

Discussion points from the joint AFSA/ARITA/ASIC liaison meeting
13 December 2018

ARITA update

- A draft of new ARITA Code has been published for consultation and the Practice Statements which accompany the Code will be released shortly.
- ARITA to run Town Hall meetings for members nationally commencing in February.
- The ARITA National Conference was held 24-25 October 2018. It was well attended and ARITA thanked the representatives from AFSA and ASIC, who made presentations.

AFSA update

- In the September quarter debt agreements comprised 46% of all personal insolvencies compared with 53.3 % for bankruptcies.
- AFSA hosted a Personal Insolvency Stakeholders Forum on 14 November 2018. The forum drew representatives from ARITA, ASIC ATO, PIPA, AIIP AICM, Consumer Action Law centre, Financial Counselling Australia, Law Council & Financial Rights Legal Centre. The forum discussed current issues in personal insolvency – law reform, untrustworthy advisors and creditor engagement. The forum will become a regular fixture every 6 months.
- AFSA will soon be publishing the Personal Insolvency Compliance Report for 2017-18 on regulatory outcomes and the performance of personal insolvency practitioners.

ASIC update

- ASIC Karen Chester has been appointed as a second Deputy Chair of ASIC. Karen was previously a Deputy Chair of the Productivity Commission. This brings the number of ASIC commissioners to seven.
- ASIC noted changes to its structure that included 10 Executive Directors that will sit between the Commission and the Senior Executive Leader group and have primary responsibility for ASIC's day-to-day operations. The ASIC Commission will continue to provide strategic leadership.
- The insolvency Practitioners team remains part of the Markets group of which Greg Yanko is the Executive Director.
- ASIC noted that ASIC will embed staff in the four major banks under its close and continuous monitoring project.
- ASIC informed the meeting that Adrian Brown (a Senior Executive in the Insolvency Practitioner team) retires from ASIC on 21 December 2018.

Insolvency law reform

- ASIC noted significant reform proposals; including the reforms to combat illegal phoenix activity and introduction of a director identify number as well as

an increase in the Assetless Administration Fund to fund liquidator investigation and recovery action where phoenix activity is suspected.

- ASIC noted recent amendments to the Insolvency Practice Rules (Corporations) 2016 restricting related party voting rights.
- AFSA noted that the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 was still under consideration by the Senate while the Bankruptcy Amendment (Debt Agreement Reform) Act 2018 is due to commence 27 June 2019.
- The meeting discussed issues raised about aspects of the recent insolvency law reform and noted these had been referred to the relevant government department.

Untrustworthy pre-insolvency advisors and illegal phoenix activity

- ARITA noted that this issue continues to be a major concern with the profession.
- ASIC noted the existence of grants under the Assetless Administration Fund to facilitate the examination of directors and others suspected of facilitating illegal phoenix activity.
- ASIC noted a tightening up of access to its registers through the ASIC registered agents' portal.
- Noted that ASIC and AFSA will be engaging more closely with other professional bodies in relation to untrustworthy advisors.

Review of Code of Professional Practice

- ARITA explained the rationale behind the revised draft Code to better reflect the membership of ARITA and the work they do. .
- The draft Code was undergoing broad consultation with ARITA members, regulators and other key stakeholders.

Access and preservation of records stored in the cloud

- ASIC suggested the meeting consider both guidance and policy issues (including possible legislative amendment to broaden the scope of s600F).
- ARITA noted that feedback from members is that providers are insisting on payment in order to provide access.
- ASIC suggested that a working party be established to produce a fact sheet for registered liquidators and trustees to assist them gain access to the records stored in the cloud and to consider the longer term policy point.

Gender and age diversity

- ASIC noted its membership of the Diversity Council of Australia and the role of Helen O'Loughlin as Chief of Staff, Office of the Commission in ASIC.
- Work on this issue by ASIC, ARITA and AFSA will continue.

Mental health working group (MHWG)

- AFSA noted that a media release on the training material for practitioners would be going out next week and there would be an email to practitioners. The training is a 90 minute online course which is free.
- Expectation for practitioners is that they will engage with the process within the first 12 months of introduction.

Common Risks

- The meeting agreed that following Royal Commission report future meetings should consider common or shared risks.

Use of Logos

- ARITA noted inappropriate use of ARITA logo by firms in circumstances where not all members of the firm are ARITA members.
- AFSA noted inappropriate use of Commonwealth & ASIC logo by one trustee on their website, who had since been contacted & amended website.
- ASIC, AFSA and ARITA agreed to share instances when the inappropriate use of a logo is identified.

Next meeting

- To be scheduled in mid-2019.