Australian Government

Australian Financial Security Authority

PERSONAL INSOLVENCY COMPLIANCE REPORT 2019–20

PERSONAL INSOLVENCY

Delivering improved and equitable financial outcomes for consumers, business and the Australian community

afsa.gov.au

CONTENTS

FOREWORD

I am pleased to present our 2019–20 Personal Insolvency Compliance Report. This report showcases the outcomes from the key focus areas within the Personal Insolvency Compliance Program (appendix A), including what we did and how we responded to risks and challenges.

For the first time, this report incorporates information from the Official Receiver, reflecting the important role the Official Receiver plays in compliance within the personal insolvency system. This is a new approach to reporting that will continue into the future.

2019–20 was a challenging time for the country as we tackled two disasters – the bushfires and the COVID-19 pandemic. In response to the pandemic, the government extended bankruptcy protections and thresholds.

I am pleased to report that AFSA adapted quickly to the changes and transitioned smoothly to a new working environment, ensuring the continuation of our regulatory and other services.

We work hard to achieve our vision of being a world-class government service provider and a firm and fair regulator. We recognise the importance of transparency and ensuring our data is accurate, reliable and readily available.

Remuneration and culture were key focus areas for AFSA in 2019–20, as both issues have the potential to undermine confidence and trust in the personal insolvency system. In March 2020, we published the report, Registered Trustee Remuneration in the Personal Insolvency System. In June 2020, we released a paper about embracing good culture, Integrity Principles of Trustees and Debt Agreement Administrators, developed in consultation with industry bodies and consumer groups.

We continue to encourage insolvency professionals to consider and adopt these integrity principles, as we strongly believe that a good culture is fundamental to maintaining public confidence in the personal insolvency profession. This is arguably more important now than ever, with the sector facing increased public scrutiny in the wake of the economic impact of the pandemic.

Addressing misconduct by registered practitioners, debtors, and others who interact with the personal insolvency system remains a key priority for AFSA. We seek to positively influence compliance and take appropriate action when there is evidence of wrongdoing. During 2019–20, AFSA initiated disciplinary action against registered practitioners and will continue to do so as necessary. While publication of the results of disciplinary action taken is not always possible, stakeholders can be assured that swift and decisive action is taken in appropriate circumstances.

If we are to ensure public confidence in the personal insolvency system it is critical that debtors comply with their obligations. Practitioners have a duty under the Bankruptcy Act 1966 to identify and report offences, and they play an important role in deterring future offending. AFSA monitors offence referrals by insolvency practitioners and takes alleged breaches of bankruptcy law seriously. We investigate, and where we find evidence of warranting prosecution, we work with the Commonwealth Director of Public Prosecutions to seek convictions in criminal courts.

This year has illustrated the importance of working together to achieve a common goal – and the personal insolvency system is no different. We are committed to working with every stakeholder in the system to ensure we maintain its integrity for all Australians.

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

INTRODUCTION

Welcome to the 8th edition of the Personal Insolvency Compliance Report. Previous publications have reported on the performance of private personal insolvency practitioners and highlighted significant compliance outcomes.

Each year, after assessing regulatory outcomes, trends, issues and stakeholder views, we prepare and publish our Personal Insolvency Compliance Program that sets out our strategic priorities for the year. This publication describes how we addressed those priorities.

In 2019-20, the COVID-19 pandemic created challenges for AFSA and the personal insolvency system. The pandemic required us to quickly identify, monitor and respond to unique issues. We published numerous guidance documents and messages about COVID-19 and increased our virtual engagement activities with industry bodies, consumer groups and key stakeholders. Targeted communications were sent to professional associations of occupations hardest hit by the pandemic (including the arts, recreation, hospitality, tourism and retail), to reach those debtors who may need to access AFSA's information. AFSA also developed specific guidance to assist those in small business, or those impacted by the challenges for small business.

At the same time, AFSA adjusted its work practices to ensure that business as usual continued, including the support provided by the Official Receiver. We also initiated changes so that regulation staff could undertake practitioner inspections remotely.

Australia's bushfires over the summer of 2019–20 and the COVID-19 pandemic will inevitably lead to insolvencies that arise due to no fault on the part of the business or individual. Mental health challenges and instances of anxiety in debtors and insolvency professionals will likely increase. To support these challenges, AFSA provides trusted and clear information on insolvency options.

To better support the mental health of insolvency professionals, their staff, and users of the personal insolvency system, AFSA supported the Insolvency Mental Health Awareness Program – an initiative of AFSA, ARITA and ASIC. We have also developed and promoted resources to help manage challenging mental health situations.

Anyone who is dealing with mental health issues is encouraged to reach out to seek help from organisations like Lifeline, Beyond Blue and federal, state or local government services such as Head to Health.

The challenges of 2019–20 have demonstrated the importance of continuing to monitor trends, share information and responding quickly to challenges that emerge. Registered practitioners in particular have a crucial role to play in maintaining public confidence in the personal insolvency system.

This overview of our compliance outcomes illustrates the broad range of issues impacting on the personal insolvency system and further highlights the importance of every individual, business and organisation working together to protect it.

Paul Shaw
National Manager,
Regulation and Enforcement

David Bergman
National Manager and Official Receiver,
Insolvency and Trustee Services

2019-20 AT A GLANCE

199 registered trustees and **71** registered debt agreement administrators*

806 pre-referral enquiries received

210 administrations inspected

772 offence referrals received

291 personal insolvency proposals proactively reviewed

77 briefs sent to Commonwealth Director of Public Prosecutions

354 complaints finalised

94 persons prosecuted

177 Inspector-General reviews completed

477 Official Receiver notices issued and served

*As at 30 June 2020

HOW AFSA WORKS

The Australian Financial Security Authority is responsible for Australia's personal insolvency and personal property securities systems.

In addition to administering the personal insolvency system, we are responsible for investigating alleged offences under the Bankruptcy Act 1966 and specified sections of the Criminal Code Act 1995. AFSA fulfils the following roles created by the Bankruptcy Act 1966:

INSPECTOR-GENERAL IN BANKRUPTCY –
AFSA's Chief Executive is also the Inspector-General in Bankruptcy. The Inspector-General is responsible for the general administration of the Bankruptcy Act 1966 and has powers to regulate bankruptcy trustees and debt agreement administrators, review decisions of trustees, and investigate allegations of offences under the Act.

OFFICIAL RECEIVER –
on behalf of the Official Receiver, AFSA operates a public bankruptcy registry service with compliance and coercive powers to assist bankruptcy trustees to discharge their responsibilities.

STATISTICS

Inspector-General key compliance activities

REGISTRATIONS

199
REGISTERED TRUSTEES
(201 in 2018–19)

6
new registered trustees registered

7
registered trustees voluntarily de-registered

1
registered trustee involuntarily de-registered

71
REGISTERED DEBT AGREEMENT ADMINISTRATORS
(79 in 2018–19)

0
new registered debt agreement administrators

8
registered debt agreement administrators voluntarily de-registered

As at 30 June 2020

INSPECTIONS

33

PERSONAL INSOLVENCY PRACTITIONERS INSPECTED*
(35 in 2018–19)

9
were e-inspections or remote inspections
(3 in 2018–19)

141

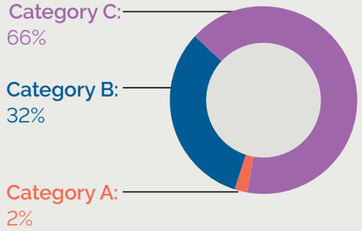
REGISTERED TRUSTEE AND REGISTERED DEBT AGREEMENT ADMINISTRATIONS INSPECTED
(141 in 2018–19)

69

OFFICIAL TRUSTEE ADMINISTRATIONS INSPECTED
(63 in 2018–19)

The most common errors we detected during our 2019–20 inspection program were:

1. property, income and asset errors
2. inadequate communication by trustee
3. unreasonable delays in timely action leading to delays in distribution



During 2019–20, we detected no practitioner wide systemic issues; classifying 66% of errors as category C (procedural – no significant impact), 32% as category B (serious – having a material impact) and 2% as category A (very serious - involving fundamental breaches and that would typically result in the commencement of disciplinary action).

PROACTIVE MONITORING OF PROPOSALS FOR COMPOSITIONS AND PERSONAL INSOLVENCY AGREEMENTS

272

PROPOSALS IN REGISTERED TRUSTEE ADMINISTERED MATTERS REVIEWED

19

PROPOSALS IN OFFICIAL TRUSTEE ADMINISTERED MATTERS REVIEWED

18
proposals required AFSA intervention

23

MEETINGS OF CREDITORS ATTENDED INCLUDING

13
Part X administration matters
(14 in 2018–19)

10
section 73 proposals
(11 in 2018–19)

Please note, this figure does not include the Official Trustee

DEBT AGREEMENT ADVERTISEMENTS

70

ADVERTISEMENTS REVIEWED
(107 in 2018–19)

intervened 29 times to correct or remove misleading or unbalanced advertising:

10
advertisements were for registered debt agreement administrators

19
advertisements were for brokers or pre-insolvency advisers

6
advertisements referred to the Australian Securities and Investments Commission for potentially false or misleading information.

GUIDANCE

Over the past 12 months, we have supported best practice by providing guidance through:

- quarterly Personal Insolvency Regulator newsletter articles
- our Insolvency Compliance Program 2019–20
- market report on registered trustee remuneration in the personal insolvency system
- article on independence: it's what you know, not who you know
- reviewing and updating Inspector-General practice directions
- COVID-19 and bushfire-related updates on the website.

COMPLAINTS

314

COMPLAINTS ABOUT PRACTITIONERS
(296 in 2018–19)

14
complaints justified
(9 in 2018–19)

40

COMPLAINTS ABOUT THE OFFICIAL TRUSTEE
(48 in 2018–19)

2
complaints justified
(1 in 2018–19)

The most common justified complaints about practitioners included:

1. inappropriate conduct or conflict of interest
2. delays in administration or lack of action
3. lack of information or communication
4. general administration and accounting

INSPECTOR-GENERAL REVIEWS:

177
reviews finalised
(179 in 2018–19)

- **155** registered trustee reviews
- **22** Official Trustee reviews

REGISTERED TRUSTEE REVIEW OUTCOMES
(79 in 2018–19)

- **19** decisions confirmed
- **29** decisions cancelled or varied
- **77** applications withdrawn or refused
- **30** review applications rejected

OFFICIAL TRUSTEE REVIEW OUTCOMES

- **1** decision confirmed
- **0** decisions cancelled or varied
- **7** applications withdrawn or refused
- **14** applications rejected

APPLICATIONS BY REGISTERED TRUSTEES FOR INSPECTOR-GENERAL APPROVAL OF REMUNERATION

232
applications finalised
(229 in 2018–19)

REGISTERED TRUSTEE REMUNERATION APPROVAL APPLICATION OUTCOMES

- **189** decisions granted
- **0** applications where remuneration was not granted
- **15** withdrawn
- **16** substituted lesser amount
- **12** review applications rejected

SHOW CAUSE NOTICES

2
SHOW CAUSE NOTICES ISSUED

- **1** registered trustee
- **1** registered debt agreement administrator

OUTCOME OF SHOW CAUSE NOTICES

- **1** trustee deregistered
- **1** debt agreement administrator registration continued with conditions imposed

INVESTIGATIONS AND PROSECUTIONS

During 2019–20, we investigated and initiated the following prosecution activities:

806
PRE-REFERRAL ENQUIRIES RECEIVED
(948 in 2018–19)

772
OFFENCE REFERRALS RECEIVED
(984 in 2018–19)

- **552** accepted for investigation
(744 in 2018–19

77
BRIEFS SENT TO COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
(115 IN 2018–19)

- **63** accepted by Commonwealth Director of Public Prosecutions
(105 in 2018–19)

94
PERSONS PROSECUTED
(96 IN 2018–19)

Official Receiver key 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 may be misusing it.

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 Official Trustee, or a registered trustee or debt agreement administrator seeking the information to properly manage an insolvency.

The Official Receiver received 4 applications to access premises and books in 2019–20, with one notice issued and complied with.

There were 198 applications requesting a person give more information, produce books or provide evidence. 173 notices were issued and 155 notices were complied with.

A total of 217 applications were related to the payment of income contributions – payments made by a person who is bankrupt to repay their creditors. 173 notices were issued and 156 were complied with, for a total value of $7.7 million that was paid into bankrupt estates.

In instances where valuable property is sold or transferred during (or in the 12 months immediately before) a bankruptcy, the Official Receiver can issue a notice requiring the value be repaid. 98 applications were made, with 84 notices issued with a compliance value of more than $43 million. Of these so far, 47 complied with to date, with negotiations ongoing with a majority of the outstanding notices. The monies recovered through these notices are returned to the bankrupt estate.

Notice type	Applications received	Notices issued and served	Notices complied with	Compliance value
S77AA	4	1	1	-
s77C	198	173	155	-
s77C Examination	66	36	24	-
s81A	4	2	1	-
s128E	1	-	-	-
s139ZL	217	173	156	$7,708,037
s139ZQ	98	84	47	$43,773,382
s139ZR	9	8	8	-
Total	**597**	**477**	**392**	**$51,481,419**

OFFICIAL RECEIVER COMPLIANCE STRATEGY OUTCOMES

In 2019–20, the Official Receiver focused on 3 areas as part of its compliance strategy:

1. Debt agreement law reform
2. Integrity of the National Personal Insolvency Index
3. Effectiveness of Official Receiver's coercive information gathering powers.

Outcomes

Debt Agreements

Law Reform

The *Bankruptcy Amendment (Debt Agreement Reform) Act 2018* received Royal Assent on 27 September 2018. The majority of the amendments commenced on 27 June 2019.

The Official Receiver facilitated the transition from self and unregistered debt agreements to registered debt agreement administrators (RDAAs) or to the Official Trustee. 19 debt agreements were transferred to the Official Trustee for administration and 15 were transferred to RDAAs. Those affected by the new laws were contacted to ensure they were aware of the legislative reform, their obligations and AFSA's role.

Compliance Investigations

The Official Receiver also focused on gathering intelligence and knowledge of creditor and RDAA relationships, nullifying invalid votes where they were identified and reporting on outcomes at team meetings.

Staff in the Official Receiver Services team continued to refine their approach to identifying debt agreements that may result in undue hardship for the debtor. Several cases were investigated and no debt agreements were rejected by the Official Receiver on hardship grounds.

Registry

Integrity of the National Personal Insolvency Index

The Official Receiver Services team removed more than 300 outdated entries on the National Personal Insolvency Index and undertook a second data integrity project, leading to the correction of over 200 records.

New Bankruptcy Form

The launch of our new online bankruptcy form in January 2020 is another way we improved the integrity of the index. The form's simplified and user-friendly structure has an increased focus on quality and relevant data. At the end of June 2020, almost 80% of bankruptcies were filed using the new form.

Compliance Investigations

The Official Receiver Registry team continued to review applications that may result in the wrong outcome for a debtor. They wrote to numerous debtors to clarify aspects of their bankruptcy applications, including asking whether they obtained advice from a financial counsellor prior to proceeding with their application.

Official Receiver Notices

Section 77AA notices

Section 77C allows the Official Receiver to issue a notice requiring a person to give evidence or provide information relating to their financial affairs – while Section 77AA notices entitle the Official Receiver to access all premises and books.

As a result of sustained awareness raising, a trustee requested the Official Receiver execute an s77AA notice following unsuccessful attempts using an s77C examination notice. This was implemented and delivered a positive outcome for the trustee. The trustee subsequently had a news article published in Insolvency News Online, the primary independent source for insolvency-related news. The article showcased the value of the Official Receiver and highlighted its powers as a useful way for trustees to achieve timely outcomes.

Statement of Affairs campaign

The Official Receiver proactively handled s77CA notices where the Statement of Affairs remained outstanding. This included matters where people who had been made bankrupt had been successfully prosecuted under section 54 referrals but had still failed to file their Statement of Affairs. Some compliance was achieved after thorough investigations, resulting in trustees further administering estates.

Examinations via video conference

The Official Receiver started holding virtual s77C notice meetings, which was particularly useful during the COVID-19 pandemic when trustees needed to progress bankrupt estate administrations. This enabled the Official Receiver to support both trustees and recipients and ensure location is not a barrier to compliance.

STRATEGIC FOCUS AREA – **DEBT AGREEMENT REFORM**

What we said we'd do

We will focus on ensuring debt agreement administrators understand and comply with the new provisions of the Bankruptcy Act 1966, and the regulations introduced by the Bankruptcy Amendment (Debt Agreement Reform) Act 2018. This includes the new duty for administrators to refer any evidence of an offence under the Act to the Inspector-General. This will assist in ensuring compliance by debtors.

What we did

The focus was on testing compliance against new duties introduced for RDAAs under the debt agreement reforms. Compliance information requests were originally planned however, there were unanticipated developments which impacted on our plans for testing.

The scope for the project was adjusted and centred on:

1. Offence referrals – collection of offence referral data and compliance information requests
2. Informal arrangements – collection of intelligence and views about the industry including RDAAs administering informal arrangements
3. Related entities – checks on RDAA-related entity reporting in certificates.

Outcomes

Offence Referrals

Offence referrals help protect the integrity of the personal insolvency system. An RDAA is required to refer potential offences to AFSA (for example, where a debtor does not disclose a significant debt in their agreement proposal).

Using a risk-based approach, compliance information requests were sent to RDAAs with low referral rates to AFSA.

Overall, the RDAA referral numbers were low. Two large RDAAs did not refer any potential offences to the Inspector-General in 2019–20. As a result, both RDAAs indicated changes to their systems and processes to ensure staff were considering possible offences, with decisions not to refer offences clearly recorded on administration files. Compliance checks will be made in 2020–21.

Informal arrangements

Informal arrangements are an alternative to Part IX debt agreements and Part X personal insolvency agreements and are unregulated. While we do not want to deter debtors from entering an informal arrangement, it is important that we mitigate the risks of untrustworthy advisors using unregulated informal arrangements.

We wrote to 6 large RDAAs to request more information about their approach to informal arrangements. We asked if they were experiencing a rise in informal arrangements and requested copies of literature and scripts used for discussions with clients in relation to them.

Our analysis found that informal arrangements may provide some benefits to debtors and creditors, particularly due to their inherent flexibility. However, professional bodies are concerned that they are unregulated and there is potential for unregistered and unregulated pre-insolvency advisors to exploit them by using threatening tactics, charging exorbitant fees, imposing strict terms or treating creditors differently to others.

Brokers and related entities

Under debt agreement reforms, RDAAs must record details of whether they (or a related entity) were an affected creditor in a matter and record the details of any broker who referred the debtor to the proposed RDAA.

The reforms also require the Official Receiver to disregard any votes received from a proposed administrator (or related entity of proposed administrator). The provisions create fairness for creditors, to prevent proposed administrators participating in a vote that would bind all creditors.

The Official Receiver noted a number of debt agreement proposals where the RDAA did not properly disclose themselves or a related entity as an affected creditor. At the time, the Official Receiver notified several RDAAs and asked that the required information be submitted.

A list of RDAAs and administrations was provided to delegates of the Inspector-General for compliance checks and all identified practitioners are now properly disclosing themselves or their related entities as affected creditors.

STRATEGIC FOCUS AREA – **INDEPENDENCE**

What we said we'd do

We undertook to test the work sources for registered practitioners to ensure arrangements are at arm's length and in accordance with the performance standards and codes of professional practice published by the Australian Restructuring Insolvency and Turnaround Association (ARITA) and the Personal Insolvency Professionals Association (PIPA).

What we did

A practitioner's relationship with regular referrers may affect their independence. A practitioner may be reliant on these relationships as a referral source, which can increase the risk of referrers influencing a practitioner's decision making.

It is critical that practitioners maintain their independence to preserve the community's trust in the personal insolvency system.

We used our database to identify trustees with high concentrations of referrals from a single referrer source. We found the following:

- Transparency in retaining services was observed by registered trustees. This was supported by the evidence of documented decision making.
- In the cases where legal costs were high, they related to people made bankrupt being uncooperative, and appeared reasonable.
- Registered trustee remuneration appeared reasonable.
- There was no evidence of a potential or actual conflict of interest.

No material breaches or significant issues were identified.

CASE STUDY

During an inspection of a registered trustee's administration files separate to the testing mentioned above, we found that the trustee's decisions and actions were in breach of the independence expectations. The registered trustee accepted information at face value from the referrer, without independently verifying the facts.

Our inspection found that transactions were not identified or not properly investigated, questionable offers were accepted for estate assets and alleged offences were not referred to us for further investigation.

Our final inspection report issued a reprimand to the trustee and noted that if it continues to not meet the expected standards, a show cause notice will be issued. The trustee was also issued with a penalty interest notice for removing funds from multiple estates without authority, contrary to the standards for registered trustees.

In response, the trustee sought training relating to the effective preparation of pre-referral and alleged offence referral forms.

STRATEGIC FOCUS AREA – **UNTRUSTWORTHY ADVISORS**

What we said we'd do

We will continue to take appropriate and available actions when untrustworthy advisor conduct has been identified.

What we did

We continue to disrupt the conduct of dodgy advisors. Being unregulated and unlicensed, these untrustworthy advisors provide false or misleading information about insolvency options and processes, taking advantage of vulnerable individuals.

In 2018–19, we sought information directly from selected practitioners about their formal and informal referrers. In 2019–20, the focus was using our intelligence and data to make informed decisions about how to disrupt untrustworthy activity. In 2020–21, we will focus on referrers who are suspected of being untrustworthy.

CASE STUDY

Mr Len Rosemeyer was formerly bankrupt and a client of a known untrustworthy advisor. At the recommendation of the advisor, he and his work colleague, Mr Shaun Clapham, sought to manipulate a creditors' meeting so that Mr Rosemeyer could keep two properties and have his bankruptcy annulled. This would deny genuine creditors access to funds they were entitled to.

Following our investigations, both Mr Rosemeyer and Mr Clapham were charged with making false statements and proofs of debt.

On 12 November 2019 Mr Clapham's prosecution was finalised (see media release).

On 14 January 2020 Mr Rosemeyer's prosecution was finalised (see media release).

While there is not yet sufficient evidence to take action against the advisor, AFSA will continue to monitor their conduct and take action when it can.

STRATEGIC FOCUS AREA – **REMUNERATION**

What we said we'd do

We will identify instances of over-charging, over-servicing and unnecessary delays and conduct remuneration reviews where appropriate.

We will engage with industry and creditors to increase creditor engagement in the insolvency process.

What we did

We assessed 19 administrations from 16 registered trustees, where there were significant closing balances or a disproportionate amount of remuneration paid compared to the returns to creditors.

Themes identified in the review included delays in administrations (such as delays in dividend payments), over-charging and over-servicing, and senior staff charging high rates for simple work.

The reviews led to:

- 4 registered trustees receiving warnings about delays in administrations
- 1 registered trustee receiving a warning for over-charging or over-servicing
- 2 registered trustees receiving feedback and 3 registered trustees receiving a warning about charging senior staff rates for lower complexity work.

Of the registered trustees mentioned above:

- 1 wrote off work-in-progress entries that were not yet billed
- 4 returned funds to administration.

Our comprehensive report on practitioner remuneration was published in March 2020.

Remuneration will remain a focus for AFSA in 2020–21. Where funds are available, a practitioner should be appropriately paid for necessary work performed properly. At the same time, creditors and debtors must feel confident that they are not being overcharged. We will ensure the right balance for all parties involved in a personal insolvency administration.

CASE STUDIES

Case study 1

An inspection of a bankrupt estate revealed that the trustee had performed work on and after the date of annulment. This is not allowed under section 153A(1) of the Bankruptcy Act 1966. A trustee must annul an estate only when all the debts (including trustee remuneration) have been paid.

As a result, the trustee was asked to refund the remuneration relating to work performed after the annulment date. This amounted to $5,522.

The trustee agreed and returned the funds to the person made bankrupt. The trustee's work will be monitored in the future for similar practices.

Case study 2

An inspection of an administration where there were joint trustees revealed over-charging by one trustee. The trustee in question charged an excessive amount of time for drafting reports. This type of work would usually be completed by junior staff.

The joint trustees were informed of rules 42-65 of the Insolvency Practice Rules, which state that a task should be charged at the appropriate rate for the level of staff reasonably expected to undertake the task.

In response, the trustees offered to refund $4,952. The trustees also confirmed they would not charge any further fees.

The offer was accepted by AFSA and the registered trustees were warned this type of practice may be escalated to disciplinary proceedings in future.

STRATEGIC FOCUS AREA – **CULTURE**

What we said we'd do

We will engage with professional associations, individual practitioners and their staff to collectively define good culture within the personal insolvency system.

We will determine an agreed position on the importance of corporate social responsibility.

We will work with professional associations and individual practitioners to positively influence the culture within the personal insolvency system.

We will assess culture in the profession and sample individual firms.

What we did

The release of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in February 2019 established a relationship between culture and outcomes. The report concluded that failings of organisational culture could foster poor decision making or poor behaviour, leading to misconduct.

Our aim was to understand what defines culture, especially how it influences behaviours that can impact the integrity of the personal insolvency system. Positive culture can support fairness when dealing with stakeholders, especially for vulnerable people. It can also help build trust and confidence in the work of the profession.

The newly created Integrity Principles for Registered Trustees and Debt Agreement Administrators define the intent and characteristics of a personal insolvency practitioner who embraces good culture. Those that embrace good culture are practitioners who are trusted, impartial, competent, transparent, inclusive, fair and equitable. At AFSA, we hold ourselves accountable, with the Official Trustee also subscribing to the principles.

The Integrity Principles, created in consultation with the industry and representative peak bodies, build on existing industry codes of conduct and provide a broad reference tool for practitioners who often make challenging decisions while trying to strike a difficult balance between competing interests and pressures.

We remain committed to engaging with the industry about culture. Over time, we expect the Integrity Principles to evolve with the industry.

It is noted that we have not found systemic cultural issues of concern in the personal insolvency industry.

CASE STUDY

How we went about consultation and drafting of the Integrity Principles document

To draft the Integrity Principles, we reviewed:

- Similar codes from industry bodies, such as the APES 110, ARITA Code of Ethics and PIPA Code of Conduct (Note that care was taken for the Integrity Principles to be consistent with these codes, but not to imitate them)
- Guidance documents from other regulators, such as ASIC's "What good looks like"
- Past AFSA presentations, such as North Queensland practitioners and financial counsellors' presentations, International Association of Insolvency Regulators (IAIR) presentation and ARITA National Conference presentation
- Academic research.

For the Integrity Principles to be useful, it was essential that they were developed in collaboration with stakeholders. As part of this process we collected feedback from stakeholders via our consultation website, AFSAsandpit, in February 2020.

To show our commitment to engaging with the industry, a communications plan was implemented to raise awareness of the AFSAsandpit survey, across a large range of stakeholders.

The majority (87%) of responses were positive, which demonstrates the industry is receptive to discussing culture.

Feedback received in the consultation process was applied to the final version of the Integrity Principles. We published the document in June 2020 and promoted the document in an article in the September 2020 Personal Insolvency Regulator newsletter.

APPENDIX A: INSOLVENCY COMPLIANCE PROGRAM 2019–20

1. Overarching ethos

We strive to be a firm and fair regulator, fostering stakeholder confidence in the personal insolvency system through effective regulation and enforcement activities that are timely, consistent and appropriate.

1.1 Statements of principle

AFSA's regulatory approach focuses on early resolution of systemic issues by adopting a proactive and preventive approach.

The Inspector-General Practice Statement 1: Regulatory framework outlines AFSA's core regulatory ethos.

IGPS 1 and AFSA's Compliance Program is flexible and continuously under review in line with market conditions affecting stakeholders.

1.2 Whole of industry approach and international best practice focus

AFSA promotes a regulatory environment where all stakeholders play a part in maintaining best practice standards.

AFSA will continue to engage with:

- the Commonwealth Director of Public Prosecutions (CDPP)
- Australian Restructuring Insolvency and Turnaround Association (ARITA)
- Personal Insolvency Professionals Association (PIPA)
- Association of Independent Insolvency Practitioners (AIIP)
- Australian Securities and Investments Commission (ASIC)
- other professional associations and government agencies.

This broad level of engagement ensures all necessary intelligence is available and facilitates the best outcomes for those affected by insolvency.

AFSA will also continue to actively engage with the International Association of Insolvency Regulators (IAIR), and other international groups, to facilitate appropriate benchmarking against developments and advances in insolvency regimes in comparable jurisdictions.

2. Strategic focus areas in 2019–20

In the financial year to 30 June 2020, AFSA focused on the following 4 areas in its compliance program. These areas were identified following an evaluation of information and data available to AFSA, as well as through consultation with the profession.

2.1 Debt Agreement Law reform

We will focus on ensuring that debt agreement administrators understand and comply with the new provisions of the Bankruptcy Act 1966, Bankruptcy Regulations introduced by the Bankruptcy Amendment (Debt Agreement Reform) Act 2018, including the new duty for Administrators to refer to the Inspector-General any evidence of an offence under the Act. This will assist in driving compliance by debtors.

2.2 Independence and Untrustworthy Advisors

Test the work sources for registered practitioners to ensure arrangements are at arm's length and in accordance with the performance standards and ARITA/PIPA codes of professional practice.

Continue to take appropriate and available action when untrustworthy advisor conduct has been identified.

2.3 Remuneration

Identify instances of over-charging and over-servicing and conduct remuneration reviews where appropriate.

Engage with industry and creditors to increase creditor engagement in the insolvency process.

2.4 Culture

Engage with professional associations, and individual practitioners and their staff to collectively define good culture within the personal insolvency system.

Determine an agreed position on the importance of corporate social responsibility.

Work with professional associations and individual practitioners to positively influence the culture within the personal insolvency system.

Assess culture in the profession and sample individual firms.