



# Regulatory Actions Cooperation Assistance and Support Policy



## Assistance and support for cooperation during regulatory actions

### 1.1. Purpose

This policy is designed to address the complexities in targeting the harms against the personal insolvency industry and the Personal Property Securities Register (PPSR) caused by misconduct, fraud or other alleged criminal conduct whether committed by a registered practitioner, pre-insolvency advisor, other advisor, creditor or debtor that may or may not be within the regulatory scope of AFSA or other regulatory regime. It is of particular relevance in circumstances where it is believed that more than one person has been involved in alleged misconduct that is under investigation.

### 1.2. Benefits

The benefits of this policy will be an ability for AFSA to promote confidence in the personal insolvency system and the PPSR, whilst demonstrating a fair and firm regulatory approach through acknowledging and encouraging the assistance of parties that may have been involved in misconduct, fraud or other alleged criminal conduct as a result of obtaining and/or adhering to advice from, a practitioner, pre-insolvency advisor or other advisor, creditor or debtor.

### 1.3. Scope

The policy applies to any individual that comes forward with evidence of conduct contravening the *Bankruptcy Act 1966*, the *Personal Property Securities Act 2009* or any other legislation, regulation or practice rule administered by AFSA.

## 2. Principles

As a fair and firm regulator, AFSA promotes assistance and support to encourage parties to cooperate in any regulatory actions undertaken.

AFSA will adopt a position of assistance and support in circumstances flowing from the cooperation of a party that results in the targeted investigation with a view to regulatory action and/or prosecution of a party involved in misconduct, fraud or other alleged criminal conduct.

## 2.1. Principle 1: Mutual Cooperation

**AFSA does not have power to grant immunity from prosecution** for criminal conduct investigated under the provisions of the *Bankruptcy Act 1966* or the *Criminal Code 1995*. That sole discretion lies with the Commonwealth Director of Public Prosecutions (CDPP)<sup>1</sup>.

It is the responsibility of the court to determine penalties for offences or contraventions of any legislation administered by AFSA. However, in line with this policy, AFSA may provide information about co-operation and assistance to:

- the CDPP related to any criminal prosecution; or
- the court related to any civil litigation.

AFSA's recognition of cooperation and assistance by parties in any investigation and/or regulatory action can take a variety of forms including, but not limited to:

- electing to take no action against a party and/or parties
- using alternative enforcement measures such as official cautions or enforceable undertakings
- substitution or enforcement for lesser conduct
- provide information to the CDPP in relation to the principles in section 16A and 16AC of the *Crimes Act 1914*
- submissions to the court for a reduction in penalty in relation to any civil litigation.

Parties wishing to take advantage of AFSA's Regulatory Actions Cooperation Assistance and Support Policy should approach AFSA referring to this policy.

AFSA determines each request on its own merits on a case by case basis.

Assistance and support will only be considered when a person has fully and truthfully co-operated with AFSA and is most likely to be considered appropriate for individuals who:

- come forward with valuable and important evidence of a contravention of which AFSA is either otherwise unaware or has insufficient evidence to initiate regulatory action
- provide AFSA with full and frank disclosure of the activity and relevant documentary and other evidence available to them
- undertake to cooperate throughout AFSA's investigation and comply with that undertaking
- have not compelled or induced any other person to take part in the conduct and were not a ringleader of the activity.

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<sup>1</sup> See [CDPP Guidelines and Directions Manual – Undertakings, offers of assistance and induced statements](#) for further details about CDPP's role.

Assistance and support will not be granted where the person seeking that assistance and support has compelled or induced any other person to take part in the conduct or was a ringleader of that activity.

Any party or their legal representatives may freely approach AFSA in an attempt to gain some indication of the likelihood of assistance and support being provided. AFSA will not be able to give definitive answers in such cases but will provide guidance as to the probable course of action and/or outcomes AFSA would undertake.

## 2.2. Principle 2: Assistance and Support Outcomes

As above in Principle 1, AFSA may make its own submission to the CDPP and/or court for consideration on any mutual cooperation. AFSA exercises this right if it is satisfied that a party seeking assistance and support, has cooperated with AFSA in a substantive way.

In line with this policy, AFSA can reach an agreement with any parties about any joint submissions to be placed before the court for consideration for any civil litigation. AFSA can also provide information about assistance and co-operation to the CDPP for the purpose of sentence proceedings in relation to the principles in section 16A and 16AC of the *Crimes Act 1914*.

AFSA will take into consideration factors including, but not limited to:

- whether the party or parties have fully cooperated with AFSA
- the nature and extent of the contravening conduct
- the circumstances in which the conduct took place
- the period over which it extended
- whether the conduct has ceased
- whether the party or parties have undertaken any remedies and/or actions
- the amount of loss, damage or harm caused
- whether the contravention was deliberate, calculated, intentional or reckless.