none"> <li>• <a href="#">Appointment of proxy form</a></li> <li>• Statement that if a creditor wishes to be represented by an attorney, power of attorney must be produced at or before the meeting</li> <li>• Statement as to the amount which the creditor claims that the regulated debtor is indebted to the creditor</li> <li>• If the creditor has been assigned a debt, the value of consideration the creditor gave for the assignment of the debt</li> <li>• Whether the creditor is a related entity of the regulated debtor</li> <li>• If first creditors meeting – brief particulars of how the debt arose, if there is a security</li> <li>• Details of electronic facilities to be made available</li> </ul> <p><a href="#">[r75-10, 75-25(1), 75-35, 75-80 IPR]</a></p>
<b>At the meeting of creditors</b>	
Complete attendee register	<p>Prior to the opening of the meeting, all attendees are to sign an attendance register</p> <p>The Inspector-General may attend, and subject to any provision of the Act is entitled to participate in, any meeting of creditors held <a href="#">[s75-30 of Sch 2]</a></p>
Opening of meeting <a href="#">[r75-55(1)(a) IPR]</a>	<p>Trustee must preside over the meeting, unless a representative has been appointed <a href="#">[r75-50 IPR, s75-25(1) of Sch 2]</a></p> <p>Person presiding must consider duties of the trustee when presiding a meeting <a href="#">[r75-260 IPR]</a></p> <p>Trustee introduces themselves <a href="#">[r75-65(1) IPR]</a></p>
Debtor's Attendance <a href="#">[r75-55(1)(a) IPR]</a>	<p>If the regulated debtor is present, introduce the regulated debtor – see rule 75-65(1) of the Rules</p> <p>Where the regulated debtor is not in attendance, the trustee must announce this and state the reason (if they are aware of one) – see rule 75-65(2) of the Rules</p>
Appointment of minutes secretary	Trustee to appoint a person as minutes secretary
Announce proxies and attorneys <a href="#">[r75-55(1)(b) IPR]</a>	<p>Trustee to review attendance register</p> <p>For voting purposes, trustee to examine statement of claims of creditors who were represented at the meeting. Trustee then announces the amounts represented creditors are admitted for voting purposes</p> <ul style="list-style-type: none"> <li>• A person who isn't a creditor (or proxy or attorney) is not entitled to vote at a meeting – <a href="#">[r75-85(1) IPR]</a></li> </ul>

	Commentary
	<ul style="list-style-type: none"> <li>• Each creditor is entitled to vote and has one vote – <a href="#">[r75-85(2) IPR]</a></li> <li>• Secured creditors are not entitled to vote unless the debt exceeds the amount estimated by the creditor to be the value of the security <a href="#">[r75-85(3) IPR]</a></li> <li>• A creditor who fails to give a trustee a statement of claim is not entitled to vote <a href="#">[r75-85(4) IPR]</a></li> <li>• The value of a creditor who has been assigned a debt, is to be worked out by the value of the consideration given for the assignment of debt <a href="#">[r75-100(4) IPR]</a></li> </ul> <p>A trustee must ask a creditor for evidence in relation to a debt to establish that it is a regulated debtor's debt, or to identify the estate the debt should be admitted to <a href="#">[r75-95(1) IPR]</a>. The trustee can consider materiality and dividend rate before deciding whether to ask for more evidence <a href="#">[r75-95(2) IPR]</a></p> <p>A trustee should act impartially, independently and have regard to the merits of a creditor's claims <a href="#">[r75-110(2) IPR]</a></p> <p>A trustee should consider whether to adjourn the meeting to determine a creditor's entitlement to vote. If so, the adjournment cannot be later than 10 business days after the original meeting <a href="#">[r75-100 IPR]</a></p>
<p>Determine if there is a quorum <a href="#">[r75-55(1)(c) IPR]</a></p>	<p>Trustee to announce if a quorum is present. A quorum consists:</p> <ul style="list-style-type: none"> <li>• The trustee, and</li> <li>• Where number of persons entitled to vote exceeds 2 – at least 2 of those are present in person or proxy or attorney, or</li> <li>• Where number of persons entitled to vote [see <a href="#">r75-85 IPR</a> for who is entitled to vote] does not exceed 2 – that person or persons present in person or by proxy or attorney</li> </ul> <p>A meeting is sufficiently constituted if the trustee is present but only one person entitled to vote is present, but that person is entitled to vote represents a number of persons sufficient to constitute a quorum. <a href="#">[r75-105(1), 75-105(2) IPR]</a></p> <p>If a quorum is <b>not</b> present within 30 minutes of the meeting:</p> <ul style="list-style-type: none"> <li>• A quorum is not present</li> <li>• The meeting is not sufficiently constituted</li> <li>• The meeting will be adjourned, either: <ul style="list-style-type: none"> <li>○ To the same day, time and place in the next week, or</li> <li>○ Another time and place appointed by the trustee - not being less than 5 or more than 15 business days after the day on which the meeting is adjourned</li> </ul> </li> </ul> <p>If the meeting is adjourned because a quorum wasn't present, the notice must be given by the end of the next business day. <a href="#">[r75-105(3), 75-105(4) IPR]</a></p> <p>If at the adjourned meeting:</p> <ul style="list-style-type: none"> <li>• A quorum is not present again,</li> </ul>

	Commentary
	<ul style="list-style-type: none"> <li>The meeting is not otherwise sufficiently constituted</li> </ul> <p>The adjourned meeting lapses. The trustee cannot adjourn the meeting again.</p> <p><a href="#">[r75-105(6) IPR]</a></p>
Tabling of Documents	<p>Trustee to table necessary documents, for example:</p> <ul style="list-style-type: none"> <li>Debtor's statement of affairs – must be tabled where the meeting is the first meeting of creditors <a href="#">[r75-55(1)(d) IPR]</a> Where the SOA indicates information is not available to the public, this must not be tabled at the meeting</li> <li>Reports to creditors</li> <li>Proxies received</li> <li>Statements of Claims and Proof of Debts received</li> </ul>
Statements and questions <a href="#">[r75-55(1)(e) IPR]</a>	<p>Trustee may want to summarise the issues of the matter, issues in the reports to creditors</p> <p>Trustee must ask if creditors have questions or statements for the trustee or the regulated debtor</p> <p><a href="#">[r75-65(5) IPR]</a></p>
Adjournments	<p>A trustee may need to adjourn a meeting of creditors, for instance:</p> <ul style="list-style-type: none"> <li>Quorum does not exist – see more about adjournments under heading “<i>Determine if there is a quorum</i>” <a href="#">[r75-105 IPR]</a></li> <li>More time is required to adjudicate on a statement of claim for voting purposes</li> <li>New information is brought to light at the meeting, that requires further investigation</li> </ul> <p>A meeting can be adjourned by:</p> <ul style="list-style-type: none"> <li>Resolution</li> <li>The trustee</li> </ul> <p><a href="#">[r75-140(1) IPR]</a></p> <p>It cannot be adjourned to a day more than 15 business days after the original meeting of creditors <a href="#">[r75-140(2) IPR]</a></p> <p>A notice of the adjournment must be sent immediately <a href="#">[r75-140(4) IPR]</a></p> <p>If the adjourned meeting is adjourned to a day more than 6 business days after the passing of the resolution, the notice should be sent to creditors at least 5 business days before the day it is adjourned to <a href="#">[r75-140(5) IPR]</a></p>
Special Resolutions	<p>If applicable, a trustee will call for a vote on special resolutions. For example, acceptance of s73 composition proposal or personal insolvency agreement.</p> <p>A special resolution is passed at a meeting of creditors of a regulated debtor if:</p>

	Commentary
	<ul style="list-style-type: none"> <li>• A majority of the creditors voting at the meeting vote in favour of the resolution, and</li> <li>• At least 75% in value of the creditors voting at the meeting vote in favour of the resolution, and</li> <li>• Where a resolution relates to <a href="#">paragraph 109(1)(j) of the Act</a>, the notice convening the meeting at which the resolution was passed contained a copy of the proposed resolution.</li> </ul> <p>A trustee will declare whether the special resolution is passed or not.</p> <p><a href="#">[r75-132 IPR]</a></p>
Resolutions	<p>If applicable, a trustee will call for a vote on resolutions. For example, trustee remuneration.</p> <p>A resolution is passed at a meeting of creditors of a regulated debtor if:</p> <ul style="list-style-type: none"> <li>• A majority of creditors voting (in person, proxy or attorney), vote in favour of the resolution</li> <li>• A majority in value of the creditors voting (in person, proxy or attorney), vote in favour of the resolution</li> </ul> <p><a href="#">[r75-115 of IPR]</a></p> <p>A resolution put to vote at a meeting will be decided either:</p> <ul style="list-style-type: none"> <li>• By poll, if requested by the trustee or creditor</li> <li>• Otherwise, on the voices</li> </ul> <p><a href="#">[r75-110(1) IPR]</a></p> <p>If a poll is not requested, A trustee will declare whether, on the voices, the resolution is:</p> <ul style="list-style-type: none"> <li>• Passed</li> <li>• Passed unanimously</li> <li>• Passed by a particular majority</li> <li>• Lost</li> </ul> <p><a href="#">[r75-110(2) IPRs]</a></p> <p>If a poll is requested, the poll will be taken immediately</p> <p><a href="#">[r75-110(3) IPR]</a></p>
Casting Votes	<p>If no result is reached from a vote on a resolution (i.e. a majority in both number and value is not reached), the trustee may consider exercising a casting vote. The trustee could either:</p> <ul style="list-style-type: none"> <li>• Vote in favour of the resolution. The trustee will then declare the resolution has passed.</li> <li>• Vote against the resolution. The trustee will then declare the resolution has not passed</li> <li>• Not exercise a casting vote. The trustee will then declare the resolution is not passed</li> </ul> <p><a href="#">[r75-115(3) IPR]</a></p>

	Commentary
	<p>The trustee must provide reasons for exercising, or not exercising, a casting vote <a href="#">[r75-115(6) IPR]</a></p> <p>However:</p> <ul style="list-style-type: none"> <li>• If the resolution relates to the removal of the current trustee, the trustee can <b>only</b> exercise a casting vote in favour of the resolution <a href="#">[r75-115(115) IPR]</a>. The Inspector-General expects trustees to provide a reason to be included in the minutes of meeting.</li> <li>• If the resolution relates to the trustee's remuneration, the trustee cannot exercise a casting vote <a href="#">[r75-115(4) IPR]</a></li> </ul> <p>Also see <a href="#">Meeting of Creditors: Casting Vote Flowchart</a></p>
<p>Other business <a href="#">[r75-55(1)(j) IPR]</a></p>	<p>The trustee is to Invite creditors and representatives to raise any other business before the meeting is closed <a href="#">[r75-55 IPR]</a></p>
<p>Close meeting <a href="#">[r75-55(1)(l) IPR]</a></p>	<p>Trustee to close meeting</p>
<p>Minutes of meeting are prepared</p>	<p>Trustee is to sign the minutes of the meeting within 10 business days after the end of the meeting <a href="#">[r75-145(1) IPR]</a></p> <p>Minutes must be made available for inspection by regulated debtor or creditors <a href="#">[r75-145(4) IPR]</a></p>

## Additional considerations for meetings about a composition or arrangement

These are in **addition** to the “Holding a meeting of creditors” list

Commentary	
<b>Before the meeting of creditors</b>	
<p><b>Is the trustee obliged to convene a meeting to consider the composition proposal?</b></p>	<p>Trustee should consider whether they are obliged to call the meeting to consider a composition proposal. Consider:</p> <ul style="list-style-type: none"> <li>• Is there adequate provision for payment of remuneration that is owing (but not yet paid) at the time the proposal is lodged? <a href="#">[r75-175(3) IPR]</a></li> <li>• Is the proposal bona fide? It will be, in the first instance, a matter for the trustee to judge whether a proposal has sufficient detail and an underlying commercial substance</li> <li>• Does the proposal lack clarity?</li> <li>• Is further investigation needed? Significant outstanding investigations means the trustee may not have sufficient material to indicate whether the proposal would benefit the bankrupt’s creditors generally <a href="#">[75-175(2D)(a)]</a></li> </ul> <p>See: <a href="#">Labocus Precious Metals Pty Ltd v Thomas [2003] FCA 1154</a>  <a href="#">Wenkart v Pantzer (No 8) (2004) 135 FCR 422</a>  <a href="#">Mandri v Nicholls as Trustee for the Bankrupt Estate of Mandri [2017] FCCA 2728</a>  <a href="#">[r75-175 IPR]</a></p>
<p><b>Notifying creditors of the meeting of creditors to consider a s73 proposal</b></p>	<p>If trustee convenes meeting, at least 5 business days before the meeting they must send creditors the:</p> <ul style="list-style-type: none"> <li>• Proposal</li> <li>• Report on the proposal, which must indicate: <ul style="list-style-type: none"> <li>○ whether the proposal will benefit creditors generally</li> <li>○ name related creditors</li> </ul> </li> <li>• If the meeting is the first meeting of creditors, a copy of the debtor’s statement of affairs (or a summary). Where the statement of affairs indicates the information is not available to the public, this will not be made available to creditors</li> <li>• Declaration of relationships by the proposed composition trustee, if applicable</li> <li>• Assent/Dissent form</li> </ul> <p><a href="#">[r75-175(2), 75-175(2D), 75-175(5) IPR]</a></p>
<p><b>Surety</b></p>	<p>Trustee may require a surety from the regulated debtor to cover:</p> <ul style="list-style-type: none"> <li>• Estimated costs incurred in arranging and holding the meeting</li> <li>• Estimated remuneration payable to the trustee in respect of the meeting</li> </ul> <p>Any excess must be refunded to the regulated debtor.  <a href="#">[r75-175(2B), 75-175(2C) IPR]</a></p>

	Commentary
<b>At the meeting of creditors</b>	
Tabling documents	<p>Trustee to table:</p> <ul style="list-style-type: none"> <li>• Section 73 proposal</li> <li>• The statement of affairs must be tabled</li> <li>• Written statement identifying material differences in respect to their statement of affairs, if applicable</li> <li>• Where the composition trustee is different to the bankruptcy trustee, table a declaration of relationships by the proposed composition trustee about whether they are a related entity of the bankrupt or a related entity of trustee</li> </ul> <p>[s73B] [r75-60(1)(b), 75-180(2), 75-180(3), 75-180(5) IPR]</p>
Statements and questions [r75-55(1)(e) IPR]	Trustee may want to also discuss the proposal terms and an explanation of their recommendation
Notification of Special Resolutions Passed	<p>For any special resolutions passed, the trustee needs to give the Official Receiver written notice of this within 2 days</p> <p>[s74(5A)] [Form 18 - Notice of Special Resolution]</p>

## Additional considerations for meetings about section 188 authority

These are in **addition** to the “Holding a meeting of creditors” list

	Commentary
<b>Before the meeting of creditors</b>	
Determining time of the meeting	<p>The meeting called under a <u>section 188 authority</u> must be held not more than 30 business days after the consent or approval was given</p> <p>[r75-27(1) IPR]</p>
Notifying creditors of the meeting of creditors held under <u>section 188</u>	<p>Trustee must call a meeting and send a copy to creditors at least 5 business days before the meeting:</p> <ul style="list-style-type: none"> <li>• Copy of the debtor’s statement of affairs. Where the statement of affairs indicates the information is not available to the public, this will not be made available to creditors</li> <li>• Report and declaration under s189A</li> <li>• Statement of possible resolutions under s189B</li> </ul> <p>[ss189A, 189B]</p>

	Commentary
	<p><a href="#">[r75-27(2) IPR]</a></p> <p>Proposed trustee of personal insolvency agreement must give written consent before meeting to act as trustee of the agreement <a href="#">[s215A(1)]</a>. Before resolution is passed at the meeting, the proposed trustee must make a written declaration as per <a href="#">s215A(3)</a></p>
<b>At the meeting of creditors</b>	
Debtor attendance	<p>The regulated debtor must attend, unless they cannot because for illness, or another sufficient reason</p> <p><a href="#">[r75-27(2B) IPR]</a></p>
Tabling of Documents	<p>Trustee to table:</p> <ul style="list-style-type: none"> <li>• Debtor's statement of affairs – must be tabled where the meeting is called under section 188 of the Act Where the SOA indicates information is not available to the public, this must not be tabled at the meeting</li> <li>• A copy of the report and declaration made under section 189A of the Act</li> <li>• A copy of the statement prepared by the trustee under section 189B of the Act</li> </ul> <p><a href="#">[r75-60(2) IPR]</a></p>
Joint administrations	<p>If the proposal relates to a joint administration, A trustee must explain to creditors the likely effect of <a href="#">section 110</a> and <a href="#">141</a> of the Act, only if:</p> <ul style="list-style-type: none"> <li>• A joint estate forms part of the property that is to be dealt with under the agreement, and</li> <li>• the agreement does not specifically provide for distribution of the joint estate.</li> </ul> <p><a href="#">[r75-170(3) IPR]</a></p>
Special Resolutions	<p>Creditors may, by special resolution:</p> <ul style="list-style-type: none"> <li>• Where the debtor's property is subject to control, resolve that the debtor's property be no longer subject to control</li> <li>• Require the debtor to execute a personal insolvency agreement – if so, the creditors must, by resolution, nominate a trustee or trustees to be the trustee or trustees of the agreement</li> <li>• Require the debtor to present a debtor's petition within 7 days</li> </ul> <p><a href="#">[s204]</a></p>
Notification of Special Resolutions Passed	<p>For any special resolutions passed, the trustee needs to give the Official Receiver written notice of this within 5 business days</p> <p><a href="#">[s62 of the Bankruptcy Regulations 2021]</a></p> <p><a href="#">[Form 18 – Notice of Special resolution]</a></p>

## Additional considerations for meetings about the removal of trustee and appointment of new trustee

These are in **addition** to the “Holding a meeting of creditors” list

	Commentary
<b>Before the meeting of creditors</b>	
Notifying creditors of the meeting of creditors to consider removal or appointment	<p>There must be at least 5 business days notice of the meeting  <a href="#">[s90-35(2) of Sch 2]</a></p> <p>The notification must include a written declaration from the incoming trustee about previous relationships <a href="#">[r75-265 IPR]</a></p>
<b>At the meeting of creditors</b>	
Resolutions	<p>Creditors may, by resolution:</p> <ul style="list-style-type: none"> <li>Remove the trustee of a regulated debtor’s estate (current trustee)</li> <li>At the same or subsequent meeting, appoint another person as trustee of the regulated debtor’s estate (incoming trustee)</li> </ul> <p><a href="#">[r90-35(1) IPR]</a></p>
Casting vote	<p>For a resolution, where there is a stalemate – i.e. a majority in both number <i>and</i> value cannot be reached – the current trustee can:</p> <ul style="list-style-type: none"> <li>Request a poll (either creditor or trustee)</li> <li>Only exercise a casting vote in favour of a resolution to be removed from office.</li> </ul> <p>A casting vote cannot be used by the current trustee to reject the resolution to remove the current trustee.</p> <p>The Inspector-General expects trustees to provide reasons for exercising a casting vote to be announced at the meeting and included in the minutes of meeting.</p> <p><a href="#">[r75-115 IPR]</a></p>
Tabling documents	<p>Current trustee to table:</p> <ul style="list-style-type: none"> <li>Declaration under <a href="#">r75-265 IPR</a></li> <li>Consent to act signed by incoming trustee</li> </ul> <p><a href="#">[r75-115(4) IPR]</a></p>
Right to speak at meeting	<p>Outgoing and incoming trustees have the right to speak at the meeting  <a href="#">[r75-115(5) IPR]</a></p>

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## Additional considerations for meetings involving joint and several administrations

These are in **addition** to the “Holding a meeting of creditors” list

	Commentary
<b>At the meeting of creditors</b>	
Explanation of effect on dividends	A trustee must explain the effect of <a href="#">section 110</a> and <a href="#">section 141 of the Act</a> with respect to dividends <a href="#">[r75-170 IPR]</a>