

PERSONAL INSOLVENCY COMPLIANCE REPORT

2021-22



Australian Government

Australian Financial Security Authority

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Foreword from the Chief Executive



Building confidence in Australia's personal insolvency system depends on fostering a strong compliance culture. Our Personal Insolvency Compliance Report 2021–22 demonstrates how we have built compliance into the heart of our work.

Safeguarding the integrity of our systems is achieved through our strengths-based regulatory approach. This report explores how we have identified and worked to mitigate systemic harms over the past year. We've anchored our work against 3 strategic priority areas to achieve this.

Our first priority focus was centred on supporting people who experience vulnerability. By establishing a Vulnerable Users Working Group, we tailored our services to deliver clear and accurate information for those in financial distress. The case studies in this report explore this further, demonstrating how we deliver on our ethos of firm and fair regulation.

Our second strategic focus was based on building willing compliance and engagement. We have published exemplar scenarios to highlight best practice in the insolvency industry, setting high standards for practitioners. We have also worked on making our systems accessible, user friendly and digitally enabled so that compliance is the easiest option.

Our final focus strengthened trust and confidence in the profession. This report showcases the ambit and strength of our regulatory toolkit, and how we have set and clearly communicated our expectations. Over the past year, we have inspected 42 personal insolvency practitioners, proactively reviewed 218 personal insolvency proposals, and issued 126 briefs for prosecution. Compliance information requests enabled us to isolate and address potential harms early and efficiently. This work builds confidence in our regulatory approach and the strength and agility of our systems.

I am proud of how these priorities have contributed to a strong culture of compliance. As a visible, modern and contemporary regulator, we look forward to continuing to deliver services that support Australia's personal insolvency system, and all those who engage with it.

Tim Beresford

Chief Executive, Inspector-General in Bankruptcy and Registrar of Personal Property Securities

Australian Financial Security Authority

2021–22 statistics at a glance

Inspector-General key compliance activities



Number of practitioners

203

Registered trustees (RTs)
(201 in 2020-21)



New

7



De-registered

Voluntarily

Involuntarily

5

0

64

Registered debt agreement
administrators (RDAs)
(68 in 2020-21)

3

5

2

Inspections



42

Personal insolvency
practitioners inspected
(83 in 2020–21)

0

Official Trustee (OT)
administrations inspected
(67 in 2020–21)

19

Error
classifications



14

Category C
(procedural, no
significant impact)

4

Category B
(serious, having a
material impact)

1

Category A
(very serious involving
fundamental breaches)

Reviews and inspections



32 *

Administrations inspected
(189 in 2020-21)

*A further 61 administrations were reviewed but not yet completed at year end



218 ¹

Personal insolvency proposals reviewed
(191 in 2020-21)

Includes section 188 authorities, Part X Personal Insolvency Agreements and Section 73 composition proposals.



273

Complaints finalised
(280 in 2020-21)



151

Inspector-General reviews completed
(177 in 2020-21)

Proactive monitoring of proposals for compositions and personal insolvency agreements



218

Proposals in registered trustee matters reviewed
(191 in 2020-21)



30

Proposals that required AFSA intervention
(29 in 2020-21)



13

Meetings of creditors attended
(18 in 2020-21)



8

Section 73 proposals
(9 in 2020-21)

5

Part X matters
(9 in 2020-21)

Insolvency advertisements



13

Advertisements reviewed
(116 in 2020-21)



1

Interventions to correct or remove misleading or unbalanced advertising
(23 in 2020-21)

Complaints finalised

273

Complaints finalised



243

Complaints about practitioners

(251 in 2020–21)



13

Complaints justified

(17 in 2020–21)



30

Complaints about the Official Trustee

(29 in 2020–21)



2

Complaints justified

(0 in 2020–21)



Inspector-General reviews



151

Reviews finalised

(177 in 2020–21)



140

Registered trustee reviews

(147 in 2020–21)



11

Official Trustee reviews

(30 in 2020–21)



148

Applications finalised

(142 in 2020–21)

Applications by registered trustees for Inspector-General Approval of Remuneration

Show cause notices

2

Show cause notices issued:
(3 in 2020-21)



2

RDAAs
(2 in 2020-21)

0

Registered trustee
(1 in 2020-21)



Outcome of show cause notices:

2

RDAAs deregistered
(2 in 2020-21)

0

Trustees deregistered
(1 in 2020-21)

Investigations and prosecutions

under the *Bankruptcy Act 1966*



596

Offence referrals received

(865 in 2020-21)



307

Accepted for investigation

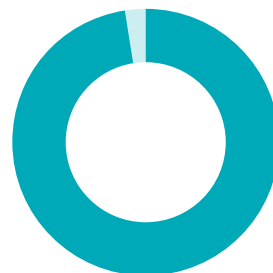
(534 in 2020-21)



126

Briefs sent to CDPP

(123 in 2020-21)



123

Accepted by CDPP

(87 in 2020-21)



95

individuals prosecuted

(69 in 2019-20)

Official Receiver notices

under the *Bankruptcy Act 1966*



374

Official Receiver notices issued and served

(461 in 2020-21)

Key compliance activities

Inspector-General compliance activities

The Inspector-General in Bankruptcy is responsible for the general administration of the *Bankruptcy Act 1966* and regulates bankruptcy trustees and debt agreement administrators.

As at 30 June 2022, there were 203 registered trustees and 64 registered debt agreement administrators. Of the registered trustees, 7 were newly registered in the financial year and 5 voluntarily deregistered. There were 3 new registered debt agreement administrators and 7 deregistered; 5 voluntarily and 2 involuntarily.

The Inspector-General also reviews trustees' decisions and investigates allegations of offences.

The decrease in Inspector-General reviews and offence referrals from 2020–21 to 2021–22 is reflective of the reduction in personal insolvency numbers during that period. The number of people prosecuted increased from 69 to 95 from 2020–21 to 2021–22, demonstrating AFSA's willingness to take firm regulatory action against those who refuse to fulfill their statutory obligations or abuse the personal insolvency system. These results align with AFSA's harms-based approach to regulation.

Although the Official Trustee was not inspected in 2021–22, it did receive regulatory attention while dealing with complaints and Inspector-General Reviews. The Official Trustee will be inspected in 2022–23.

Official receiver compliance activities

The Official Receiver has a range of powers under the *Bankruptcy Act 1966* to regulate the personal insolvency system and act against those who misuse it. On behalf of the Official Receiver, we operate a public bankruptcy registry service to help bankruptcy trustees discharge their responsibilities.

Official Receiver notices are used to request more information, gain access to relevant premises or accounting records, or recover unpaid funds owed to creditors. Requests may come from the OT or an RT seeking the information to properly manage an administration.

There were 120 applications requesting more information, books or evidence. From this, 103 notices were issued and 67 notices were complied with. A significant proportion were issued in the latter part of 2021–22 and these examinations are yet to take place.

A total of 190 applications are related to income contributions, which are payments made by a person who is bankrupt to repay their creditors. In total, 168 notices were issued and 152 were complied with for a total value of \$3.97 million.

Where valuable property is sold or transferred before a bankruptcy, the Official Receiver can issue a notice requiring the value be repaid.

In 2021–22, 52 applications were made, resulting in 32 notices being issued and 17 complied with. A further 6 notices representing more than \$5 million were being contested in Court as at 30 June 2022.

Notice type	Applications received	Notices issued and served	Notices complied with	Compliance value
s77AA*	0	0	0	Not applicable
s77C	120	103	67	Not applicable
s77C examination	86	66	23	Not applicable
s81A	1	1	0	Not applicable
s128E	1	1	1	\$28,476
s139ZL	190	168	152	\$3,975,809
s139ZQ	52	32	17	\$2,658,271
s139ZR	3	3	3	Not applicable
Total	453	374	263	\$6,662,556

*Please note: In 2021-22, section 77AA applications to access premises and books were not undertaken due to COVID-19 restrictions.

Strategic focus area 1

Support people who experience vulnerability

Why this is important

When people are financially distressed, they may not be able to make the most appropriate decision for their circumstances. It is important they have access to current and clear information about their options and obligations.

What we said we'd do

- Ensure information is accessible and accurate at the right time through the appropriate channels
- Ensure the public, especially those that are financially distressed, can make informed choices with accurate information about their personal insolvency options. We connect the public to free services that provide trusted advice about insolvency
- Disrupt people who provide misleading information and untrustworthy advice that risk the integrity of the personal insolvency system

What we did

The focus was to provide easy access to clear and accurate information for our clients, particularly those experiencing financial distress.

This year, we:

- conducted a survey of debtors and creditors to measure whether time, economic and global impacts have changed the behaviours of those seeking relief from financial hardship or those seeking payment of money owed. The survey collected information such as the demographics of these individuals, how they receive information, who they are most likely to receive information from, the level of financial literacy across these groups and their awareness of AFSA.
- released our [Untrustworthy Advisors Report](#), which highlights the prevalence of untrustworthy advisors, discusses the consequences of untrustworthy advice and details common tactics which may be a sign of untrustworthy advisor activity. The report explains how debtors, creditors, insolvency practitioners and financial counsellors can work with us to tackle the issue of untrustworthy advice in the insolvency system.
- worked on a matter with the Australian Federal Police (AFP) that involved alleged untrustworthy advisor conduct. The 3 defendants charged were committed for trial in the Victorian County Court and the prosecution action is ongoing.
- created a Vulnerable Users Working Group to support vulnerable clients by providing tailored and targeted support tools to access our services.

Case study: Request for review results in the right outcome for a vulnerable individual

An individual who was bankrupt, known as Mr A, had a marriage breakdown. The family court gave him shared parenting arrangements, with his children living with him 30% of the time. He also paid child support.

In assessing Mr A's income, his trustee did not recognise his children as dependents as he was making child support payments. His trustee assessed that Mr A had to pay an income contribution, but Mr A disagreed and lodged a review request.

We contacted the trustee to discuss their decision and found the trustee had not fully considered the treatment of Mr A's children as dependants.

The trustee contacted Mr A for further information and determined that his children should be recognised as dependants. This removed the requirement for Mr A to pay contributions.

Providing accessible and accurate information allowed Mr A to understand his obligations and question the decision made by the trustee. Raising the matter with the trustee helped to educate them for future assessments of similar situations.

Case study: Delays in annulment causing distress

A bankrupt individual, known as Ms H, submitted a complaint to AFSA after her bankruptcy annulment was delayed.

During the complaint process, Ms H advised that she had ongoing health issues and that English was not her first language, so she relied on her children to translate correspondence from the trustee and AFSA.

We determined that the trustee had contributed to unreasonable delays in administering the estate. The trustee disagreed with the allegations but agreed to pay for the unpaid interest claims of creditors so Ms H's bankruptcy could be annulled.

Ms H had also requested a refund of the trustee's remuneration and other costs believing it was excessive. Our review showed that the remuneration charged by the trustee was reasonable. We explained the decision to Ms H so she could better understand the bankruptcy process and why trustees need remuneration for administering an estate.

As a result, the delays ended and Ms H's bankruptcy was annulled. Ms H also withdrew the complaint and request for refund, resolving the matter.

Case study: Prosecution consequences for couple alleged to have followed untrustworthy advice

Deliberate misconduct and non-compliance, sometimes as a result of dodgy advice, can result in individuals committing crimes.

In July 2022, a Queensland couple faced Brisbane District Court charged with several offences under the Bankruptcy Act, following an investigation by AFSA.

Two property developers were facing bankruptcy in late 2011. To avoid losing control and ownership of their property, the couple made false declarations which prevented their estate being administered effectively. They also disposed of property to defraud their creditors.

The couple were found guilty and each sentenced to two years' imprisonment.

While no charges were laid against any other individuals, the fraudulent behaviour was driven by untrustworthy advice. During AFSA's investigation, the couple were declined the opportunity to provide information about the advice they'd received.

The case illustrates how individuals in vulnerable and stressful positions can take untrustworthy advice and find themselves in bankruptcy and also facing criminal prosecution.

Strategic focus area 2

Drive willing compliance and engagement

Why this is important

Supporting all participants in the personal insolvency system to willingly comply with their obligations reduces costs, avoids penalties for individuals and strengthens overall confidence in the system.

What we said we'd do

- Better understand and respond to the compliance behaviours that lead people to comply. This includes addressing the root causes of non-compliance
- Enable compliance by making our systems easy to use, accessible, automated, personalised and secure
- Engage with stakeholders to gather important information and intelligence to address risks and harms in the industry
- Publish benchmarks for the profession to aspire to and recognise industry leaders
- Collaborate with other regulators and use the full range of our powers to address non-compliance
- Encourage debtors and creditors to comply with their obligations in a timely manner

What we did

We fostered positive compliance behaviour in the personal insolvency system because non-compliance can have a detrimental effect on public confidence. We have worked on innovative projects to help us become a visible, modern and contemporary regulator, making it easier for people to understand their obligations and to encourage positive behaviour.

Over the past year, we:

- reviewed how we assess matters to better understand the reasons for non-compliance and to increase awareness of vulnerabilities faced by clients
- liaised regularly with key stakeholders to give and receive information and intelligence that feeds into AFSA's regulatory priorities in addressing harms
- published 4 exemplar behaviour case studies provided by the industry that represent proven practice and AFSA's Integrity Principles
- targeted dishonest behaviour, particularly around individuals failing to file a bankruptcy form or failing to disclose key personal and financial information
- implemented new digital services to make compliance and engagement easier, including implementing [Digital Identity access](#), simplifying the advertising of creditor meetings and streamlining processes to [transfer files to trustees](#).

Case study: Targeting dishonest behaviour to address failures to file

Our Enforcement team tested 3 methodologies to disrupt non-compliance and encourage individuals to meet their obligations.

Methodology 1: Outstanding bankruptcy forms in estates administered by the Official Trustee

We trialled a system to determine if intervention methods like skip tracing (locating a person's whereabouts) would help a bankrupt individual meet their obligations and file their bankruptcy form. Two skip tracing firms were engaged to establish the addresses and contact details of 85 individuals.

Engaging contract tracers prompted 36 individuals (42% of the broader test group) to file their bankruptcy form.

Methodology 2: Offenders who have an outstanding bankruptcy form

AFSA can issue a statutory notice to a person who is bankrupt, requiring them to file their bankruptcy form. Failure to comply is an offence attracting a penalty of up to 12 months' imprisonment.

We re-examined the cases of 72 bankrupt individuals who were previously prosecuted for not filing their bankruptcy form. 49 individuals (almost 70%) were prosecuted again as their bankruptcy form remained outstanding.

Examples of sentences imposed include:

- fines of up to \$8,000
- 12-month community correction orders
- 200 hours of community service and a good behaviour bond for a period of 2 years.

Methodology 3: Using external data to identify incorrect information on bankruptcy forms

For a random selection of administrations, we reviewed differences in the declared values of motor vehicles and the funds declared as cash at bank and expected income for the preceding 12 months.

Preliminary results indicate that whilst there were deviations between the bankruptcy form and external data sources, the variations did not change the outcome.

Based on the 3 methods we trialled we successfully drove willing compliance and appropriate disclosures were made. This was done using regulatory tools, data and intelligence.

Case study: Assessing an RDAA to determine they are a fit and proper person

We received a complaint claiming that an RDAA was recently banned as an Australian Financial Services (AFS) provider by the Australian Securities and Investments Commission (ASIC) for 5 years.

The anonymous complainant expressed concerns about the RDAA being a fit and proper person.

Reforms to the Bankruptcy Act in 2018 brought in a new fit and proper person test for those applying for or renewing their RDAA registration.

We investigated the complaint with the RDAA. Although the actions questioned by ASIC were unrelated to the RDAA's debt agreement role, the findings reflected poorly on their competence, judgement and professional character.

We informed the RDAA of our concerns about ASIC's findings and the RDAA decided to surrender their registration, which we accepted. This is a good example of AFSA ensuring that only those who are fit and proper remain registered as personal insolvency practitioners.

Strategic focus area 3

Strengthen trust and confidence in the profession

Why this is important

Those in financial difficulty rely on personal insolvency practitioners for their specialist knowledge, high quality services and trusted advice.

What we said we'd do

- Strengthen practice management by monitoring controls and complaints
- Provide guidance and raise awareness of the need to appropriately manage information, data and cybersecurity
- Seek assurance that practitioners are maintaining their required hours of continuing professional development
- Use our statutory powers to elicit cooperation and support the efficient administration of estates
- Be intelligence and data driven to proactively target unexplained delays and unnecessary remuneration

What we did

As a regulator, we set and communicate our expectations of insolvency practitioners to maintain high confidence in the industry.

In this financial year, we:

- worked with our internal complaints handling area to strengthen the way we approach and monitor complaints, particularly repeat and vexatious complainants
- reviewed the Annual Trustee Returns of 124 registered trustees and sought evidence that independently verifiable continuing professional education had been undertaken. In all but 2 cases, the education undertaken was appropriate. In those 2 cases where insufficient education had been undertaken, the trustees were in the process of surrendering their registration
- issued compliance information requests (CIRs) to insolvency practitioners about poor remuneration practices, aged administrations and the sustainability of debt agreements. CIRs are intelligence and data driven so that potential harms are isolated and addressed. Compliance across these 3 targeted areas was adequate and 3 administrations were noted for a remuneration review
- released practitioner guidance about data security and business continuity, and updated inspection material with specific questions about cybersecurity threats and controls

Case study: Reviewing a trustee's remuneration

An individual, Ms P, submitted a request to review her trustee's remuneration after being made bankrupt by creditor's petition.

Our review indicated Ms P may have been incapable of managing her affairs. The estate was solvent and a high level of remuneration had accrued during a brief time.

Documents provided to AFSA showed that the trustees knew of Ms P's difficulties in managing finances and spent excessive time on certain tasks.

After reviewing the trustee's files and considering responses from the trustee and Ms P's solicitor, we found evidence that the trustee overcharged the estate.

The trustees refunded the money to Ms P and they will be monitored for future practice. Consequences for the trustee also included decreased remuneration and a negative indicator on their risk profile.

Case study: Procedural errors identified in a composition proposal

Two individuals in debt organised a joint composition proposal. A review of the section 73 report to creditors found that the trustee had not considered all the requirements for the joint composition proposal.

Some of the issues included only proposing to hold a single vote despite different creditors listed in the joint and separate estates and failing to properly set out remuneration.

We contacted the trustee's office, detailing our concerns and providing information on relevant case law. The trustee agreed to issue a supplementary report to creditors to address our concerns.

Our timely and relevant feedback ensured that creditors had the full picture to inform how they wished to proceed. Our regulatory intervention ensured creditors were in the best possible place to make an informed decision.

The Australian Government regulator
and service provider for matters relating to
personal insolvency and personal property securities

afsa.gov.au