



Australian Government

Australian Financial Security Authority

S156A Beta Review March 2022

A progress report to evaluate the effectiveness of the changes made to the distribution of bankrupt estates to registered trustees.



Our vision: To be a firm and fair regulator and world-class government service provider that delivers improved and equitable financial outcomes for consumers, business and the community.

S156A Beta Review

Following a consultation process with industry starting in February 2021, The Australian Financial Security Authority (AFSA) announced a change to the way in which bankrupt estates would be distributed to registered trustees (RTs). The change involves a transfer of new estates to registered trustees under s156A where it is clear that a registered trustee may consent to administer the estate. This is in addition to work already transferred by the OT under s181A. The change is designed to increase the overall number of matters distributed to the private sector and increase the number of matters distributed to female trustees. The main priority of the Official Trustee (OT) is to continue to focus on matters that are in the public interest and build confidence in the personal insolvency system – even if the administration may not result in a financial return to creditors or cover administration costs. See [changes to AFSA’s approach to transferring matters](#) for more information.

To ensure the process was efficient and easy for all stakeholders, the changes were initially implemented as a Beta launch for six months. This has allowed us to seek feedback during the period so we can refine and improve the new process.

Overview

With the number of bankruptcy applications continuing to be low due to the current economic environment, we have not been able to distribute as many estates to RTs as may have been the case prior to the economic effects of COVID-19. As a result, not all RTs on the panel have had the opportunity to participate in the trial. However, the data collected to date has reflected that the process is working as expected and has created an effective method for the timely allocation of commercial work to RTs.

When starting the trial, stakeholders recognised that relying solely on what is disclosed in the Statement of Affairs or Bankruptcy Form may result in the distribution of estates with varying commercial outcomes, including some that may offer no realisations. It is too early for us to draw any conclusions on the efficacy of the current thresholds set in consultation with insolvency practitioners, or outline any actions we may take to adjust these thresholds, but we will continue to monitor it closely.

Statistics

Table 1: data regarding applications – 29 July 2021 to 31 January 2022

Category	Number
Total applications assessed against criteria	2,064
Total eligible applications where S156a offers made	107

Gender breakdown	Total number (out of 107 eligible applications)
Offers made to female RTs	18 (17%)
Offers made to male RTs	89 (83%)

Response to offer	Total number (out of 107 eligible applications)
Offers accepted	82 (77%)
Offers lapsed	15 (14%)
Offers rejected	10 (9%)

Table 2: data regarding RTs – 29 July 2021 to 31 January 2022

Category	Number
Total RTs	202
RTs on the panel	156

Gender breakdown of RTs on panel	Total number (out of 156 RTs on panel)
Female	17 (11%)
Male	139 (89%)

Timely allocation of matters

Recognising the need to ensure that those entering bankruptcy can receive relief quickly, the timely allocation of matters is an important consideration. However, the decision to start the trial with a 24-hour acceptance period initially resulted in some difficulties for RTs.

The model is built for a profession where people are available on all weekdays during business hours, and we know that this is no longer the case for the whole workforce.

We recognise that some RTs have found this timing difficult due to flexible working arrangements, leave and unexpected absences. We are working through options and considering appropriate solutions to address this issue. Any extension in the acceptance period needs to be balanced against the timely relief for the applicant.

Gender diversity

There is a significant gender gap in the insolvency industry as only around 10% of Australia's registered insolvency practitioners are women. AFSA is committed to doing its part to ensure that diversity in the insolvency profession better reflects that of the wider community. In July 2021, AFSA introduced an initial target of 20% as the minimum proportion of bankrupt estates directed to female trustees.

The trial has been successful in increasing the work distributed to female trustees, with approximately 17% of offers being made to female RTs during the period. The 20% target was reached shortly after the reporting period. We would like to thank the female trustees who were early adopters of the policy and therefore assisted us work through the teething issues. We have been working closely with this cohort and thank them for their honest feedback. This feedback has allowed us to evaluate our processes with a view to improving the flow of commercial work to women working in the private sector.

Criteria

Establishing a set of criteria and relying solely on the information supplied on the Statement of Affairs or Bankruptcy Form does create complexity and room for error. The criteria established were developed following stakeholder consultations and we recognise that it is too early to determine if all criteria are optimal.

The table below shows the criteria which prompted the transfer:

Criteria description	# Categorised for transfer	% Categorised for transfer
Sold or transferred assets	43	34%
Contributors	31	25%
Trust involvements	17	14%
Money owed to the bankrupt	9	7%
Real estate	8	6%
Combined resale value of vehicles	4	3%
Other assets combined value	4	3%
Preference payments	3	2%
Cash on hand and at bank	3	2%
Financial assets market value combined	1	1%
Interest in assets owed by others with a combined value	1	1%

Criteria description	# Categorised for transfer	% Categorised for transfer
Lump sums paid to super within last 5 years	1	1%
Shares market value combined	0	0%
Deceased estate estimated value of benefit	0	0%

The top three asset classes were:

1. **Sold or transferred assets:** calculated as the 'Value of the Asset' less 'Amount Received' by the person owing money. If the difference exceeds \$40,000, the criteria is triggered for an RT to investigate an undervalued transaction. Feedback suggests that in some instances, the funds are paid to a mortgagee or co-owner and therefore there are no funds available.
2. **Contributors:** contribution estates are those where the contribution rate is identified as >\$5,000 per annum. Some feedback has been provided highlighting that errors in completing the form have an impact, such as including income in both the 'wages' and 'self-employed' rows.
3. **Trust involvements:** identified assets of distribution = >\$25,000. Some feedback was provided where information in the Bankruptcy Form contradicted that given under Q55 or instances where the bankrupt individual operated their company through a trust and declared it had no assets and was no longer trading.

We will continue to monitor feedback on these and other issues, noting the volumes are still low. Where there is opportunity to improve the process, AFSA will look to do so.

Process

The key process that changed during the trial was the opt-out clause on the online form. Feedback indicated that the opt-out clause caused unnecessary confusion and created the perception that the OT could be selected to permanently administer an estate. Between the launch of the process on 29 July 2021 and the removal of the option on 29 September, AFSA received 747 applications for bankruptcy without a Consent to Act. Of those, 581 opted out, and there were several applications that did not meet the established set of criteria, resulting in just 16 offers to RTs.

This feedback was considered, and the decision was taken to withdraw the opt-out choice from the Bankruptcy Form. Removal of this option has significantly increased the volume of matters offered to the private sector (16 in first in two months of operations, 91 for following four months of operations).

Next steps

The process is broadly working as expected, and we have made some adjustments in response to feedback since implementation. We will continue to seek feedback as more RTs have experience with the system and look for opportunities to refine the process which may include considering the appropriateness of the agreed criteria. We will consult regularly with stakeholders and report at least annually on outcomes.

Feedback

While we have spoken with many RTs during the trial to understand their experiences, we welcome further feedback via RTNationalTransfers@afsa.gov.au