

AFSA - ARITA - ASIC joint liaison meeting discussion points

4 June 2019

AFSA update

- Personal insolvencies have fallen in the last two quarters. These falls are occurring in both bankruptcies and debt agreements. In the March quarter 2019, bankruptcies fell 9% compared to last year. They are at their lowest level since the March quarter 1995. Debt agreements have also moderated, falling 32% compared to last year. Bankruptcies have followed a downward trend since mid-2009. Debt agreements have only just started to moderate in the last 6 months after following an upward trend over the last decade.
- AFSA noted in light of the Royal Commission and key outcomes, they are continuing to consider the implications for their regulatory work, and AFSA more broadly.
- AFSA noted they have commenced a program of work to improve the information they provide in order to raise the understanding of the consequences of bankruptcy. A simple calculator has been created to give people an idea of the amount of income contributions they may need to pay. This will assist people who are already bankrupt, as well as those who are considering bankruptcy.

ASIC update

- ASIC noted the appointment of Executive Directors as part of changes implemented following the ASIC capability review. ASIC's Commissioners will step back from involvement in specific regulatory matters and focus on providing strategic leadership.
- ASIC noted that there would be a focus on enforcement action following the Royal Commission with ASIC's 'why not litigate' approach when an offence has been committed and ASIC considers taking court action is in the public interest and would achieve the best regulatory outcome. ASIC noted that, where appropriate, it would continue to pursue other options in its regulatory toolkit.
- ASIC noted that their Close and Continuous Monitoring Teams within some banks has seen changes occurring in real time.
- ASIC noted its vision statement under Chair James Shipton of "A fair, strong and efficient financial system for all Australians".

ARITA update

- ARITA noted it welcomed Scott Atkins as its new President. The board now has 31% female representation and includes a number of direct appointments to gain better diversity and representation across the board for registered trustees and small practices. Priorities for the next two years include diversity, law reform and engagement in Asia.
- ARITA noted that their working group were reviewing feedback received on its revised Code of Professional Practice. Final consultation will be held prior to final acceptance and publication.

- ARITA noted the 'State of the Profession' survey which will be published in the next ARITA journal.
- ARITA noted their upcoming National Conference and positive number of registrations received so far.

Insolvency law reform

- AFSA have updated their I-G Practice Directions and Statements to reflect changes to Debt Agreement Law Reform.
- Noted that with the dissolution of the last Parliament the 1 Year Bankruptcy Reform Bill has lapsed as well as the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill.

Compliance actions, and feedback

- AFSA noted the planned focus areas in their 2019-20 compliance program are 1) Debt Agreement Law Reform, 2) Independence and untrustworthy advisors, 3) Remuneration and 4) Culture. The Official Receiver (OR) is also considering compliance issues.
- ASIC noted their compliance focus areas being 1) Improving registered liquidator (RL) access to funding under Assetless Administration Fund (AAF), 2) Independence 3) Remuneration and 4) Funds handling.
- ASIC said that AAF workshops are scheduled with RLs shortly and a funds handling survey will soon be sent to all RLs to raise awareness and prompt a review of the systems they have in place to safeguard money held by them on behalf of creditors.

Common Risks:

Creditor disengagement

- AFSA noted an increase in I-G approved remuneration determinations due to lack of creditor engagement.
- Further work with creditors will be undertaken. The importance of creditor participation was noted. Communications with creditors is seen as a key issue.

Untrustworthy pre-insolvency advisors and related illegal activity

- AFSA noted their reliance on information from practitioners for intelligence and desire for information. Practitioners are encouraged to come forward with relevant information on untrustworthy advisors.
- ASIC noted its work in this area and that their internal phoenix taskforce is closely monitoring reports of misconduct.

Committees:

Registration Committees

- AFSA noted that post ILRA, of the 14 applications for registration received, about a half have failed the interview, mostly due to a lack of hours or lack of knowledge.
- ASIC also noted that a number of applicants under the new Committee registration process have been unsuccessful.

- The meeting discussed whether additional guidance material might be prepared to assist potential applicants understand the requirements of registration.

Disciplinary actions

- ARITA noted their disciplinary review process and how matters were referred to ARITA's independent Professional Conduct Committee (PCC). Noted that it would be a PCC decision to refer a matter to a regulator as per ILRA. No matters have been referred to a regulator under ILRA to date.

Mental health working group (MHWG)

- Noted positive feedback being received for Insolvency Mental Health Awareness Program (IMHAP).
- Noted next steps would be to progress the face to face training.
- The suggestion was raised that a guidance sheet could be helpful.

Practitioner gender and age diversity

- The proposed joint gender balance survey was discussed. Next steps are to have an offline discussion about the mechanics of how that would be distributed.
- ASIC and AFSA noted ongoing discussions about the impact of the statutory continuing profession education requirements on women who may wish to apply for, and maintain registration as, a liquidator or trustee.

Other business

- AFSA noted their digitisation of forms project which is nearly completion in July. The revised Statement of Affairs (SOA) form is intended to be released in the beginning of next year.

Next meeting

- The next meeting is scheduled for 10 December 2019 in the ASIC Melbourne office.