



Australian Government

Australian Financial Security Authority

**AUSTRALIAN FINANCIAL
SECURITY AUTHORITY
PERSONAL INSOLVENCY
PRACTITIONERS
COMPLIANCE REPORT
2014-15**

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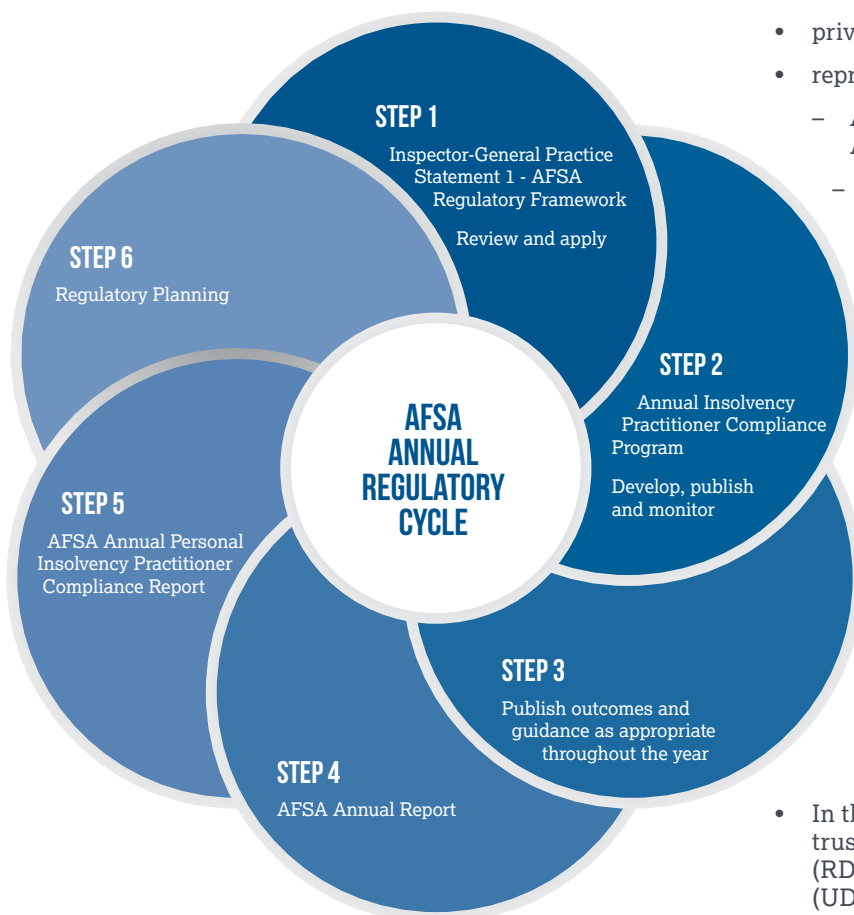
Our regulatory role

AFSA's regulatory and enforcement functions are exercised by the Inspector-General in Bankruptcy. These encompass the registration, monitoring and inspection of private personal insolvency practitioners and investigation of alleged offences under the Bankruptcy Act 1966 and specified sections of the Criminal Code.

These activities serve to ensure high national standards of personal insolvency practice and procedure, compliance with the Bankruptcy Act 1966 and to fulfil AFSA's purpose to:

“Provide improved and equitable financial outcomes for consumers, business and the community through application of bankruptcy and personal property securities law, regulation of personal insolvency practitioners and trustee services.”

AFSA's regulatory role is captured in the following six step annual regulatory cycle:



Purpose of this report

AFSA is committed to increasing transparency in reporting regulatory outcomes and performance of private personal insolvency practitioners. It is important that all stakeholders affected by insolvency and the profession itself are provided with timely and relevant data and analysis in the interests of continuous improvement.

AFSA's 2014–15 Insolvency Practitioner Compliance Program (**Annexure A**) delivered a structured compliance program across each of the eight core roles that make up AFSA's regulatory and enforcement function. The **Personal Insolvency Practitioners Compliance Report 2014–15** (the Report) is an assessment of private practitioner performance during 2014–15 together with AFSA's performance as measured against that program, including significant regulatory outcomes achieved in the public interest. The report is also relevant to AFSA's Regulator Performance Framework and our performance as a regulator.

This information expands on that contained in the AFSA 2014-15 Annual Report and provides stakeholders with additional qualitative data. It also complements the range of statistics published by AFSA such as, *Annual Administration Statistics*, and summarises significant regulatory outcomes as highlighted in the Personal Insolvency Regulator Newsletter (PIR) editions throughout 2014–15.

The report is of interest and relevance to all AFSA stakeholders but will particularly appeal to:

- private personal insolvency practitioners (PIPs)
- representative professional bodies:
 - Australian Restructuring Insolvency & Turnaround Association (ARITA)
 - Personal Insolvency Professionals Association (PIPA)
 - CPA Australia and
 - Chartered Accountants Australia and New Zealand
- financial counsellors and representative associations
- major creditors and representative associations
- lawyers practising or interested in insolvency
- regulatory bodies in Australia and overseas such as International Association of Insolvency Regulators
- academics.

Reader's note

- In the context of this report PIP includes registered trustees (RTs), registered debt agreement administrators (RDAAAs) and unregistered debt agreement administrators (UDAAAs).
- We have rounded information in this report to whole numbers using standard rounding conventions. For this reason, percentages cited in tables may not always add to 100%.
- Summary data compared to average annual mean figures over the five year period from 1 July 2010 to 30 June 2015 is shown (Annexure B) for comparative purposes and to provide useful context. While some qualitative contextual text is provided in this report, comparisons to previous AFSA Annual Reports will provide the greatest amount of relativity to this data.

Executive Summary 2014–15

By the major outcomes

- ➔ Undertaking an internal review of AFSA's regulatory practices and procedures to ensure efficient and effective service delivery and reduction in compliance burden on PIPs.
- ➔ Facilitating the voluntary deregistration of an RT following disciplinary proceedings initiated by AFSA over several systemic errors and failure to properly perform duties of a trustee.
- ➔ Facilitating repayment of overcharged fees by PIPs back into personal insolvency administrations for distribution to creditors or as surplus funds to discharged bankrupts.
- ➔ Facilitating better and earlier engagement between debtors, bankrupts, creditors and PIPs to ensure timely administration and communication of information.
- ➔ Improving the level of independence and disclosures by PIPs both at meetings and when reporting to creditors.
- ➔ Publishing revised Inspector-General Practice Statement 10 (IGPS 10) on handling complaints against PIPs to facilitate better and earlier resolution of grievances from bankrupts, debtors and creditors.
- ➔ Addressing systemic areas of non-compliance by providing guidance through Personal Insolvency Regulator (PIR) articles, online podcasts and information sessions for PIPs.
- ➔ Assessing appropriate use of compliance tools (such as objections to discharge and compulsory notices) by PIPs to ensure debtors and bankrupts meet their obligations.
- ➔ Embracing technology to enhance AFSA's capability to effectively monitor advertising of debt agreements across multiple platforms including TV, radio, print and online.
- ➔ Proactively monitoring RDAA compliance with Inspector-General Practice Guideline 1 (IGPG 1) on debt agreement advertising to ensure misleading or unbalanced content is corrected, removed and/or referred to ASIC for investigation.
- ➔ Expanding eInspections to reduce the compliance burden of physical inspections on PIPs by remotely inspecting their electronic administration files and online systems.
- ➔ Introducing new pre-referral enquiry (PRE) process for PIPs to facilitate early contact and prompt reporting of alleged offences to AFSA.

Executive Summary 2014–15

By the numbers

- 279 PIPs surveyed during March 2015 on AFSA's regulatory role and functions
 - 49 Surveys completed by PIPs and feedback received from ASIC, ARITA and PIPA.
- 281 Registered PIPs as at 30 June 2015 made up of 212 RTs and 69 RDAAs
 - 23 Applications for registration as PIPs were received of which 16 were accepted, 5 were not accepted and 2 were pending decision as at 30 June 2015.
 - 11 PIPs were deregistered due to voluntary resignation or lapsed registration.
- 90 PIPs inspected
 - 77 Were physical on-site inspections.
 - 13 Were remote off-site eInspections.
- 353 Personal insolvency administrations inspected
 - 170 Errors or issues identified.
- 4 RTs found to have overcharged fees or improperly dealt with trust monies
- 90 Debt agreement advertisements were reviewed
 - 9 Cases of intervention to correct or remove misleading or unbalanced advertising.
- 316 Part X and section 73 proposals reviewed
 - 32 Creditors meetings attended.
 - 8 Cases of proactive regulatory intervention to oversee necessary corrective action.
- 253 Complaints received about PIPs
 - 22 Were considered justified.
- 227 Requests received for Inspector-General reviews under the Bankruptcy Act
 - 214 Inspector-General reviews were finalised.
- 384 Bankruptcy Act offence referrals received from PIPs
 - 211 Were accepted for further investigation.
- 501 Bankruptcy Act offence pre-referral enquiries (PREs) received from PIPs
- 122 Infringement notices issued to PIPs, petitioning creditors and executors
 - 29 Were issued to RTs.
- 4 Personal Insolvency Regulator Newsletter editions published
- 32 Information sessions delivered to PIPs and their staff on offence referrals

AFSA's Regulatory and Enforcement functions – 8 core roles

How we go about what we do

1. Registration

Central to all effective regulatory regimes is finding a balance between promoting entry of suitable new applicants in the interests of competition and economic growth and protecting stakeholders by preventing entry of unsuitable new applicants into the system.

AFSA is responsible for registering only suitably qualified persons to practice as RTs and RDAAs.

Further information on the registration process for RTs is detailed in Inspector-General Practice Statement 13 and for RDAAs in Inspector-General Practice Statement 4. Both documents are available on AFSA's website.

2. Inspections

If an applicant for registration is successful, the PIP then becomes part of the personal insolvency industry and is able to take appointments to administer personal insolvency administrations. On occasion this may be subject to conditions that have been imposed in granting registration. Every private registered practitioner is given a risk rating which guides AFSA on how often and to what extent that practitioner will be subject to a physical inspection.

AFSA is responsible for reviewing the standards of RTs and RDAAs through a targeted program of inspecting files, systems and practices.

Further information on the inspection process for RTs and RDAAs is detailed in Inspector-General Practice Statement 11, available on AFSA's website.

3. Proactive monitoring

One of our regulatory tools is to proactively monitor administrations to identify those with certain traits that may represent a higher degree of risk and complexity. AFSA proactively monitors:

- solicitor controlling trustees (SCTs) and unregistered debt agreement administrators (UDAAs) to assess their ongoing eligibility to act
- debt agreement advertising to ensure compliance with Inspector-General Practice Guideline 1 and the PIPA Code of Professional Conduct
- creditor meetings convened to consider Personal Insolvency Agreement (PIA) and Composition proposals.

In 2014–15 targeted exercises were undertaken in relation to:

- monitoring misleading or unbalanced advertising of insolvency practitioner services
- promoting compliance by RTs with their duty to identify and refer offences to AFSA

- identifying over-servicing and/or over-charging of remuneration and disbursements
- improper handling or reconciliation of trust funds by PIPs under the Bankruptcy Act
- effective use of compliance tools ensuring debtors/bankrupts discharge their duties.

Further information on the proactive monitoring process for RTs, RDAAs and SCTs is detailed in Inspector-General Practice Statement 11 and Inspector-General Practice Guideline 1, both available on AFSA's website.

4. Guidance

As the regulator of PIPs, AFSA has a role in providing practical guidance to the industry¹. We do this in a number of different ways in the interests of promoting best practice. These include:

- offering information sessions to PIPs on technical areas of interest
- quarterly publication of the Personal Insolvency Regulator (PIR) newsletter
- providing practice guidance through Inspector-General practice directions, podcasts, statements and guidelines
- releasing podcasts² on topical subjects in response to stakeholder feedback

5. Complaints

AFSA is responsible for investigating complaints made by debtors, creditors and others about the conduct of PIPs with a focus on early intervention and dispute resolution. However, AFSA encourages PIPs to effectively utilise their own internal complaint handling processes in responding to complainants wherever possible³.

The complaints handling process for RTs and RDAAs is detailed in Inspector-General Practice Statement 10⁴.

6. Inspector-General reviews

AFSA is responsible for reviewing prescribed decisions made by RTs including:

- filing an objection to a bankrupt's discharge from bankruptcy
- assessing a bankrupt's income and liability to pay compulsory contributions
- refusing a bankrupt's hardship application to pay compulsory contributions
- imposing a Supervised Account to collect compulsory income contributions
- claiming remuneration.

AFSA is also responsible for reviewing and determining requests to approve RT remuneration in certain circumstances upon application to the Inspector-General.

1 Consistent with the ANAO *Guide to Better Practice Regulation – Achieving the Right Balance*, June 2014 p17.

2 A four part series of podcasts were released on AFSA's YouTube channel in 2014–15 about remuneration.

3 Consistent with the ANAO *Guide to Better Practice Regulation – Achieving the Right Balance*, June 2014 p23.

4 A revised IGPS 10 was released in August 2014 and published on AFSA's website.

Again the focus is to proactively intervene to address practice issues or resolve disputes.

Further information on the process of Inspector-General reviews is detailed in Inspector-General Practice Statements (IGPS) 12, 15 and 16, all of which are available on AFSA's website.

7. Disciplinary action

An important aspect of AFSA's ongoing strategic focus is forging productive working relationships with all stakeholders⁵. This includes sharing information/intelligence to identify and address problematic systemic issues through early intervention. This is done in conjunction with private practitioners wherever possible.

Where necessary AFSA takes disciplinary action (and applies relevant sanctions) against PIPs who do not comply with their duties under the Bankruptcy Act 1966. Outcomes are published by way of media release where possible.

Further information on the disciplinary process for RTs and RDAAs is detailed in Inspector-General Practice Statements 8 and 9 respectively, both of which are available on AFSA's website.

8. Investigate offences against the Bankruptcy Act and prosecute if appropriate

AFSA is responsible for the assessment and investigation of alleged offences against the Bankruptcy Act 1966 received from PIPs, creditors and other members of the public.

Where appropriate, investigations are referred to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution. Significant prosecution outcomes are published on AFSA's website by way of media release.

Further information on the offence investigation process is detailed in Inspector-General Practice Statements 6, 14 and 18 which are all available on AFSA's website.

Inspector General Practice Statements (IGPSs) are available on our website and give guidance to regulated entities by explaining when and how AFSA will exercise specific powers under the Bankruptcy Act, describing underlying principles and the expectation of practitioners.

Internal review of regulation

Delivering efficient and effective services

A key element of AFSA's 2014–17 Strategic Plan is optimising service delivery. This involves continually improving our processes, governance and resource management to support quality service delivery. This also aligns with the Public Governance, Performance and Accountability Act 2013 (PGPA) which requires the efficient, effective, economical and ethical use or management of public resources.

Consistent with this, AFSA continued its internal review of its regulatory practices and procedures in 2014–15 (in consultation with stakeholders⁶) to identify areas for improvement. Several recommendations have been implemented to date including:

- Enhancing AFSA's monitoring capabilities of advertised insolvency services (particularly debt agreements) and clarifying the parameters of acceptable advertising by RDAAs and brokers
- Expanding the implementation of AFSA's remote access and desktop eInspections to a greater number of PIPs
- Implementing the pre-referral enquiry (PRE) process to address the reasons why many offence referrals by PIPs were not accepted by AFSA for investigation.

Reducing regulatory compliance burden

AFSA's internal review of regulation is consistent with the government's broader deregulation agenda aimed at 'Cutting Red Tape' in line with the principles articulated in its Guide to Regulation, which includes:

- Ensuring options offering the greatest net benefit are always recommended
- Imposing regulation only when it can be shown to offer an overall net benefit
- Offsetting the cost burden of any new regulation by reductions in existing regulatory burdens
- Preparing a Regulatory Impact Statement (RIS) for every substantive regulatory change
- Consulting in a genuine and timely way with affected stakeholders
- Consulting with other regulators to avoid creating cumulative or overlapping regulatory burdens
- Publishing information on which decisions are based at the earliest opportunity
- Implementing regulation with common sense, empathy and respect
- Periodically reviewing regulations to test their continuing relevance
- Working closely with the portfolio Deregulation Units throughout the regulatory making process.

⁵ Consistent with the ANAO *Guide to Better Practice Regulation – Achieving the Right Balance*, June 2014 p15.

⁶ Including ASIC, ARITA, PIPA, all RTs and RDAAs.

New regulatory performance framework

To achieve its deregulatory aims, the government also began work in 2014–15 to improve the performance of regulators. This included supporting regulators to adopt consistent, risk-based approaches to administering regulation. This was done by developing the Regulator Performance Framework (RPF).

The RPF encourages regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives and to effect positive ongoing and lasting cultural change. The RPF will allow AFSA to report objectively on its efforts to administer regulation fairly, effectively and efficiently. It will also be a useful tool for AFSA to identify opportunities for improvement and better target its resources for greater impact. The RPF will also assist in highlighting where improvement of our regulatory framework could reduce compliance costs.

The RPF includes:

- 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.

AFSA has developed performance measures to enable an assessment against the KPIs and completed its RPF⁷ to implement the new process from 1 July 2015.

Performance on core Regulatory and Enforcement activities

Registrations

As at 30 June 2015, there were 281 PIPs in Australia comprised of 212 RTs and 69 RDAs.

During 2014–15 these 281 PIPs received and held on trust a total of \$561.23 million, finalised 13,563 personal insolvency administrations and had 57,177 administrations on hand on 30 June 2015⁸.

Of the \$561.23 million received by PIPs, \$235.83 million (or 42%) was paid in dividends to creditors while \$146.39 million (26%) was paid in PIP fees.

If we compare this to 30 June 2011, there were 267 PIPs in Australia made up of 211 RTs and 56 RDAs. At that time they received and held \$385.67 million on trust, finalised 8,010 personal insolvency administrations and had 46,899 administrations on hand. Of the \$385.67 million received by PIPs during 2010–11, \$151.48 million (or 39%) was paid in dividends to creditors while \$89.53 million (or 23%) was paid in PIP fees.

During the five financial years ending 30 June 2011 to 30 June 2015, the number of administrations on hand with PIPs increased 22% while the dollar value of monies held on trust increased 46%. Over the same period RT numbers have kept steady while RDAA numbers have increased 23%.

New entrants to the market

Registered trustees

AFSA received 12 new applications from prospective RTs in 2014–15. Of these, seven (58%) were accepted, four were not accepted and one was pending decision as at 30 June 2015.

In the five years from 1 July 2010 to 30 June 2015, AFSA received an average of 10 applications annually from people seeking to be an RT.

Table 1: Number of RT registrations in 2014-15

State or Territory	No. of RTs 1 July 2014	No. of RT applications received	No. of RT applications accepted	No. of RT applications rejected [#]	No. of RTs registered	No. of RTs deregistered	No. of RTs 30 June 2015
NSW	62	7	4	3	7	4	*64
ACT	5	0	0	0	0	0	5
Vic	47	1	1	2	1	0	*49
Qld	49	2	1	1	1	0	50
SA	16	0	0	0	0	2	14
NT	1	0	0	0	0	0	1
WA	22	2	1	0	2	2	22
Tas	7	0	0	0	0	0	7
Total	209	12	7	6	11	8	212

* One NSW registered RT relocated to VIC leading to changed figures at 30 June 2015 from 65 to 64 (in NSW) and from 48 to 49 (in VIC).

Includes two RT applications received the previous year which were pending decision at 30 June 2014 and were not accepted in 2014–15.

7 The completed and approved RPF is available on AFSA's website.

8 The completed and approved RPF is available on AFSA's website.

Table 2: Number of RDAA registrations in 2014–15

State or Territory	No. of RDAAs 1 July 2014	No. of RDAA applications received	No. of RDAA applications accepted ^{##}	No. of RDAA applications rejected	No. of RDAAs registered	No. of RDAAs deregistered	No. of RDAAs 30 June 2015
NSW	19	2	2	0	2	3	**20
ACT	0	0	0	0	0	0	0
Vic	8	2	2	0	2	0	10
Qld	24	5	6	1	6	0	**28
SA	3	0	0	0	0	0	3
NT	0	0	0	0	0	0	0
WA	5	1	1	0	1	0	6
Tas	2	1	0	0	0	0	2
Total	61	11	11	1	11	3	69

** Two Qld registered RDAAs relocated to NSW leading to changed figures at 30 June 2015 from 30 to 28 (in Qld) and from 18 to 20 (in NSW).

Includes three RDAA applications received the previous year which were pending decision at 30 June 2014 and were accepted in 2014–15.

Registered debt agreement administrators

AFSA received 11 new applications from prospective RDAAs in 2014–15. Of these, nine (82%) were accepted, one was not accepted and one was pending decision at 30 June 2015.

In the five years from 1 July 2010 to 30 June 2015, AFSA received an average of six applications annually from people and companies wishing to be registered as RDAAs.

Registration renewals and professional indemnity insurance

In 2014–15, AFSA continued its proactive practice of verifying relevant PIP details to ensure only suitably qualified and eligible persons and entities' registration are renewed for a further three year period. This included annual certificate of currency checks to validate professional indemnity insurance policies held by RTs in their individual capacity.

Further information on practitioner registrations is available from the AFSA Annual Report.

Inspections

AFSA inspected 90 PIPs and the systems and controls that govern their personal insolvency practice. Of those, 77 (86%) were physical on-site inspections and 13 (14%) were remote off-site inspections. A total of 353 personal insolvency administrations were inspected with 170 errors or issues identified and 35 (21%) of those requiring remedial action.

Total inspections conducted by AFSA comprised 0.6% of the 57,177 active administrations on hand with PIPs as at 30 June 2015. This compares with 639 (1.1%) of the 58,759 active administrations on hand with PIPs as at 30 June 2014. This represents a decrease of 286 (45%) in total inspections of administrations conducted by AFSA in 2014–15⁹.

In the five years from 1 July 2010 to 30 June 2015, AFSA inspected an average of 684 personal insolvency administrations and identified errors in 32% of those (Annexure B).

In 2014–15, AFSA expanded its eInspections of RTs and RDAAs following a successful pilot conducted in 2013-14. Implementing eInspections of practitioner online systems and files is an important deregulatory measure consistent with the government's agenda to reduce the compliance burden on stakeholders.

Registered trustees

AFSA inspected 75 RTs and 277 of their administrations in 2014–15. There were 155 errors identified of which 31 (20%) required remedial action.

Table 3: RT inspections in 2014–15

RT inspections	Total
Number of RTs inspected	75
Number of administrations inspected	277
Number of errors identified	155
Number of errors requiring remedial action	31
Proportion of errors requiring of remedial action (%)	20

Of the errors identified, the highest proportion (82%) were category C errors. These are defined in Inspector-General Practice Statement 11 as one-off practice or procedural errors and non-compliance errors that are not systemic and do not have a significant impact on the administration, dividends, creditors, debtors' rights or system integrity but should be brought to the PIP's attention and monitored.

⁹ Consistent with the government 'Cutting Red Tape' agenda and the ANAO *Guide to Better Practice Regulation – Achieving the Right Balance*, June 2014 p42 aimed to reduce the regulatory compliance burden on stakeholders.

Table 4: RT errors by category in 2014–15

RT errors	Category of error			Total
	A	B	C	
Number of errors	0	28	127	155
Proportion of errors (%)	0	18	82	100

The highest area of RT non-compliance resulted from property, income or asset errors (21%) and remained relatively steady compared to 2013–14. AFSA is providing continued guidance through its PIR newsletter articles and information sessions to improve RT performance standards in these areas.

Table 5: RT non-compliance in 2014–15

RT non compliance areas	Number of errors	Proportion of errors (%)
Property, income or asset errors	33	21%
Inadequate communication by trustee	31	20%
Unreasonable delays in timely action leading to delays in distribution	18	12%
Failure to meet trustee/controlling trustee standards or PINS	16	10%
Creditor claims not properly dealt with	12	8%
Failure to maintain proper records	12	8%
Commonwealth Revenue implications	9	6%
Overcharging or over-servicing	8	5%
Failure to refer possible material offence	7	5%
Problems with meetings	7	5%
Conflict of interest	2	1%
Defalcation or unlawful activities	0	0%
Other	0	0%
Total	155	100

Registered debt agreement administrators

AFSA inspected 10 RDAA's and five UDAA's and 76 of their administrations in 2014–15. There were 15 errors identified of which 4 (27%) required remedial action.

Table 6: RDAA/UDAA inspections in 2014–15

RDAA/UDAA inspections	Total
Number of RDAA's inspected	10
Number of UDAA's inspected	5
Number of administrations inspected	76
Numbers of errors identified	15
Number of errors requiring remedial action	4
Proportion of errors requiring of remedial action (%)	27

Of the total RDAA errors identified, the highest proportion (87%) were Category C errors.

Table 7: RDAA errors by category in 2014–15

RDAA error	Category of error			Total
	A	B	C	
Number of errors	0	2	13	15
Proportion of errors (%)	0	13	87	100

The highest area of RDAA non-compliance resulted from errors relating to failure to maintain proper records (33%). AFSA is providing continued guidance through its annual RDAA forum and PIR newsletter articles to improve RDAA performance standards in these areas.

Table 8: RDAA non-compliance areas in 2014–15

RDAA non compliance areas	Number of errors	Proportion of errors (%)
Failure to maintain proper records	5	33%
Failure to comply with certification duties: provision of prescribed information, affordability, accuracy and completeness	3	20%
Commonwealth Revenue implications	2	13% ¹
Unreasonable delays in timely action leading to delays in distribution	1	7%
Remuneration and expenses not taken in accordance with provisions of debt agreement	1	7%
Inadequate administration of the debt agreement	1	7%
Failure to notify creditors of 3 months arrears default	1	7%
Creditor claims not properly dealt with	1	7%
Defalcation or unlawful activities	0	0%
Inadequate communication by RDAA	0	0%
Failure to notify Official Receiver of dates to maintain NPII	0	0%
Conflict of interest	0	0%
Other	0	0%
Total	15	100

Inspection outcomes

The major outcomes achieved from AFSA's annual inspection process in 2014–15 include:

- overseeing improvements in PIPs' systems and controls, particularly in the area of disclosure and independence. This includes improvements to PIP checklists and precedents and one RT undertaking to be supervised and having his files reviewed by an experienced RT for six months
- identifying specific instances of PIP overcharging or over-servicing in personal insolvency administration and facilitating repayment of over-charged remuneration and disbursements into the relevant administrations
- facilitating better and earlier engagement between debtors, bankrupts, creditors and PIPs, including payment of dividends and responding to reasonable requests for information in a timely manner

¹⁰ Relates to errors in calculation and associated payments of realisations charge.

- responding to systemic areas of non-compliance by providing guidance through Personal Insolvency Regulator newsletter articles, podcasts and Inspector-General practice documents
- overseeing misleading or unbalanced advertising of debt agreements and services by RDAAs or brokers being corrected, removed and/or referred to ASIC for investigation under the Australian Consumer Law (ACL).

Proactive monitoring

Ongoing eligibility checks

AFSA completed a biennial review of the continuing eligibility of SCTs and UDAAs during 2014–15, which identified only four UDAAs with a combined total of 13 active administrations. AFSA will undertake its next biennial review during 2016–17.

Advertising insolvency services

AFSA continued proactively monitoring advertising of debt agreements and services by RDAAs and brokers in 2014–15 to ensure compliance with Inspector-General Practice Guideline 1 (IGPG 1).

In 2014–15, AFSA's activities expanded to reviewing advertising by RDAAs and brokers on TV, radio, print and online after enhancing its monitoring capabilities.

A total of 90 compliance reviews were undertaken, comprising 83 online websites plus one YouTube clip, one TV and five radio advertisements respectively. Of these, action was taken in nine cases to correct/remove misleading or unbalanced advertisements by RDAAs or brokers in breach of IGPG 1.

Table 9: RDAA advertising in 2014–15

Debt agreement advertising	2014 15
Number of interventions to correct/remove advertising	9
Number of advertising compliance reviews conducted	90
Proportion of advertisements needing remedial action (%)	10

The most common issues of concern were:

- including the phrases 'Government guaranteed' or 'Government debt agreement'
- referring to or describing debt agreements as 'debt consolidation'
- unbalanced advertising ie inadequate comparison of negative and positive consequences of debt agreements
- stating a debt agreement makes it 'easier to borrow money in future' and has 'less effect on your credit rating'.

Inspector General Practice Guidelines (IGPGs) are available on our website and give guidance to regulated and non regulated entities by explaining when and how AFSA will interpret areas of work or practice that are not specifically governed or provided for under the Bankruptcy Act, describing underlying principles and the expectation of practitioners

In 2014–15, AFSA worked closely with the Australian Securities and Investments Commission (ASIC) to address misleading and unbalanced advertising of debt agreements and services by RDAAs and brokers. As part of a co-regulatory approach to ensuring effective compliance with IGPG 1 and the ACL, the two agencies signed a new Memorandum of Understanding (MOU) on 2 October 2014.

The MOU extends the liaison, cooperation, assistance and exchange of information to enhance the effective and efficient performance of regulatory functions by AFSA and ASIC.

Advertising was also a focus of discussion at the 8th annual RDAA forum hosted in Brisbane on 9 October 2014¹¹.

Part X and section 73 proposals

AFSA reviewed 316 personal insolvency agreement (Part X) and composition (s73) proposals of the total 492 received (64%) and attended 32 creditors' meetings during 2014–15.

Table 10: Monitoring of Part X and s73 proposals meetings in 2014–15

Monitoring of Part X and s73 proposals/meetings	2014 15
Number of Part X and s73 proposals received	492
Number of Part X and s73 proposals reviewed	316
Proportion of Part X and s73 proposals reviewed (%)	64
Number of meetings attended	32
Number of instances of intervention/corrective action	8
Proportion of instances of intervention/corrective action (%)	3

Of the total proposals reviewed by AFSA, eight (3%) involved intervention due to RTs failing to properly report or conduct enquiries or incorrectly treating creditors' claims.

The major outcomes achieved from AFSA's intervention include ensuring specific remedial action was undertaken by RTs such as:

- issuing further reports to creditors to increase the quality of information they receive
- correcting deficient meeting procedures and/or
- adjourning meetings (in some cases) to conduct investigations.

In the five years from 1 July 2010 to 30 June 2015, AFSA proactively intervened on average in 6% of the total Part X and section 73 proposals reviewed.

RT offence referrals

In 2014–15, AFSA received 384 offences referrals from RTs along with 501 pre-referral enquiries.

AFSA introduced pre-referral enquiries (PREs) to promote timely reporting by RTs of alleged offences. PREs are a precursor to preparing full offence referrals and assist RTs to efficiently comply with their duties, particularly where it is unclear if an offence has occurred (or adequate evidence is available to prosecute).

¹¹ Advertising was also covered at the 7th RDAA Professional Development Day hosted by AFSA in Sydney on 17 October 2013.

The new PRE process was formally launched in AFSA's December 2014 PIR and followed by 8 information sessions delivered across Australia to RTs and their staff. A total of 501 PREs were received from RTs during 2014–15.

The PRE initiative is designed to reduce the compliance burden on RTs and is consistent with the government's deregulatory agenda. Another positive outcome has been an increase in RTs and their staff engaging with AFSA, evidenced by the significant number of PREs received since they were introduced.

Pre-insolvency advisors

In 2014–15 AFSA continued monitoring RTs whose compliance with the performance standards appeared to be adversely influenced by established relationships with certain pre-insolvency advisors. Ongoing concerns include:

- lack of independence and disclosure
- lack of material investigations into the debtor or bankrupt's affairs – particularly where s73 compositions are proposed soon after the date of bankruptcy (with some offering little or no return to creditors)
- incomplete reporting to creditors on the debtor or bankrupt's affairs or merits of the composition or personal insolvency agreement (PIA) proposal
- inadequate adjudication of the claims lodged by associated entities voting for compositions or PIAs.

AFSA continued its presence at meetings of creditors in 2014–15 to maintain effective scrutiny of proposals and meetings. Where appropriate, AFSA requested creditor meetings be adjourned and supplementary material provided to creditors so that informed decisions could be made.

Compliance information requests

In 2014–15, compliance information requests (CIRs) were utilised to target focus areas in AFSA's insolvency practitioner compliance program. These regulatory tools complement AFSA's annual inspection of PIPs and facilitate effective (but less intrusive¹²) oversight of specific practice areas.

In 2014–15, CIRs were sent to PIPs to examine remuneration claims, trust fund handling and reconciliations and use of legislative compliance tools.

Remuneration

In 2014–15, a total of \$561.23 million was realised in administrations held by PIPs of which \$331.35 million (59%) was received by RTs and \$229.88 million (41%) was received by RDAAs.

Of the \$331.35 million received by RTs in 2014–15, \$94.38 million (28%) was paid out as remuneration. Of the \$229.88 million received by RDAAs in 2014–15, \$52.01 million (23%) was paid out as fees.

In 2014–15, Annual Estate Return (AER) data of RTs was analysed to identify administrations where remuneration exceeded \$100,000 and 70% of total realisations. AFSA identified 44 administrations which matched this criteria and wrote to the relevant RTs to obtain copies of their work in progress (WIP).

¹² Consistent with Government 'Cutting Red Tape' reforms and the ANAO *Guide to Better Practice Regulation – Achieving the Right Balance*, June 2014 p42 aimed to reduce the regulatory compliance burden on stakeholders.

These were reviewed to determine whether RTs were over-servicing or over-charging. Of the 44 administrations identified, six (14%) were the subject of detailed investigations due to evidence of:

- significant manager or partner time incurred and charged for doing low complexity tasks
- incomplete or inaccurate WIP records provided
- disproportionate disbursements (or third party costs) incurred relative to work described
- unnecessary tasks being performed
- excessive instances of rework performed.

In two administrations investigated, the respective jointly appointed RTs were found to have over-charged and subsequently repaid a total of \$29,512 in remuneration claimed¹³.

Trust funds and reconciliations

In 2014–15, AFSA wrote to 146 PIPs seeking assurance through signed declaration that trust funds were reconciled under the relevant provisions and performance standards of the Act. Those PIPs comprised 122 RTs and 24 RDAAs and were not otherwise due for inspection in 2014–15.

A total of 144 PIPs (99%) replied to the CIRs with a signed declaration confirming the existence of reconciled funds and (where appropriate) provided a copy of their most recently completed bank reconciliation. The two PIPs that did not respond were followed up to ensure compliance could be confirmed.

Of the 144 PIPs that replied, 10 RDAAs were the subject of further investigations for various issues which included:

- having two trust accounts contrary to section 185LD of the Act (RDAAs must have one interest bearing account)
- failure to provide copies of recent bank reconciliations in two cases despite sending AFSA a signed declaration
- failure to deal with un-presented cheques older than 6 months as required under section 254 of the Act.

In addition, AFSA identified one instance of jointly appointed RTs depositing trust funds into their firm account (rather than the administration bank account) contrary to sub-section 169(1) of the Act and imposed a penalty of \$14,000 for the breach of duty.

Compliance tools

Official Receiver notices

In 2014–15, AFSA analysed National Personal Insolvency Index (NPII) data to identify PIPs with a history or pattern of not using tools under the Act to encourage compliance by debtors and bankrupts. These tools include objections to discharge and Official Receiver notices.

AFSA wrote to 32 RTs with the lowest record of compliance tool usage, relative to their total active administrations on hand. All RTs replied, advising that they did properly consider using available compliance tools in each administration and exercised their discretion not to on a case-by-case basis on commercial or operational grounds.

¹³ Includes the case study in AFSA's Annual Report 2014–15 p31.

This exercise was intended to remind PIPs of the availability of processes under the Act and the importance of encouraging compliance by debtors and bankrupts.

Section 305 applications

In 2014–15, AFSA received 27 applications from PIPs under section 305¹⁴ for funding to conduct further investigations and/or encourage compliance by debtors or bankrupts under the Act. There were seven (35%) more applications received compared to 2013–14.

There were 21 applications for Commonwealth funding assistance approved¹⁵ compared to 18 applications approved in 2013–14.

There was a marked increase in funding assistance approved compared to 2013–14. The total amount underwritten increased from \$42,736 to \$175,766 and total expenditure increased from \$13,277 to \$39,066.

Guidance

AFSA provided guidance to PIPs during 2014–15 through a number of different media.

Personal Insolvency Regulator (PIR) newsletter

Four issues of the PIR were published:

- PIR Volume 12 Issue 2 (Sep 2014)
- PIR Volume 12 Issue 3 (Dec 2014)
- PIR Volume 13 Issue 1 (Mar 2015)
- PIP Volume 13 Issue 2 (Jun 2015).

Podcasts

Three podcasts on personal insolvency practitioner remuneration were issued during 2014–15.

Inspector-General practice documents

Published directions, statements and guidelines

As at 30 June 2015, AFSA had a total of 33 published Inspector-General practice documents providing guidance to PIPs and other stakeholders. These comprised 17 practice directions (IGPD), 15 practice statements (IGPS) and one practice guideline (IGPG).

In February 2015, AFSA converted the format of all Inspector-General practice documents to hypertext markup language (HTML) to comply with the Government's web content accessibility guidelines (WCAG 2.0). Doing so enabled AFSA to record and analyse the extent to which external stakeholders view these documents.

During the fourth quarter (1 April to 30 June) 2014–15, external stakeholders viewed 31 Inspector-General practice documents. These were viewed a total of 6,383 times with the top 10 Inspector-General practice documents shown in Table 11.

¹⁴ Section 305 of the Bankruptcy Act allows the Commonwealth to underwrite the cost of proceedings or enquiries about the administration or the examinable affairs of a debtor or bankrupt.

¹⁵ Includes all applications approved in 2014–15 regardless of whether they were received in that period.

Table 11: Top ten Inspector-General practice documents viewed in 2014–15

Inspector General practice document	No. of views
IGPD 14 Proper performance of duties of a bankruptcy trustee	548
IGPD 18 Trustee remuneration notifications	545
IGPD 2 Collection of realisations and interest charges	513
IGPS 14 Referring offences against the <i>Bankruptcy Act 1966</i> to the Inspector-General	449
IGPD 6 Remuneration entitlements of a registered bankruptcy trustee	332
IGPS 16 Reviewing remuneration of trustees and costs of third party service providers	304
IGPS 12 Statutory reviews of trustee decisions under the <i>Bankruptcy Act 1966</i>	273
IGPS 4 Guidelines and processes for registration of debt agreement administrators	266
IGPS 1 Regulatory framework	219
IGPS 10 Complaint handling process for complaints against bankruptcy trustees and debt agreement administrators	214
Total	3,663

The top 10 Inspector-General practice documents were viewed a total of 3,663 times during the relevant period. This represents 57% of total Inspector-General practice documents viewed.

Revised Inspector-General practice statement 10 – handling complaints against practitioners

AFSA released an updated IGPS 10¹⁶ on handling of complaints against PIPs in August 2014, following extensive stakeholder consultation.

Professional bodies which represent PIPs (including ARITA, PIPA, CAANZ and CPA) have acknowledged that:

- from time to time, members are likely to receive complaints from stakeholders in administrations during their careers which need to be taken seriously and handled effectively
- effective complaints management systems ensure that complaints are properly handled and enable feedback on their service and quality assurance
- complaints not properly handled may escalate to regulators and professional bodies which can be costly, time consuming and lead to reputational damage.

Recognising this, these bodies require their members to implement policies, procedures and systems to ensure effective complaints management.

Consistent with this requirement, AFSA's process for handling complaints against practitioners was updated to provide additional guidance on the Inspector-General's expectations that:

- complainants contact the practitioner in an effort to resolve their complaint in the first instance; and
- practitioners take relevant steps to resolve complaints raised with them using their complaints management systems.

¹⁶ Also included relevant changes to the *Privacy Act 1988* and additional resources relating to the management of complaints.

AFSA’s regulatory ethos and compliance model focuses on early resolution of systemic issues by adopting a proactive and preventative regulatory approach wherever possible. This is reinforced in revised IGPS 10 which expects practitioners to take responsibility for reducing complaints to ensure that clients receive the most efficient service possible and best practice standards are promoted.

Revised Inspector-General practice Statement 13 – trustee registration application process

AFSA released an updated IGPS 13 on the registration application process for RTs in November 2014, following consultation with ASIC and ARITA.

Revised IGPS 13 clarifies the level of professional indemnity insurance (PII) cover required by RTs under the Bankruptcy Act. The PII cover held should comply with the professional standards scheme of the national occupational association to which an RT (or his/her firm) belongs. If the RT (or his/her firm) does not belong to a national occupational association, then a level of insurance equivalent to either of the schemes which CAANZ or CPA consider adequate is required.

Stakeholder information sessions

Practitioner and financial counsellor visits

AFSA’s Chief Executive and Inspector-General, Veronique Ingram, and National Manager of Regulation and Enforcement Paul Shaw visited Townsville and Cairns in July 2014, followed by Hobart, Perth and Adelaide in October–November 2014 to meet with PIPs and financial counsellors. Those who attended received an update on AFSA news and developments, recent personal insolvency activity and trends and had an opportunity to discuss a broad range of practice issues.

Trustee information sessions

In 2014–15, AFSA also provided targeted information sessions to RTs and their staff on offence referrals (IGPS 14) and its new PRE process. AFSA visited 32 firms to deliver information sessions and respond to practice queries to improve the quality and number of RT offence referrals accepted for investigation.

Inspector General Practice Directions (IGPDs) are available on our website and assist regulated entities by explaining how the law should be interpreted, giving both guidance and direction on specific insolvency practice.

RDAAs forum

In October 2014, AFSA facilitated the eighth annual RDAAs Forum in Brisbane. In excess of thirty RDAAs and their senior staff attended the day, representing approximately 80% of all RDAAs entities practising in Australia.

Feedback from participants indicated that the forum achieved its objectives – enabling RDAAs to interact and discuss specific case studies which highlight and address current debt agreement practice and legal issues. In particular, participants provided positive feedback that indicated relevant issues were raised, there was opportunity for participation and that AFSA’s response to questions was clear.

External stakeholder forums and conferences

In 2014–15, AFSA attended various forums and meetings along with several conferences as part of its annual Stakeholder Engagement Framework and Strategic Plan 2014–17.

A summary of AFSA’s key national and state stakeholder engagement forums and meetings attended during 2014–15 is shown in Table 12.

Table 12: AFSA stakeholder engagement forums and meetings attended in 2014–15

Stakeholder forum/meeting	When
Australian Restructuring Insolvency & Turnaround Association (ARITA)	Quarterly
Australian Securities and Investments Commission (ASIC)	Bi-annual
Australian Taxation Office (ATO)	Bi-annual
Commonwealth Director of Public Prosecutions (CDPP)	Bi-annual
Financial Counselling Australia (FCA)	Bi-annual
Federal Circuit Court of Australia (FtCtC)	Bi-annual
Law Council of Australia (LCA)	Monthly
Personal Insolvency Professionals Association (PIPA)	Bi-annual
RDAAs Forum	Annual

In addition to the above forums/meetings, AFSA attended the International Association of Insolvency Regulators (IAIR) annual meeting in September 2014 in Washington DC to deliver a country report on Australia’s personal insolvency system.

In delivering guidance to the industry, AFSA works closely with various national and international government agencies and professional bodies. These include IAIR, NZITS, ASIC, CDPP, ATO, ARITA, PIPA, CAANZ and CPA.

Complaints

AFSA received 253 complaints against PIPs in 2014–15. Of these 226 (89%) related to RTs while 27 (11%) related to RDAAs. Of the 253 complaints received, 22 (9%) were considered justified in 2014–15.

There were 82 (24%) less complaints received against PIPs compared to 2013-14, which coincides with AFSA's release of updated IGPS 10 on handling complaints in August 2014.

One key change to IGPS 10 was to reinforce the obligation of PIPs to handle complaints at source (wherever possible) and only refer them to AFSA where they cannot be resolved.

In the five years from 1 July 2010 to 30 June 2015, AFSA received an average of 366 complaints annually of which 35 (10%) were considered justified.

Table 13: RT and RDAA complaints received in 2014–15

RT and RDAA complaints received	Number of complaints received	Proportion of complaints received (%)
RT complaints	226	89
RDAA complaints	27	11
Total	253	100

Of the aggregate RT complaints received, 141 (62%) were the subject of investigation with 16 (7%) considered justified. There were 48 (25%) less complaints against RTs investigated compared to 2013–14.

Of the aggregate RDAA complaints received, 21 (78%) were the subject of investigation with 6 (22%) considered justified. There were 7 (50%) more complaints against RDAAAs investigated compared to 2013–14.

Table 14: RT and RDAA complaints in 2014–15

RT and RDAA complaints received	Complaints received			
	Received	Complaints investigated	Complaints not investigated	Complaints justified
Number of RT complaints	226	141	85	16
Proportion of RT complaints received (%)	100	62	38	7
Number of RDAA complaints	27	21	6	6
Proportion of RDAA complaints received (%)	100	78	22	22

The areas of aggregate and justified RT and RDAA complaints received are shown below.

Table 15: Sources of complaints in 2014–15

Complaint source	Bankrupt/ Debtor	Creditor	Third Party/ Other	PIPs	Total
Number of complaints	150	47	54	2	253
Proportion of complaints (%)	59	19	21	1	100

Registered trustees

The highest area of aggregate RT complaints resulted from decisions concerning assets (24%), while the highest area of justified RT complaints was delays in administration or lack of action (31%).

Table 16: RT complaint areas in 2014–15

RT complaint areas	Aggregate RT complaints		Justified RT complaints	
	Number	Percent (%)	Number	Percent (%)
Decisions concerning assets	54	24	2	13
Delays in administration or lack of action	28	12	5	31
Other	23	10	0	0
General administration and accounting	46	20	4	25
Fees and costs	15	7	0	0
Lack of information or communication	18	8	3	19
Income and contribution liability assessments	7	3	0	0
Creditor claims and dividends	20	9	1	6
Inappropriate conduct or conflict of interest	15	7	1	6
Continuing action by creditors	0	0	0	0
Total	226	100	16	100

Registered debt agreement administrators

The highest areas of aggregate and justified RDAA complaints resulted from lack of information or communication (30% and 33% respectively) and creditor claims and dividends (19% and 33% respectively). To address this, AFSA has provided additional guidance to PIPs on effective complaint handling in an updated IGPS 10¹⁷ and discussed these areas during the 8th annual RDAA forum hosted in Brisbane on 9 October 2014.

Table 17: RDAA complaint areas in 2014–15

RDAA complaint areas	Aggregate RDAA complaints		Justified RDAA complaints	
	Number	Percent (%)	Number	Percent (%)
Lack of information or communication	8	30	2	33
Creditor claims and dividends	5	19	2	33
Certification issues	5	19	1	17
Other	4	15	1	17
General administration and accounting	3	11	0	0
Fees and costs	2	7	0	0
Continuing action by creditors	0	0	0	0
Delays in administration or lack of action	0	0	0	0
Inappropriate conduct or conflict of interest	0	0	0	0
Total	27	100	6	100

Complaint outcomes

The major outcomes achieved from AFSA's complaint handling process in 2014–15 are similar to those uncovered through the national inspection process and include:

- facilitating re-engagement between debtors, bankrupts, creditors and PIPs to ensure timely administration and communication of information
- overseeing improvements to PIP systems and controls, particularly in the area of disclosure and independence – including improvements to checklists and precedents
- identifying specific instances of PIP over-servicing or over-charging in personal insolvency administration and facilitating repayment of unapproved or excessive amounts back into the relevant administration
- identifying systemic areas of non-compliance resulting in further guidance being provided to PIPs by way of PIR newsletter articles and revised Inspector-General Practice Statement 10
- identifying unbalanced or misleading advertising of debt agreements resulting in RDAAs or brokers being contacted to remove or correct marketing material and referring to ASIC.

Inspector-General reviews

AFSA received 227 requests for Inspector-General (IG) reviews in 2014–15, of which 140 (62%) related to RT decisions and 87 (38%) related to RT remuneration determinations. There were 31 (16%) more review requests received in 2014–15 compared to 2013–14, of which 23 (74%) related to RT remuneration determinations.

A total of 214 (94%) review requests were finalised in 2014–15 of which 92 (43%) were confirmed/granted while 39 (18%) were cancelled/varied or not granted.

Of the 92 review requests confirmed/granted, the highest percentage related to remuneration determinations (78%). Of the 39 review requests cancelled/varied, the highest percentage related to income contribution assessments (36%)¹⁸.

Table 18: Inspector-General review results in 2014–2015

IG review result	Number	Percent (%)
RT decision confirmed/remuneration granted	92	43
Plus: RT decision cancelled or varied/remuneration not granted	38	18
Plus: Review application withdrawn or refused	84	39
Total reviews finalised	214	100

¹⁸ A podcast will be released in 2015-16 to provide further guidance to RTs on assessment of income contributions to address this issue.

Table 19: Inspector-General reviews in 2014–2015

IG reviews	Income contribution assessments	Objections to discharge	Hardship applications	Reviews	Taxations	Remuneration	Total
No. of requests received	48	53	11	26	2	87	227
Proportion (%)	21	23	5	12	1	38	100
No. confirmed/granted	3	16	1	0	0	72	92
Proportion (%)	3	18	1	0	0	78	100
No. cancelled/varied/not granted	14	13	0	3	0	8	38
Proportion (%)	36	33	0	8	3	20	100
No. of requests withdrawn/ refused	27	21	10	14	6	6	84
Proportion (%)	32	25	12	17	7	7	100
No. of requests finalised	44	50	11	17	6	86	214
Proportion (%)	21	23	5	8	3	40	100

A review of a trustee's remuneration results in a refund to the estate

The trustee of a bankrupt estate was required to repay \$18,000 to the estate after a review of his remuneration.

The trustee did not ask creditors to provide a proof of debt for the amounts owed by the bankrupt. Instead, the trustee estimated the extent of debts owed to creditors.

Based on the estimate, it was decided that there was sufficient equity in the bankrupt's property for all creditors to be paid out. The bankrupt and his wife refinanced their home in order to pay the creditors the estimated amount of debt and make it possible for the bankruptcy to be annulled.

However, the estimate of the debt owing was \$20,000 less than the actual amount owed. Without the creditors' proof of debt, the trustee had made errors in identifying the creditors. The bankrupt sought a review of the trustee's remuneration by the Inspector General in Bankruptcy.

The review was conducted on the basis that the trustee may have acted improperly, or without due care and diligence, in the administration of the estate. As a result of the review, the trustee agreed to refund the estate and conceded that an error had occurred in not obtaining and adjudicating on all proofs of debt before giving the estimate.

Disciplinary action

AFSA plays a key role in maintaining the integrity of Australia's personal insolvency system. AFSA works with practitioners and takes proactive disciplinary action where appropriate to ensure stakeholders maintain confidence in the system.

Registered trustees

AFSA deregistered eight RTs in 2014–15, all of whom voluntarily resigned.

Information gathered during 2014–15 from our regulatory inspections and complaints received revealed that some practitioners did not maintain the standards required.

In one case, AFSA successfully negotiated an undertaking by an RT to voluntarily resign following disciplinary proceedings commenced over alleged breaches of duty identified including:

- inadequate investigation of property, assets and income; and
- insufficient scrutiny of related party voting claims at meetings of creditors.

Registered debt agreement administrators

AFSA deregistered three RDAAs in 2014–15, all of whom elected not to renew.

No RDAAs or UDAAAs were declared ineligible to act or subject to any disciplinary action by AFSA in 2014–15 for failing to properly perform their duties.

Table 20: RT and RDAA disciplinary action in 2014–15

RT disciplinary action	Total
RT voluntary resignations	8
RT registrations cancelled	0
RT show cause letters sent	1
Committees convened	1
RDAA disciplinary action	Total
RDAA voluntary resignations	3
RDAA registrations cancelled	0
UDAA declared ineligible	0
RDAA/UDAA show cause letters sent	0

Table 21: Number of RT offence referrals in 2014–15 by administration location

RT offence referrals	NSW	ACT	Vic	Qld	SA	NT	WA	Tas	N/A*	Total
	Number									
Referrals accepted	61	2	58	54	14	1	13	1	7	211
Referrals not accepted	67	1	36	35	12	0	7	2	13	173
Referrals received	128	3	94	89	26	1	20	3	20	384
	Proportion (%)									
Referrals accepted	48	67	62	61	54	100	65	33	35	55
Referrals not accepted	52	33	38	39	46	0	35	67	65	45
Referrals received	100	100	100	100	100	100	100	100	100	100

* Referrals without an administration number.

Table 22: Proportion of RT offence referrals in 2014–15 by administration location

RT offence referrals	NSW	ACT	Vic	Qld	SA	NT	WA	Tas	N/A*	Total
% Referrals accepted	29	1	27	26	7	0	6	0	3	100
% Referrals not accepted	39	1	21	20	7	0	4	1	8	100
% Referrals received	33	1	24	23	7	0	5	1	5	100

* Referrals without an administration number.

Investigate and prosecute offences

A total of 384 offence referrals were received from RTs in 2014–15 of which 211 (55%) were accepted for investigation. Details of total RT offence referrals received by source of administration are shown in Table 21.

Of the aggregate RT offence referrals received, 81 percent related to administrations from NSW (33%), Vic (24%) and Qld (23%) as shown in Table 21.

AFSA issued media releases during 2014–15 of significant RT referrals accepted that resulted in successful prosecutions. These are available from our website. Three significant outcomes are detailed in the following media releases.

Media release – QLD (Lane) – bankrupt conceals \$95,000 from proceeds of home sale and faced jail conviction in Brisbane Court

Wed 24 June 2015

Deborah Sevine Lane, a 54 year old bus driver from Brisbane, was convicted to six months jail in the Brisbane Magistrates Court on 11 June 2015, for a false declaration and concealment of property proceeds while she was a bankrupt.

Ms Lane became bankrupt on 6 October 2011 and failed to declare that she owned and subsequently sold a relocatable home valued at \$95,652.50.

The defendant gifted the proceeds to her de-facto partner who used the proceeds to purchase another property.

His Honour considered that the defendant had a series of unfortunate events that led to her bankruptcy, and showed regard to the submissions regarding the defendant's health problems, that she is currently in remission and continues to work.

His Honour considered the defendant's plea of guilty, but stated that she had kept about \$95,000 from her creditors.

The two charges against Ms Lane resulted when she signed a declaration that was false and concealed the sale of property proceeds valued at \$95,652.50.

His Honour stated that Ms Lane's offending was a serious matter and the defendant had a dishonest intention. His Honour also stated that general deterrence was important but personal deterrence was not required in this case.

Ms Lane pled guilty to both charges and received imprisonment for a maximum of six months, to be released on a self-recognition of \$1,250 and a good behaviour bond of two years.

Media release – NSW (Abdul-Karim) – former barrister hides cash prior to becoming bankrupt

Fri 21 November 2014

Former barrister, Michael Saadey Abdul-Karim, recently received a jail penalty for removing property to the value of \$175,279.79 and failing to accurately disclose details of his financial circumstances whilst bankrupt.

Mr Abdul-Karim was convicted in the Downing Centre District Court, NSW, on 14 November 2014 in relation to 2 offences under the *Bankruptcy Act 1966*. In early 2005, the Council of the NSW Bar Association filed a Creditor's Petition against Mr Abdul-Karim and the parties subsequently entered into a Deed of Agreement.

The debt related to costs incurred by the Bar Council during various proceedings including those in the Administrative Decisions Tribunal Appeal Panel, the NSW Court of Appeal and the NSW Supreme Court.

Under the terms of the deed, Mr Abdul-Karim agreed to pay the Bar Council \$278,000 in two instalments between November 2005 and February 2006.

Mr Abdul-Karim proceeded to mortgage his shares in three properties and obtained loan proceeds of \$214,220.75. The funds were deposited into his account in early December 2005.

Later that month, Mr Abdul-Karim withdrew \$175,000 from this account, however the Bar Council did not receive any payment.

In January 2006, Mr Abdul-Karim signed a Controlling Trustee Authority authorising a Controlling Trustee to take control of his property and put a proposal to his creditors. During the course of this authority, he completed two Statement of Affairs. During a meeting of his creditors, it was resolved that he should file a Debtor's Petition.

In April of the same year, Mr Abdul-Karim became bankrupt by filing a Debtor's Petition and Statement of Affairs. He did not disclose the withdrawal of the \$175,000.00 on any of the Statement of Affairs.

When questioned about the withdrawal during the administration of his personal insolvency agreement and bankruptcy, Mr Abdul-Karim informed his trustees that the funds were given to his daughter and used for her business and for property renovations.

Investigations by the Australian Financial Security Authority's (AFSA) regulation and enforcement unit revealed that the \$175,000 withdrawn from Mr Abdul-Karim's account was in fact deposited in to a newly opened account with another bank.

A month after opening the account, Mr Abdul-Karim withdrew all the funds and closed the account. One week after closing the account, he deposited the funds to an account held by a third party.

Judge Madgwick convicted and sentenced Mr Abdul-Karim to nine months imprisonment for the removal of the money and three months imprisonment for the non-disclosure of the transfer of funds, to be released forthwith on recognisance in the sum of \$1,000 and conditioned that he be of good behaviour for a period of one year. Sentences of imprisonment were to be served concurrently.

When passing sentence, Judge Madgwick commented that despite the lack of criminal history, Mr Abdul-Karim could not be said to have previously been of good character as he had been struck off as a barrister for making a false affidavit in proceedings relating to a costs dispute.

The judge observed that Mr Abdul-Karim was very economical with the truth or is a man who reconceives that truth from time to time according to his interest.

Judge Madgwick stated that there was no doubt the defendant had deliberately concealed the removal of the funds and that his offending was among the worst instances of this type of offending.

AFSA's regulation and enforcement national manager, Mr Paul Shaw, said that AFSA takes breaches of the bankruptcy law - such as non-disclosure of transfer of assets or concealing or removing assets - very seriously and will take court action when warranted to enforce penalties.

The matter was prosecuted by the Commonwealth Director of Public Prosecutions.

Media release – TAS (Riza) – bankrupt faces jail term after removing \$55,000 before bankruptcy

Wed 15 October 2014

Mr Julian Anthony Riza, was convicted in the Hobart Court of Petty Session on 14 October 2014 for two offences under the *Bankruptcy Act 1966*.

Mr Riza was sentenced to a period of eight months imprisonment, to be released after serving two months upon entering into a recognisance of \$3,000 on condition being of good behaviour for a period of three years.

Mr Riza and his ex-wife sold their marital home in 2012, and settled their Family Law affairs a few months later, which resulted in Mr Riza receiving \$60,627 into his bank account in May 2013. The next day Mr Riza withdrew \$55,000 and when asked later by his bankruptcy trustee what happened to the money, he claimed he had taken it to Melbourne and spent it on drinking and gambling. Mr Riza was unable to produce any evidence to support his claim about spending the money.

Mr Riza became voluntarily bankrupt in July 2013, and declared credit card debt and loans of \$67,726, but failed to declare the money he had received from the sale of his home a few months earlier.

In court, Mr Riza's lawyer produced a medical report that stated Mr Riza was of borderline intellect, however Magistrate Mollard was of the view Mr Riza had the ability to plan and execute his strategy to hide the proceeds from the sale of his marital home.

Australian Financial Security Authority's Regulation and Enforcement manager, Paul Shaw said that the Australian Financial Security Authority takes breaches of bankruptcy law, such as attempts to hide money, very seriously and will raise these matters with the courts to decide on the matter and enforce penalties where necessary.

Infringement Notices

AFSA issued a total of 122 infringement notices in 2014–15 of which 29 (24%) were issued to RTs. Overall there were 18 (17%) more infringement notices issued in 2014–15, but nine (24%) fewer issued to RTs compared to 2013–14.

Of the 122 infringement notices issued, 28 (23%) were withdrawn by the Inspector-General. As a result, 94 net infringement notices were issued during 2014–15.

Of the 29 infringement notices issued to RTs, one (3%) was withdrawn by the Inspector-General. As a result, 28 net infringement notices were issued to RTs during 2014–15.

Of the total infringement notices issued to RTs, over 60% related to failure to file a copy of executed PIAs with AFSA under s218(2) (38%) and to file a copy of an annulment certificate with AFSA under s153A(2) (24%).

Table 24: RT infringement notices issued by offence in 2014–15

Offence section	RT infringement notices issued	
	Number	Percent (%)
218(2)	11	38
153A(2)	7	24
74(5A)	5	17
73(1A)	4	14
153B(3)	2	7
Total	29	100

Feedback

AFSA is committed to delivering robust and timely quantitative and qualitative information to personal insolvency practitioners on their performance to ensure they continue to maintain high standards and implement best practice.

We hope that stakeholders find this report useful and welcome any feedback on how we may improve it in future.

For enquiries about this report or to provide feedback, please email statistics@afsa.gov.au or phone 02 6198 3554. Alternatively please email rpo@afsa.gov.au or phone 07 3360 5414.

Table 23: Infringement notices in 2014–15

Infringement Notice	Notices issued		Notices withdrawn		Net notices issued	
	Number	Percent (%)	Number	Percent (%)	Number	Percent (%)
RTs	29	24	1	4	28	30
Others*	93	76	27	96	66	70
Total	122	100	28	100	94	100

* Others include petitioning creditors, RDAs, Controlling Trustees and Executors for deceased estates.

Annexure A: AFSA Practitioner Insolvency Program 2014–15

1) Overarching ethos

1.1 Statements of principle

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

The Inspector-General Practice Statement 1 – Regulatory Framework (IGPS 1) outlines the core of AFSA's 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:

- financial counsellors
- creditors
- debtors
- the Commonwealth Director of Public Prosecutions (CDPP)
- Australian Restructuring Insolvency and Turnaround Association (ARITA)
- Personal Insolvency Professionals Association (PIPA)
- Australian Securities and Investments Commission (ASIC) and
- 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) to facilitate appropriate benchmarking against developments and advances in insolvency regimes in comparable jurisdictions.

Consistent with the government's de-regulatory agenda, AFSA continued to undertake the review of practice and procedure in 2014–15, and, after external consultation, implement any recommendations for change to improve efficiency and effectiveness. This will include the continued pilot of AFSA's eInspection initiative which was commenced in 2013. eInspections are a potentially significant deregulatory initiative which allow AFSA to have a secure remote window into a practitioner's system and administration files and thereby reduces the need for onsite inspections.

2) Strategic Focus Areas

In the financial year to 30 June 2015, AFSA will focus on the following five areas in its compliance program. These areas have been identified following an analysis of regulatory findings and emerging trends.

2.1 Advertising of insolvency practitioner services

AFSA will monitor the advertisements of insolvency practitioners, particularly those of Registered Debt Agreement Administrators (RDAAAs) and associated entities, to ensure those that choose to advertise, do so in a balanced way that is free from false, misleading or deceptive statements.

2.2 Offence referrals

We will invite early contact from practitioners in the offence investigation process and promote the use of a short form referral process. This will ensure practitioners comply with their section 19 Bankruptcy Act (the Act) duty to refer potential offences and also commit only the relevant time necessary to identify and refer matters.

2.3 Remuneration

We will focus on early identification and where possible remedy instances of overcharging or over-servicing by insolvency practitioners. This will be identified and handled through a number of functions including our inspection program, targeted campaigns, complaint handling process and Inspector-General Reviews.

2.4 Trust funds and reconciliations

We will seek assurance that trust funds are reconciled in accordance with the relevant provisions and performance standards. This will be carried out by remote targeted campaign as well as the inspection program.

2.5 Compliance tools

The Act provides a range of compliance tools which insolvency practitioners may use at their discretion. We will review the use of tools such as objections to discharge and Official Receiver notices, to ensure relevant and appropriate use. Good governance principles also require business to have strong internal quality assurance in order to test the adequacy of systems and controls. This will also be tested as part of the inspection program.

3) AFSA's Insolvency Practitioner compliance activities

The six strategic focus areas in 2014–15 are complemented by AFSA's eight core insolvency compliance roles. These core roles and AFSA's strategic focus within each role in 2014–15 is explained in Annexure A.

Annexure A – Insolvency Practitioner compliance activities

No.	Function	Inspector General practice documents ¹ or other web based material	Strategic focus areas in 2014 15
1	Trustee (RT) and debt agreement administrator (RDAA) registrations	i) IGPS 4 – Guidelines and processes for registration of debt agreement administrators ii) IGPS 13 – Trustee registration application process under the <i>Bankruptcy Act 1966</i>	A focus to ensure any deviation from practice is remediated effectively and efficiently to maintain high standards of regulation.
		IGPS 11 – Monitoring and inspection of bankruptcy trustees and debt agreement administrators	Ongoing pilot of AFSA's eInspections initiative.
2	Inspections	IGPS 11 – Monitoring and inspection of bankruptcy trustees and debt agreement administrators	Attention will be drawn to review a practitioner's advertising method and first point of contact with debtors to ensure advice provided is within legislative and best practice guidelines.
3	Proactive monitoring		
4	Guidance	i) Personal Insolvency Regulator (PIR) newsletter ii) AFSA Practices and Policies	Quarterly issues of the Personal Insolvency Regulator newsletter. Review, consultation and update of IGPS where necessary. Facilitate Practitioner Information Sessions when deemed necessary. Produce and publish new guidance series via Podcast.
5	Complaints	IGPS 10 – Complaints handling process for complaints bankruptcy trustees and debt agreement administrators	Ongoing focus to ensure complaints are outcome focussed and resolved at source wherever possible. Emphasise gatekeeper approach to identify issues early for debtors and creditors - either resolve or direct to another appropriate agency.
6	Inspector-General Reviews	i) IGPS 12 – Statutory reviews of trustee decisions under the <i>Bankruptcy Act 1966</i> by the Inspector-General ii) IGPS 15 – Assessment by the Inspector-General of a trustee remuneration approval requests iii) IGPS 16 – Reviewing remuneration of trustees and costs of third party service providers	Focus on solutions and guidance to systemic issues identified through Inspector-General reviews of: i) practitioner remuneration ii) objections to discharge iii) income assessments.
7	Disciplinary action	i) IGPS 9 – Involuntary cancellation of registration of debt agreement administrators and ineligibility process ii) IGPS 8 – Involuntary cancellation of trustee registration	Early intervention cultivating productive working relationships with all stakeholders so that proactive action can be taken as appropriate.
8	Investigate and prosecute offences against the <i>Bankruptcy Act 1966</i>	i) IGPS 18 – Issuing of infringement notices by the Inspector-General in Bankruptcy ii) IGPS 14 – Referring offences against the <i>Bankruptcy Act 1966</i> to the Inspector-General	A focus on the quality of practitioner's offence referrals. Implement short form referral process. Ongoing focus to ensure timely lodging of documents with the Official Receiver in accordance with time-frames stipulated in the Act.

1. Inspector-General practice documents are available on our website and explain how we go about what we do.

Annexure B: AFSA Regulation & Enforcement Business Information 2010–15

Business information	2010–11	2011 12	2012 13	2013 14	2014 15	5 year mean
Registrations						
Trustee applications received	9	4	12	14	12	10
Number of RTs at end of period	211	205	205	208	212	208
Administrator applications received	3	9	3	3	11	6
Number of RDAs at end of period	56	61	63	60	69	62
Total PIPs at end of period	267	266	268	268	281	270
Inspections						
RT administrations examined	449	688	344	388	277	429
RT errors identified	224	238	152	216	155	197
RDAA administrations examined	245	447	254	251	76	255
RDAA errors identified	30	19	23	35	15	24
Total PIPs administrations examined	694	1135	598	639	353	684
Total PIP errors identified	254	257	175	251	170	221
Percentage of errors identified	37	23	29	39	48	32
Proactive reviews						
Part X & s73 proposals reviewed	558	587	553	333	316	469
Part X & s73 creditor meetings attended	67	66	89	106	32	72
Proposals/meetings - AFSA intervention	26	12	44	32	8	24
Percentage of AFSA intervention	5	2	8	10	3	6
Complaints						
RT complaints received	288	313	455	311	226	319
RT complaints justified	27	24	38	35	16	28
RDAA complaints received	66	72	50	24	27	48
RDAA complaints justified	8	8	4	9	6	7
Total PIP complaints received	354	385	505	335	253	366
Total PIP complaints justified	35	32	42	44	22	35
Percentage complaints justified	10	8	8	13	9	10
Inspector-General Reviews						
Income assessment reviews received	32	33	32	46	48	38
Income assessment reviews varied	17	16	16	19	14	16
Objection to discharge reviews received	47	39	31	52	53	44
Objection to discharge reviews varied	14	13	8	10	13	12
Hardship application reviews received	4	4	10	11	11	8
Hardship application reviews varied	2	0	1	2	0	1
RT remuneration reviews received*	2	19	64	87	115	57
RT remuneration reviews varied*	0	4	5	9	51	14
Total I-G reviews received	85	95	137	196	227	148
Total I-G reviews varied	33	33	30	40	78	43
Percentage I-G reviews varied	39	35	22	20	34	29
Bankruptcy Act Offences						
Referrals received	1317	1498	1262	1332	1183	1318
Accepted for investigation	843	962	719	665	696	777
CDPP briefs prepared	276	216	200	122	154	194
CDPP briefs accepted#	^235	^200	^118	^95	128	155
Total persons prosecuted**	242	154	148	116	81	148
Dollar value of fraud proven	\$0.83m	\$4.06m	\$3.26m	\$1.42m	\$1.30m	\$2.17m

* Legislation commenced 1 December 2010.

** Includes convictions and charges proven without conviction.

Include a portion of the briefs prepared and referred to the CDPP in the previous financial year.

^ These figures have been revised since they were originally published.

Acronyms

ACCC	Australian Competition & Consumer Commission
ACL	Australian Consumer Law
AER	Annual Estate Return
AFSA	Australian Financial Security Authority
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CAANZ	Chartered Accountants Australia and New Zealand
CDPP	Commonwealth Director of Public Prosecutions
CIR	Compliance information request
CPA	CPA Australia
FCA	Financial Counselling Australia
FCA	Federal Court of Australia
FCC	Federal Circuit Court of Australia
IAIR	International Association of Insolvency Regulators
IG	Inspector-General
IGPD	Inspector-General Practice Directions
IGPG	Inspector-General Practice Guidelines
IGPS	Inspector-General Practice Statement
IRLC	Insolvency & Reconstruction Law Committee
ITSA	Insolvency and Trustee Service Australia
LCA	Law Council of Australia
NPII	National Personal Insolvency Index
NZITS	New Zealand Insolvency and Trustee Service
PIA	Personal Insolvency Agreement
PIP	Personal Insolvency Practitioner
PIPA	Personal Insolvency Professionals Association
PIR	Personal Insolvency Regulator
PPSR	Personal Property Securities Register
PRE	Pre-referral enquiry
RDAA	Registered Debt Agreement Administrator
RPF	Regulatory Performance Framework
RT	Registered Trustee
SCT	Solicitor Controlling Trustee
UDAA	Unregistered debt agreement administrator