



Regulator Performance Framework

1 July 2017 to 30 June 2018 self-assessment report

BACKGROUND

The Australian Government's Deregulation Agenda (earlier known as the Regulatory Reform Agenda) seeks to improve the performance of regulators by supporting them to adopt consistent, risk-based approaches to administering regulation. The Government has developed a framework to measure the performance of regulators—the Regulator Performance Framework (the Framework).

As a Commonwealth regulator, we are guided by the Framework to minimise our impact on those we regulate while still delivering the vital regulatory role we have been asked to perform. The Framework allows us to report objectively on our efforts to administer regulation fairly, effectively and efficiently. It is also a useful tool for us to identify opportunities for improvement and better target our resources for greater impact. The Framework assists in highlighting where improvement of our regulatory framework could reduce compliance costs.

The Framework comprises of six outcomes based key performance indicators (KPIs); performance measures to assess the achievement of the KPIs; a process for an annual externally validated self-assessment against the Framework; reporting on the outcomes of the annual self-assessment; and a selective process for targeted external review every three years.

The following report is our self-assessment of our regulatory performance under the Framework for 2017–18. We report on both quantitative and qualitative outcomes, and include appropriate narratives, where relevant, for each of the six KPIs. The assessment reports on particular relevant activities and, as appropriate, may include summaries of stakeholder engagement, case studies and examples of activity relevant to each of the six KPIs.

The Bankruptcy Reform Consultative Forum (BRCF) externally validates the self-assessment of AFSA's performance under this Framework.

This self-assessment report was provided to the BRCF for validation in October 2018. All feedback received was positive.

EXECUTIVE SUMMARY

KPI 1

Regulators do not unnecessarily impede the efficient operation of regulated entities

Commentary:

- AFSA undertakes regular liaison activities with key stakeholders.
- We communicate key messages to regulated entities through our Insolvency Practitioner Compliance Program (Compliance Program), Personal Insolvency Regulator (PIR) newsletter, Personal Insolvency Practitioner Compliance Report, annual report, through regular stakeholder engagement, communication and media channels and the Regulator Performance Framework.
- We work with other Commonwealth agencies including the Australian Taxation Office (ATO), the Australian Securities & Investments Commission (ASIC) and the Commonwealth Director of Public Prosecutions (CDPP) to provide relevant information to practitioners including via the PIR newsletter.
- Efficiency savings for regulated entities are reported to the Attorney-General's Department (AGD).

Status: Achieved

KPI 2

Communication with regulated entities is clear, targeted and effective

Commentary:

- We've updated all web-based guidance materials for Insolvency *Law Reform Act 2016* (ILRA) Tranche 2 amendments, which took effect 1 September 2017.
- Information sheets and PIR articles released to provide guidance to practitioners.
- Ongoing formal and informal liaison with stakeholders, including the Australian Restructuring Insolvency and Turnaround Association (ARITA), Personal Insolvency Professionals Association (PIPA) and financial counsellors.

Status: Achieved

KPI 3

Actions undertaken by regulators are proportionate to the regulatory risk being managed

Commentary:

- Risk-based approach adopted and documented in Compliance Program.
- Consultation with professional associations on industry trends and issues, which influence regulatory action.
- New risk profiling system implemented internally.

Status: Achieved

KPI 4

Compliance and monitoring approaches are streamlined and coordinated

Commentary:

- Stakeholder liaison meetings held with ARITA, PIPA, ASIC and the ATO on a regular basis. We discuss compliance and monitoring approaches during these meetings.
- Meetings with other key stakeholders, including with practitioners from South Australia and Western Australia.
- Specific, and ongoing, work with ASIC in relation to the ILRA.

Status: Achieved

KPI 5

AFSA is open and transparent in our dealings with regulated entities

Commentary:

- Regular engagement with ARITA, PIPA, Insolvency Law Reform Committee (Law Council's Insolvency and Reconstruction Law Committee), CDPP, and ASIC occurred.
- We published our Personal Insolvency Practitioner Compliance Report for 2016–17 in December 2017, and spoke about outcomes at conferences and key stakeholder events.
- We published key outcomes and discussion points from stakeholder liaison meetings.

Status: Achieved

KPI 6

AFSA actively contributes to the continuous improvement of regulatory frameworks

Commentary:

- AFSA is continuing to work closely with ASIC and professional associations to assist with the alignment of regulatory processes because of the ILRA. This will contribute to a consistent and cohesive regulatory framework for insolvencies, both corporate and personal.
- Liaison with AGD regarding proposed law reform, providing insight on issues from industry trends.

Status: Achieved

KPI 1

Regulators do not unnecessarily impede the efficient operation of regulated entities

PERFORMANCE MEASURES

- (i) AFSA's risk-based Compliance Program is developed by applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the annual release of the program.
- (ii) AFSA raises awareness of regulatory activity and known compliance risks through targeted delivery of information, including through publishing the results of the Compliance Program and material outcomes.
- (iii) Complaints about regulatory activity are investigated and responded to in accordance with AFSA's complaints and compliments framework.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers that it has met this KPI for the 2017–18 financial year. This assessment is based on the following factors:

- (i) We publicly released our 2017–18 Compliance Program on the AFSA website on 12 July 2017. Discussion at regular stakeholder liaison meetings and an article in the October 2017 PIR highlighted its release. To develop the program, we adopted a risk-based approach and used available data and intelligence—including that obtained during regular meetings with the profession. AFSA consulted with professional associations prior to release of the program.
- (ii) We raised awareness of regulatory activity, compliance risks and relevant issues through the PIR newsletter and in media releases on enforcement outcomes. In June 2018, we also introduced quarterly Enforcement and Regulation snapshot webpages to raise awareness of our regulatory activity.
- (iii) Our complaints handling procedure is available on the AFSA website. Complex complaints are resolved as soon as possible and AFSA communicates with complainants to provide regular updates. All complaints received were handled in accordance with AFSA's policy. One complaint about AFSA's enforcement activities was found to be partially substantiated. This finding resulted in additional training for relevant staff. Remedies for complainants also included the provision of additional information and better explanations.

Other:

1. Our deregulatory reports to AGD from 1 July 2017 to 30 June 2018 outlined a \$412,929 regulatory savings.



Case study: Improving online services for stakeholders

We have improved our debt agreement services for stakeholders and provided an additional way for people to interact with us about debt agreement matters.

Through AFSA's online services, clients can now lodge:

- debt agreement proposals
- variation proposals
- termination proposals
- notification of completion forms
- notification of six-month arrears default forms.

Previously, if an individual or a debt agreement administrator wanted to submit debt agreement forms, they could only do so by email, fax and post. They can now log in to AFSA's online services to complete and submit these forms.

Business-to-government

We have also improved our business-to-government (B2G) services. The B2G channel is a way of accessing AFSA's services where instead of using the AFSA online services interface, clients build their own interface. Our B2G debt agreement administrator clients are working to integrate with our new debt agreement services by utilising our 'Discovery' environment, with the 'Production' environment deployed and ready for use when they have completed their integration. Our B2G channel currently supports the lodgement of debt agreement proposals, with the release of additional forms occurring later this year.

KPI 2

Communication with regulated entities is clear, targeted and effective

PERFORMANCE MEASURES

- (i) All guidance materials¹ for regulated practitioners will be monitored to ensure the provision of relevant and current information in the most accessible format for stakeholders.
- (ii) Consultation periods actively promoted, feedback considered and communicated by AFSA with relevant professional bodies prior to any regulatory changes.
- (iii) KPIs for completion of complaints and Inspector-General reviews support timely, clear and consistent decisions and advice.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers that it has met this KPI for the 2017–18 financial year. This assessment is based on the following factors:

- (i) The commencement of the second tranche of the ILRA on 1 September 2017 resulted in the update and release of several Inspector-General Practice Statements (IGPS) and Inspector-General Practice Directions (IGPD). IGPS's explain when and how the Inspector-General in Bankruptcy (IG) will exercise specific powers under the *Bankruptcy Act 1966* (the Bankruptcy Act). IGPD's assist regulated entities by explaining how the law should be interpreted, giving guidance on specific insolvency practice. The following practices were updated during the period: IGPS 1, IGPS 10, IGPS 13, IGPS 14, IGPS 15, IGPS 16, IGPS 18, IGPD 1, IGPD 5, IGPD 6, IGPD 12, IGPD 18, IGPD 21 and IGPD 22. We are undertaking ongoing consultation with stakeholders—and regulated entities in particular—to improve navigation and accessibility of information for users. We have published a dedicated page on the AFSA website to provide quick access to current information about ILRA changes affecting practitioners (see case study below).
- (ii) AFSA uses a documented consultative approach to regulatory changes. We seek and consider feedback from relevant stakeholders before finalising any material changes, and we provide a response to feedback provided. Regular liaison meetings with professional associations are also used for this purpose.
- (iii) The KPIs for complaints and IG reviews are time-based and monitor completion of activities, and internal KPI supports quality decisions. We investigate exceptions to identify opportunities for improvement. We also internally monitor a KPI for decisions overturned by the Administrative Appeals Tribunal. No exceptions occurred.



Case study: New PIR newsletter format

We changed the format of our quarterly PIR newsletter due to client feedback. We successfully transitioned the newsletter to a new online, mobile friendly format. The first edition had an open rate of 26.6% and a click rate of 15.6%. Approximately fifty per cent of devices used to open the document were mobile devices.

Case study: Easy access to ILRA information

AFSA created a dedicated webpage to provide a 'one-stop-shop' for registered trustees to access information about ILRA changes (www.afsa.gov.au/professionals/about-insolvency-law-reform-act-ilra). It includes comparative tables for old and new provisions, quick access to current legislation and new approved AFSA forms along with a link to questions and answers for ILRA changes affecting registered trustees.

¹ These include Inspector-General Practice Statements, Practice Directions and Practice Guidelines.

KPI 3

Actions undertaken by regulators are proportionate to the regulatory risk being managed

PERFORMANCE MEASURES

- (i) AFSA's risk-based Compliance Program is developed applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the annual release of the program.
- (ii) AFSA raises awareness of regulatory activity and known compliance risks through targeted delivery of information, including through publishing the results of the Compliance Program and of material outcomes.
- (iii) AFSA maintains a risk-based process prior to initiating investigation about regulated practitioners.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers that it has met this KPI for the 2017–18 financial year. This assessment is based on the following factors:

- (i) Refer to KPI 1 (i).
- (ii) Refer to KPI 1 (ii).
- (iii) We've outlined our risk-based process and regulatory framework in IGPS 1, which was updated in August 2017 after feedback from practitioner associations was sought. Internal processes and guidance reflect and adopt that risk based approach enabling AFSA's resources to focus on areas of most potential harm.



Case study: New risk profiling system

We released a new risk profiling system internally in March 2018. This has greatly expanded our data source from six to 33 criteria, which use objective and validated data from a range of AFSA systems. The criteria are allocated to six different categories. This allows us to assess the real time and historical risk profile of our personal insolvency practitioner population based on a total risk, category risk and criteria risk. We can compare each practitioner's risk profile to the general practitioner population and determine which entities are outliers in each risk category, criteria and overall. We can use this data to target the higher risk practitioners for our inspection program or for specific compliance focus areas each year.

KPI 4

Compliance and monitoring approaches are streamlined and coordinated

PERFORMANCE MEASURES

- (i) AFSA's risk-based Compliance Program is developed applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the annual release of the program.
- (ii) Stakeholder meetings, including with relevant professional associations, ASIC as key co-regulator and international regulators (including through the IAIR) occur regularly throughout the year to inform updates to the risk-based compliance programs.
- (iii) Professional associations are provided with various channels to provide feedback about AFSA's regulatory processes.
- (iv) AFSA maintains and participates in appropriate information sharing arrangements and relationships with relevant entities to enhance regulatory intelligence and coordinate regulatory activity where possible.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers that it has met this KPI for the 2017–18 financial year. This assessment is based on the following factors:

- (i) Refer to KPI 1 (i).
- (ii) Regular meetings with ARITA, PIPA, ASIC, CDPP, ATO and the New Zealand Insolvency & Trustee Service occurred. We also held meetings with the AGD to discuss potential law reform. The Chief Executive (and Inspector-General) of AFSA attended the annual IAIR conference and AGM in London from 5–7 September 2017. The Annual Forum for debt agreement administrators was jointly held with PIPA in October 2017. Other meetings occurred with the following stakeholders: practitioner meetings in Perth and Adelaide with the Chief Executive, Australian Small Business Family Enterprise Ombudsman, Australian Finance Industry Association, Commonwealth Ombudsman, Inspectors-General, Hire and Rental Industry Association, Financial Counselling Australia, Financial Ombudsman Services, Australian Federal Police, and Consumer Action Law Centre. Relevant outcomes from these meetings influence AFSA's compliance program activities and planning.
- (iii) Communication channels available to professional associations and practitioners included industry liaison meetings, participation in working groups for the ILRA, contribution of articles to the PIR and provision of direct feedback on the Compliance Program. The Annual Forum for debt agreement administrators continued to provide an additional channel to receive feedback and provide regulatory information to and from PIPA and its members in October 2017. A major creditors' forum was also held in September 2017, where issues of common interest to creditors in debt agreements and bankruptcy were discussed. AFSA attended and presented at the Australian Institute of Credit Management National Conference in October 2017.
- (iv) AFSA hosted the AFSA-CDPP national workshop in May 2018. This was the second workshop of its type and first hosted by AFSA. While AFSA and the CDPP have independent roles, independence does not mean working in isolation. The workshop provided an opportunity for a mix of AFSA Enforcement staff and CDPP prosecutors to communicate and collaborate on key issues and develop and refine strategies to obtain effective outcomes that maintain public confidence in the personal insolvency system. Memorandums of Understanding are in place with regulatory and relevant stakeholders including ASIC, ATO, Department of Human Services, Australian Electoral Commission and ARITA. These all include information sharing arrangements. AFSA has also regularly participated in the Interagency Regulators Forum. AFSA is a regular participant in meetings of the Law Council's Insolvency and Reconstruction Law Committee where implementation of legislative amendments to the Bankruptcy Act via the ILRA have been a regular topic. AFSA is a member of the multi-agency Phoenix Taskforce. AFSA continues to share information and contribute to taskforce initiatives as required.

Case study: Working closely with ASIC

In preparation for the harmonisation of registration and disciplinary processes under the ILRA, we worked closely with ASIC by sharing our experience in the process for registering and disciplining practitioners. AFSA staff met with ASIC staff to explain the process and share practice guidance, interview questions, redacted show cause notices and other templates. AFSA staff have continued to work closely with ASIC to discuss any issues arising under the new harmonised legislation so that a coordinated and, as far as possible, uniform approach is taken to practices.



KPI 5

AFSA is open and transparent in our dealings with regulated entities

PERFORMANCE MEASURES

- (i) IGPS1 Regulatory Framework is reviewed and updated at least annually. It is published on the AFSA website in accessible format.
- (ii) Practitioners provided with various channels to provide feedback about AFSA's regulatory practice.
- (iii) AFSA's annual Compliance Report is publicly available and includes results for all regulatory performance measures.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers that it has met this KPI for the 2017–18 financial year. This assessment is based on the following factors:

- (i) We updated the IGPS 1 Regulatory Framework in August 2017 after consulting with the professional associations. It is available on the AFSA website in HTML and is under continuous review.
- (ii) Refer to KPI 4 (iii). AFSA's compliance report for 2016–17, including a summary of stakeholder feedback received, was published in December 2017. Feedback about AFSA's regulatory practice is sought from PIPA and ARITA as a standing agenda item at liaison meetings. There is also an online portal on the AFSA website for practitioners to provide feedback about AFSA's services.
- (iii) We published our 2016–17 compliance report on the AFSA website in December 2017. All regulatory performance measures were included in addition to the key outcomes and feedback from stakeholder liaison activities. Key outcomes and issues are identified and discussed with stakeholders, including at practitioner conferences and forums.



Case study: Compliance program strategic focus areas

Each year, we choose suitable strategic focus areas to form the core of our compliance program. We select these areas of focus by analysing emerging trends and by reviewing multiple data holdings, including practitioner compliance history and common errors where the greatest harm is having an effect on stakeholders. When the proposed strategic areas are selected, we share them with professional associations, such as ARITA and PIPA, AFSA stakeholders and other relevant government agencies for feedback and further thoughts. Once we incorporate the feedback into the compliance program, it is published to AFSA's website and a media release is issued. In following this process, AFSA is open and transparent in its dealings with regulated entities. We publish our progress and outcomes against the program throughout the financial year and at its end. We may communicate these via media releases or PIR newsletter articles, and culminate in the preparation and publication of the Personal Insolvency Practitioner Compliance Report.

KPI 6

AFSA actively contributes to the continuous improvement of regulatory frameworks

PERFORMANCE MEASURES

- (i) Stakeholder meetings, including with AGD, relevant professional associations, and ASIC (as key co-regulator) occur regularly throughout the year to inform updates to the risk-based compliance program.
- (ii) Feedback is provided to the BRCF and professional associations at least annually on key regulatory outcomes and issues.
- (iii) Practitioners are provided with various channels to provide feedback to improve regulatory practice and procedure. Feedback is used to inform AFSA's regulatory practice and procedure amendments, with stakeholders informed about improvements made in response to feedback received.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers that it has met this KPI for the 2017–18 financial year. This assessment is based on the following factors:

- (i) Refer to KPI 4 (ii) and case study. Meetings with AGD on potential law reform (see case studies below).
- (ii) Refer to KPI 4 (iii). The PIR is published quarterly and is used to communicate with practitioners on feedback received and key regulatory outcomes and issues. The most recent publication date was June 2018.
- (iii) Refer to KPI 1 (Other), KPI 4 (iii) and KPI 5 (ii).



Case study: Bankruptcy Amendment (Enterprise Incentives) Bill 2017 (the Bill)

AFSA continues to assist AGD with aspects of the Bill relating to the one-year bankruptcy proposed amendments.

- The Bill was introduced in the Senate on 19 October 2017 and was referred to a Senate Committee.
- AFSA made a submission and gave evidence at public hearings into this Bill and the Bankruptcy (Debt Agreement Reform) Bill.
- The Committee report recommended that the Bill be passed, subject to the Government giving positive consideration to some amendments to the Corporations Act proposed by ASIC, which would be intended to prevent a one-year disqualification period for directors applying to 'undeserving' persons.
- An AFSA project board is managing preparations for the proposed changes.

Case study: The Bankruptcy (Debt Agreement Reform) Bill 2018 (the Debt Agreement Bill)

AFSA has been working with AGD on debt agreement reform proposals.

- The Bankruptcy (Debt Agreement Reform) Bill 2018 was introduced in the House of Representatives on 14 February 2018 and was debated and passed on 28 February 2018.
- The Debt Agreement Bill was introduced and had its second reading speech in the Senate on 19 March 2018.
- The Debt Agreement Bill was referred to a Senate Committee.
- AFSA made a submission and appeared at a public hearing on 5 March.
- The Committee report recommended that the Government consider allowing the 3-year cap to be extended an additional 2 years by agreement, and consider changes to the payment to income ratio proposal to be more tailored to debtor circumstances. Subject to those recommendations, the Committee recommended the Debt Agreement Bill be passed.