



Australian Government

Australian Financial Security Authority

**AUSTRALIAN FINANCIAL
SECURITY AUTHORITY
PERSONAL INSOLVENCY
PRACTITIONERS
COMPLIANCE REPORT
2015–16**

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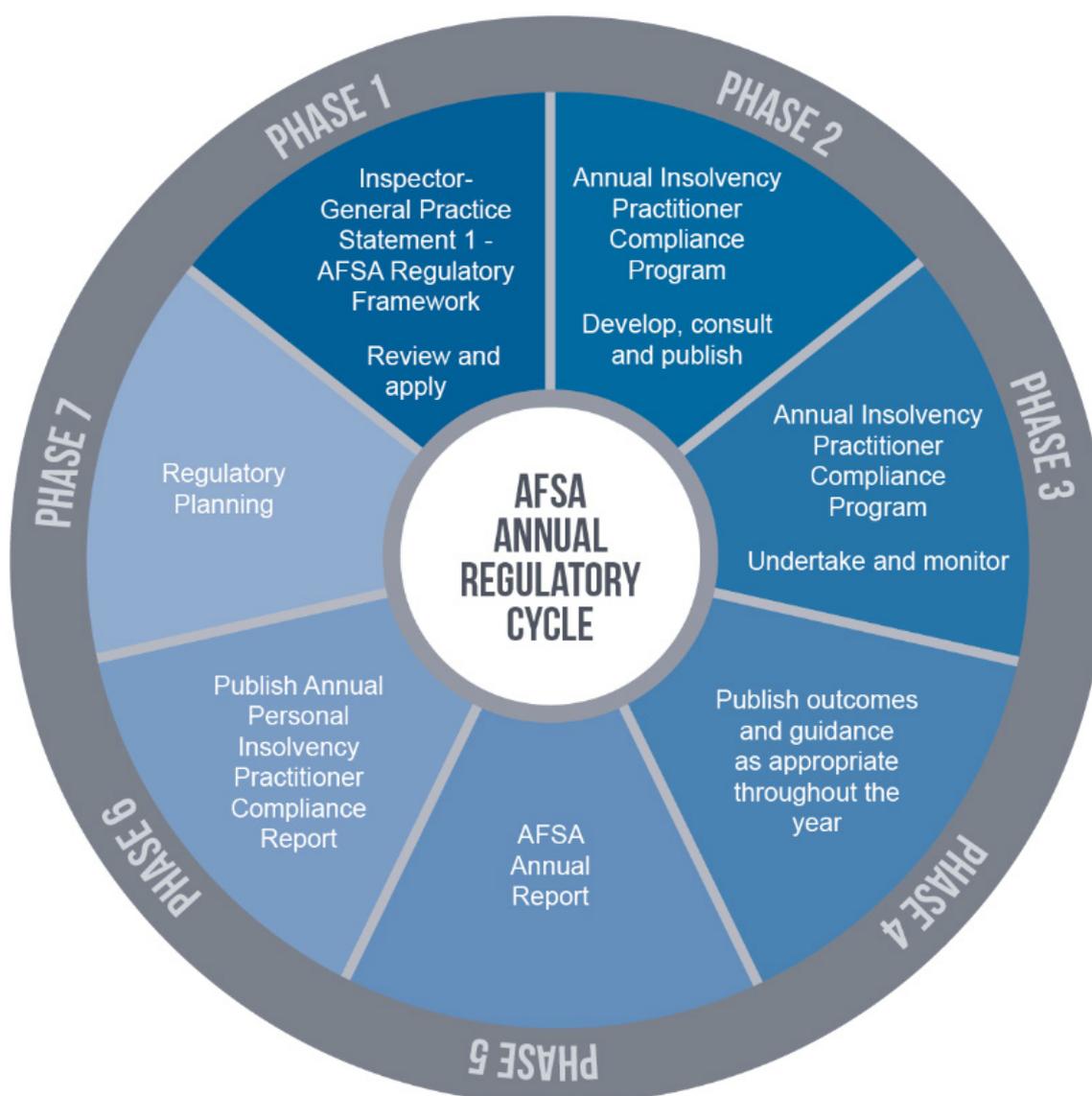
OUR REGULATORY ROLE

The regulatory and enforcement functions of the Australian Financial Security Authority (AFSA) 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 Act 1995*.

These activities serve to ensure high national standards of personal insolvency practice and procedure, compliance with the *Bankruptcy Act 1966* and to fulfil our 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.”

Our role is captured in the following [seven phase annual regulatory cycle](#):



PURPOSE OF THIS REPORT

We are 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 2015–16 insolvency practitioner compliance programme (**Annexure A**) delivered a structured compliance programme across each of the eight core roles that make up AFSA's regulatory and enforcement function. The **Personal insolvency practitioners compliance report 2015–16** (the report) is an assessment of private practitioner performance during 2015–16 together with AFSA's performance as measured against that programme, including significant regulatory outcomes achieved in the public interest.

This information expands on that contained in the AFSA annual report 2015–16 and provides stakeholders with improved qualitative data. It also complements the range of statistics we have published such as, Annual administration statistics, and summarises significant regulatory outcomes as highlighted in the Personal Insolvency Regulator newsletter (PIR) editions throughout 2015–16.

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

- personal insolvency practitioners (PIPs)
- representative professional bodies including:
 - Australian Restructuring Insolvency & Turnaround Association (ARITA)
 - Personal Insolvency Professionals Association (PIPA)
 - Certified Practising Accountant (CPA) Australia
 - 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 the International Association of Insolvency Regulators (IAIR)
- academics.

READER'S NOTE

- In the context of this report personal insolvency practitioners are 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 per cent.
- Summary data compared to average annual mean figures over the five year period from 1 July 2011 to 30 June 2016 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 2015–16



BY MAJOR OUTCOMES

Achieving positive outcomes from the key regulatory focus areas of AFSA's Insolvency Practitioner Compliance Programme 2015–16.

Completing an internal review of AFSA's regulatory practices and procedures to ensure efficient and effective service delivery and reduction in compliance burden.

Proactively monitoring trustee investigations in real time prior to trustees making recommendations on annulment and personal insolvency agreement proposals.

Facilitating better and earlier engagement between debtors, bankrupts, creditors and practitioners to ensure timely administration and communication of information.

Reviewing trustees non-professional expenses charged to insolvency administrations to ensure the expenses are reasonable, necessary and proper.

Improving the level of independence and disclosures by personal insolvency practitioners in relation to pre-insolvency advisors or other referrers.

Publishing revised Inspector-General Practice Statement 1 (IGPS 1) on AFSA's regulatory framework.

Addressing systemic areas of non-compliance by providing guidance through Personal Insolvency Regulator (PIR) articles, online podcasts and information sessions for practitioners.

Embracing technology to enhance AFSA's capability to effectively monitor advertising of debt agreements across multiple platforms including TV, radio, print and online.

Publishing revised Inspector-General Practice Guideline 1 (IGPG 1) on debt agreement advertising and proactively monitoring RDAA compliance to ensure misleading or unbalanced content is corrected, removed and/or referred to the Australian Securities and Investments Commission (ASIC) for investigation.

Creating awareness of the pre-referral enquiry (PRE) process among personal insolvency practitioners to facilitate early contact and prompt reporting of alleged offences to AFSA.



BY THE NUMBERS

291

Registered personal insolvency practitioners

215

Registered trustees

76

Registered debt agreement administrators

18

Applications received for registration as a personal insolvency practitioner

16

applications accepted

1

application not accepted

1

application pending decision as at 30 June 2016

8

Personal insolvency practitioners were deregistered due to voluntary resignation or lapsed registration.

77

Personal insolvency practitioners inspected

63

Physical on-site inspections

14

Remote inspections

283

Personal insolvency administrations inspected

160

Errors or issues identified

8

Registered trustees found to have overcharged fees

54

Debt agreement advertisements reviewed

13

Cases of intervention to correct or remove misleading or unbalanced advertising



426	Personal insolvency agreements (Part X) and composition (section 73) proposals reviewed	59	Creditors meetings attended	25	Cases of proactive regulatory intervention to oversee necessary corrective action
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212	Complaints received about personal insolvency practitioners	13	Complaints justified
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246	Requests received for Inspector-General reviews under the Bankruptcy Act	234	Inspector-General reviews were finalised.
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372	Bankruptcy Act offence referrals received from personal insolvency practitioners	233	Referrals accepted for further investigation.
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538	Pre-referral enquiries (PREs) received from personal insolvency practitioners
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98	Infringement notices issued to personal insolvency practitioners, petitioning creditors and executors	16	issued to registered trustees.
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4	Personal Insolvency Regulator newsletters published
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8	Information sessions delivered to personal insolvency practitioners and their staff on offence referrals
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AFSA'S REGULATORY AND ENFORCEMENT FUNCTIONS—EIGHT 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 registered trustees and registered debt agreement administrators.

Further information on the registration process for registered trustees is detailed in Inspector-General Practice Statement 13 and for RDAAs in Inspector-General Practice Statement 4. Both documents are available on our website.



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

2. Inspections

If an applicant for registration is successful, the personal insolvency practitioner 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 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 registered trustees and registered and unregistered debt agreement administrators through a targeted programme of inspecting files, systems and practices.

Further information on these inspection processes 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. We proactively monitor:

- 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 (Part X) and composition (section 73) proposals.

In 2015–16, we undertook targeted exercises to:

- ensure that the outlays taken are reasonable and do not confer an extra benefit to the practitioner
- ensure compliance with the Trustee Performance Standards and the ARITA and PIPA Codes of Professional Practice to ensure practitioners remain at arm's length in relation to pre-insolvency dealings
- analyse apparent delays between the date of last receipt and the payment of interim or final dividends to creditors to ensure administrations are being finalised with all convenient speed
- ensure the integrity of returns lodged for the 2014–15 annual estate return period
- ensure the veracity of related party claims, adequate disclosure and the thoroughness of practitioner's investigations prior to making a recommendation on debtors or bankrupt's proposals.

Further information on proactive monitoring processes is detailed in Inspector-General Practice Statement 11 and Inspector-General Practice Guideline 1.

4. Guidance

As the regulator of personal insolvency practitioners, we have a role in providing practical guidance to the industry¹. We do this in a number of different ways to ensure the promotion of best practice such as:

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

5. Complaints

We are responsible for investigating complaints made by debtors, creditors and others about the conduct of personal insolvency practitioners with a focus on early intervention and dispute resolution. However, we encourage practitioners to effectively utilise their own internal complaint handling processes in response to complainants wherever possible³.

Further information on the complaints handling process can be found in Inspector-General Practice Statement 10.

6. Inspector-General reviews

We are responsible for reviewing prescribed decisions made by registered trustees 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.

We are also responsible for reviewing and determining requests to approve registered trustee remuneration in certain circumstances upon application to the Inspector-General. Our focus in this area is to proactively intervene to address practice issues or resolve disputes.

Further information on the process of Inspector-General reviews can be found in Inspector-General Practice Statements (IGPS) 12, 15 and 16.

7. Disciplinary action

An important aspect of our ongoing strategic focus is forging productive working relationships with all stakeholders⁴. 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, we take disciplinary action (and applies relevant sanctions) against personal insolvency practitioners 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 personal insolvency practitioners is detailed in Inspector-General practice statements 8 and 9.

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 practitioners, 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.

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

2 Two podcasts were released on [AFSA's YouTube channel](#) in 2015–16 about referring alleged offences to AFSA and the AFSA Personal insolvency practitioner compliance report.

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

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

INTERNAL REVIEW OF REGULATION

Delivering efficient and effective services

A key element of our 2015–16 corporate 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, we completed an internal review of its regulatory practices and procedures in 2015–16 (in consultation with stakeholders⁵) to identify areas for improvement. Several recommendations were subsequently implemented. They included:

- enhancing our monitoring capabilities of advertised insolvency services (particularly debt agreements) and clarifying the parameters of acceptable advertising by registered debt agreement administrators and brokers.
- expanding the implementation of our remote access and desktop eInspections to a greater number of personal insolvency practitioners.
- implementing the pre-referral enquiry (PRE) process to address the low acceptance rate of offence referrals from personal insolvency practitioners by AFSA for investigation.

Reducing regulatory compliance burden

Our internal review of regulation was consistent with the government's broader regulatory reform 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 regulatory reform units throughout the regulatory making process.

New regulatory performance framework

To achieve its regulatory reform aims, the Government also began work in 2015–16 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. It allows us to report objectively on efforts to administer regulation fairly, effectively and efficiently. The RPF will also be a useful tool for us to identify opportunities for improvement and better target our resources for greater impact. It also assists in highlighting where improvement of our regulatory framework could reduce compliance costs.

The RPF comprises:

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

We published our RPF in June 2015. The six KPIs and related performance measures under the framework, which seeks to reduce unnecessary regulatory burden, have all been met. The full report on AFSA's performance is subject to external validation by the Bankruptcy Reform Consultative Forum and then approval will be sought by the Attorney-General prior to 31 December 2016. The final and full report will be published on AFSA's website.

5 Including ASIC, ARITA, PIPA, all RTs and RDAAs and major creditors.

PERFORMANCE ON CORE REGULATORY AND ENFORCEMENT ACTIVITIES

REGISTRATIONS

At 30 June 2016, there were 291 personal insolvency practitioners in Australia comprising 215 registered trustees and 76 registered debt agreement administrators.

During 2015–16 these practitioners received and held in trust a total of \$569.97 million, finalised 13,717 personal insolvency administrations and had 59,360 administrations on hand at 30 June 2016⁶. Of the \$569.97 million received by personal insolvency practitioners, \$235 million (41 per cent) was paid in dividends to creditors while \$142.16 million (25 per cent) was paid in practitioner fees.

In comparison, five years ago at 30 June 2011, there were 267 personal insolvency practitioners in Australia comprising 211 registered trustees and 56 registered debt agreement administrators. At that time they received and held \$385.31 million on trust, finalised 8,010 personal insolvency administrations and had 46,899 administrations on hand. Of the \$385.31 million received by personal insolvency practitioners during 2010–11, \$151.45 million (39 per cent) was paid in dividends to creditors while \$89.49 million (23 per cent) was paid in practitioner fees.



Between 30 June 2011 and 30 June 2016, the number of administrations on hand with personal insolvency practitioners increased 27 per cent while the dollar value of monies held on trust increased 48 per cent. Over the same period, registered trustee numbers increased by 5 per cent and registered debt agreement administrator numbers increased by 20 per cent.

New entrants to the market

Registered trustees

AFSA received 10 new applications from prospective registered trustees in 2015–16. Of these, eight (80 per cent) were accepted, one was not accepted and one was still pending decision at 30 June 2016.

In the five years from 1 July 2011 to 30 June 2016, AFSA received an average of 10 applications annually from people seeking to become a registered trustee.

Table 1: Registered trustee information 2015–16

	NSW	ACT	Vic	Qld	SA	NT	WA	Tas	Total
Registered trustees at 1 July 2015	64	5	49	50	14	1	22	7	212
New trustees	3	0	1	3	0	0	1	0	8
Trustees deregistered	0	0	2	0	0	0	3	0	5
Registered trustees at 30 June 2016	67	5	48	53	14	1	20	7	215

Table 2: Registered trustee applications 2015–16

	NSW	ACT	Vic	Qld	SA	NT	WA	Tas	Total
New applications received	3	0	2	4	0	0	1	0	10
Applications accepted	3	0	1	3	0	0	1	0	8
Applications rejected	0	0	0	1	0	0	0	0	1

⁶ During 2015–16, the Official Trustee in Bankruptcy held on trust a total of \$69.85 million, finalised 15,073 personal insolvency administrations and had 5,004 administrations on hand on 30 June 2016, making it the single largest trustee.

Registered debt agreement administrators

AFSA received eight new applications from prospective registered debt agreement administrators in 2015–16. Nine applications were accepted during the year, including one application that was received in 2014–15 but had not been processed by 30 June 2015. There were instances of applications not being accepted in 2015–16.

From 1 July 2011 to 30 June 2016, AFSA received an average of seven applications annually from people and companies wishing to be registered as debt agreement administrators.

Table 3: Number of RDAA registrations in 2015–16

	NSW	ACT	Vic	Qld	SA	NT	WA	Tas	Total
Registered debt agreement administrators at 1 July 2015	20	0	10	28	3	0	6	2	69
New debt agreement administrators	3	0	0	4	2*	0	0	1	10*
Debt agreement administrators deregistered	1	0	0	2	0	0	0	0	3
Registered debt agreement administrators at 30 June 2016	22	0	10	30	5	0	6	3	76

* This figure includes one RT whose company is registered as an RDAA (not them individually). For consistency, all persons with overall management responsibility who are registered trustees are included in the above figures.

Table 4: Registered debt agreement administrator applications 2015–16

	NSW	ACT	Vic	Qld	SA	NT	WA	Tas	Total
New applications received	3	0	0	4	1	0	0	0	8
Applications accepted	3	0	0	4	1	0	0	1	9*
Applications rejected	0	0	0	0	0	0	0	0	0

* Includes one registered trustee application received in 2014–15 but not accepted until 2015–16.

Registration renewals and professional indemnity insurance

In 2015–16, we continued the proactive practice of verifying relevant personal insolvency practitioner details to ensure only suitably qualified and eligible persons and entities had their registrations renewed for a further three year period. This verification included annual certificate of currency checks to validate professional indemnity insurance policies held by registered trustees in their individual capacity.

INSPECTIONS

We inspected 77 personal insolvency practitioners and the systems and controls that govern their personal insolvency practices. Of those, 63 (82 per cent) inspections were physical on-site inspections and 14 (18 per cent) were remote inspections. In 2015–16, a total of 283 personal insolvency administrations were inspected with 160 (57 per cent) errors or issues identified and 27 (17 per cent) requiring remedial action.

This compares with 353 administration inspections in the 2014–15 year and represents a decrease of 70 (20 per cent) in total inspections of administrations conducted by AFSA in 2015–16⁷.

In the five years from 1 July 2011 to 30 June 2016, AFSA inspected an average of 602 personal insolvency administrations and identified errors in 39 per cent of those administrations (Annexure B).

AFSA continued to expand its eInspection programme in 2015–16 following a successful pilot conducted in 2013–14. Implementing eInspections of practitioner online systems and files is an important regulatory reform measure consistent with the Government's agenda to reduce the compliance burden on stakeholders.

⁷ 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.

Registered trustees

In 2015–16, AFSA inspected 62 registered trustees and 228 of their administrations. There were 138 errors identified of which 23 (17 per cent) required remedial action.

Table 5: Registered trustee inspection information for 2015–16

Registered trustee inspection information	Total
Registered trustees inspected	62
Administrations inspected	228
Errors identified	138
Errors requiring remedial action	23
Proportion of errors requiring of remedial action	17%

Categorisation of errors

To assist in assessing the seriousness and relevant regulatory response and to alert practitioners of the issues and possible repercussions, non-compliances are classified as either category A, B or C depending on the level of seriousness.

Category A

These are very serious errors or breaches requiring immediate attention and include fundamental breaches and lack of controls that are likely to bring into question the integrity of the system.

Category B

These are serious or systemic errors that will have a material impact on the administration and require timely remedial action. The practitioner should be counselled and timely remedial action taken.

Category C

These are one-off practice or procedural errors and non-compliance errors that are not systemic and don't have a significant impact on the administration, dividends, creditors, debtors' rights or system integrity but should be brought to the attention of the practitioner and monitored.

Table 6: Registered trustee errors by category in 2015–16

	Category of error			Total
	A	B	C	
Errors identified	1	15	122	138
Proportion of errors	1	11	88	100%

Of the 138 administration errors identified through the inspection programme, the highest proportion (88 per cent) were category C errors.

Table 7: Registered trustee non-compliance areas in 2015–16

Areas of non-compliance	Number of errors	Proportion of errors (%)
Inadequate communication by trustee	39	28%
Property, income or asset errors	25	18%
Failure to meet trustee/controlling trustee standards or PINS	20	14%
Creditor claims not properly dealt with	12	9%
Failure to maintain proper records	9	7%
Problems with meetings	9	7%
Overcharging or over-servicing	8	6%
Commonwealth Revenue implications*	7	5%
Unreasonable delays in timely action leading to delays in distribution	7	5%
Failure to refer possible material offence	2	1%
Conflict of interest	0	0%
Defalcation or unlawful activities	0	0%
Other	0	0%
Total	138	100

*All are one-off errors and not material in nature.

The highest area of registered trustee non-compliance stemmed from inadequate communication by the trustee (28 per cent). AFSA is providing continued guidance through its PIR newsletter articles and information sessions to improve performance standards in this area.

Registered debt agreement administrators

AFSA inspected 11 registered debt agreement administrators and four unregistered debt agreement administrators, along with 55 of their administrations in 2015–16. There were 22 errors identified of which 4 (18 per cent) required remedial action.

Table 8: Debt agreement administrator inspections in 2015–16

	Total
Registered debt agreement administrators inspected	11
Unregistered debt agreement administrators inspected	4
Administrations inspected	55
Errors identified	22
Number of errors requiring remedial action	4
Proportion of errors requiring of remedial action	18%

Table 9: Registered and unregistered debt agreement administrator errors by category in 2015–16

	Category of error			
	A	B	C	Total
Errors identified	0	5	17	22
Proportion of errors (%)	0	23	77	100

Of the total registered and unregistered debt agreement administrator errors identified, the highest proportion (77 per cent) were category C errors.

Table 10: Registered and unregistered debt agreement administrator non-compliance areas in 2015–16

Areas of non-compliance	Number of errors	Proportion of errors (%)
Failure to maintain proper records	8	36%
Commonwealth Revenue implications*	4	18%
Failure to comply with certification duties: provision of prescribed information, affordability, accuracy and completeness	3	14%
Failure to notify creditors of 3 months arrears default	3	14%
Remuneration and expenses not taken in accordance with provisions of debt agreement	2	9%
Creditor claims not properly dealt with	2	9%
Unreasonable delays in timely action leading to delays in distribution	0	0%
Inadequate administration of the debt agreement	0	0%
Defalcation or unlawful activities	0	0%
Inadequate communication by administrator	0	0%
Failure to notify Official Receiver of dates to maintain NPPI	0	0%
Conflict of interest	0	0%
Other	0	0%
Total	22	100

*All were made by unregistered debt agreement administrators. Relevant investigations are being undertaken.

The highest area of non-compliance for registered and unregistered debt agreement administrators resulted from failure to maintain proper records (36%). We are providing continued guidance through the annual registered debt agreement administrator forum and Personal Insolvency Regulator newsletter articles to improve performance standards in these areas.

Inspection outcomes

The major outcomes achieved from AFSA's annual inspection process in 2015–16 include:

- overseeing improvements in personal insolvency practitioner systems and controls, particularly in the area of disclosure and independence. This includes improvements to checklists and precedents.
- identifying specific instances of 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 practitioners, including payment of dividends and responding to reasonable requests for information in a timely manner.
- responding to systemic areas of non-compliance by providing guidance through newsletter articles, podcasts and Inspector-General practice documents.
- overseeing misleading or unbalanced advertising of debt agreements and services by registered debt agreement administrators or brokers and ensuring its correction, removal and/or referral to ASIC for investigation under the Australian Consumer Law (ACL).

PROACTIVE MONITORING

Advertising insolvency services

AFSA continued its proactive monitoring advertising of debt agreements and services by registered debt agreement administrators and brokers in 2015–16 to ensure compliance with Inspector-General Practice Guideline 1 (IGPG 1).

Enhanced monitoring capability allowed for increased monitoring of advertisements in 2015–16. Our activities expanded to include reviewing advertising by administrators and brokers on television, radio, in print and online. We also maintained close working relationships with ASIC to address instances of misleading and unbalanced advertising of debt agreements and services.

A total of 54 compliance reviews were undertaken, comprising 48 online websites plus three YouTube clips, one radio advertisement and two mailed letters. As a result, 13 registered debt agreement administrators had advertisements that required remedial action to correct/remove misleading or unbalanced advertising in breach of IGPG 1. A number of these matters were referred for potential enforcement action to ASIC.

Table 11: Registered debt agreement advertising in 2015–16

Debt agreement advertising	Number
Number of RDAAs contacted with advertising that required remedial action	13
Number of advertising compliance reviews conducted	54
Proportion of RDAA advertising that required remedial action (%)	24

The most common issues of concern were:

- inclusion of the phrases ‘government guaranteed’ or ‘government debt agreement’
- reference to or describing debt agreements as ‘debt consolidation’
- unbalanced advertising i.e. 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’.

Advertising was also considered at the 10th annual RDAA forum hosted in the Gold Coast on 9 October 2015⁸.



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

Personal insolvency agreement (Part X) and composition (section 73) proposals

In 2015–16, AFSA reviewed 426 personal insolvency agreement (Part X) and composition (section 73) proposals of the 481 received (89%) and attended 59 creditors’ meetings.

Table 12: Monitoring of Part X and section 73 proposals 2015–16

Part X and section 73 proposals received	481
Part X and section 73 proposals reviewed	426
Proportion of Part X and section 73 proposals reviewed	89%
Creditor meetings attended	59
Instances of intervention/corrective action	25
Proportion of instances of intervention/corrective action	6%

Of the total proposals reviewed by AFSA, 25 (6 per cent) involved intervention due to registered trustees failing to properly report or conduct enquiries or incorrect treatment of creditors’ claims.

Intervention by AFSA ensured specific remedial action was undertaken by registered trustees such as:

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

From 1 July 2011 to 30 June 2016, AFSA proactively intervened on average in 6 per cent of the total Part X and section 73 proposals reviewed.

Registered trustee offence referrals

In 2015–16, AFSA received 366 offences referrals from registered trustees along with 532 pre-referral enquiries (PREs)⁹.

AFSA introduced pre-referral enquiries (PREs) to assist registered trustees in reporting of alleged offences. PREs are a potential alternative to preparing full offence referrals and assist trustees to efficiently comply with their duties. They are intended for use when a practitioner considers that an offence against the Act may have occurred but it is unclear (or undecided) whether there is sufficient evidence to support the completion of a full offence referral or the investigation or prosecution may not be in the public interest.

⁸ Advertising was also considered in detail at the 11th RDAA Professional Development Day hosted on the Gold Coast on 9 October 2016.
⁹ In addition there were five offence referrals from RDAAs and one from a Controlling Trustee. There was a total of 543 PREs submitted by all PIPs.

COMPLIANCE INFORMATION REQUESTS

Compliance information requests (CIRs) were utilised to target focus areas in AFSA's insolvency practitioner compliance programme during 2015–16. This regulatory tool complements the annual inspection of personal insolvency practitioners and facilitates effective (but less intrusive¹⁰) oversight of specific practice areas.

In 2015–16, CIRs were sent to practitioners to examine their remuneration claims, trust fund handling and reconciliations and use of legislative compliance tools.

The strategic focus areas for the 2015–16 compliance programme were:

1. Practitioner outlays and expenses
2. Proactive monitoring of personal insolvency agreement (Part X) and composition (section 73) proposals
3. Timely action
4. Practitioner accounts and records
5. Independence and pre-insolvency advisors

A summary of the outcomes achieved against each of these five (5) strategic focus areas are shown below.

1. Practitioner's outlays and expenses

This focus was aimed at ensuring any expenses incurred by personal insolvency practitioners are reasonable, necessary and proper.

Non-professional expenses can generally be categorised as two types—those incurred with external providers, for example advertising, travel and accommodation; and those incurred internally, for example, telephone, photocopying and printing—where these are not already included in overheads.

AFSA reviewed 125 reports to creditors from 65 trustees, 60 of whom were ARITA members. Over 80% of the practitioners sampled made reference to the ARITA Code of Professional Practice in relation to non-professional costs—all ARITA members have an obligation to do so.

Investigations have determined that there is considerable variation in how firms deal with non-professional expenses. Some firms include non-professional expenses in overheads, charge at cost or charge at an internally determined rate. The rates charged for photocopying, printing and stationery also vary considerably. In a number of cases, firms were found to charge an internally determined rate for expenses that was well above the rate that would be charged by an external party offering the same service. The most frequently charged non-professional expenses related to photocopying, printing and searches. AFSA is following up instances of non-compliance with individual practitioners. We are also consulting with ARITA on how to provide further guidance on best practice for non-professional expenses, including clearer disclosure regarding expenses that might be included in overheads rather than directly expensed.

2. Proactive monitoring of personal insolvency agreement (Part X) and composition (section 73) proposals

AFSA focused on the veracity of related party claims, adequate disclosure and the thoroughness of a practitioner's investigations—prior to making a recommendation on a bankrupt's proposal for annulment or a debtor entering into a personal insolvency agreement.

A total of 30 high risk proposals were reviewed during 2015–16 and 15 meetings were attended as a result of the risk assessment. As a result of our attendance at creditor meetings, nine proposals were accepted, four were rejected, one was adjourned and one was withdrawn.

Non-compliance was identified in 75 per cent of the 30 high risk administrations reviewed. The majority of findings related to inadequate investigations or inadequate reporting. AFSA intervened in seven instances, most commonly seeking additional reporting or further investigations to be undertaken by practitioners.

3. Timely action

During our standard inspection activities, we focused on whether there were unreasonable delays in distributing funds available to creditors in personal insolvency administrations. Unreasonable was defined as 'a dividend

¹⁰ 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.

not being paid within 6 months of the date that funds were realised by a trustee, and there was no reasonable explanation to justify the delay’.

Of the trustees inspected, 14 had a total of 22 administrations where sufficient funds had been received to distribute to unsecured creditors. Two administrations were found to have had unreasonable delays in payment of a distribution.

The trustees in question were counselled and their systems and controls amended to ensure dividends are paid with all appropriate speed in the future.

4. Practitioner accounts and records (annual estate return accuracy)

AFSA focused on ensuring the integrity of returns lodged for the 2014–15 annual estate return (AER) period.

Compliance testing was undertaken by way of a statistically valid sample of 15 registered trustees and nine registered debt agreement administrators during the annual inspection programme.

Two practitioners were found to have AER errors.

- One related to rent not being grossed up for the agent’s fees—the AER was amended and the correct realisations charge paid.
- Three errors in three administrations where legal expenses were recorded as ‘other payments’ instead of ‘administrative expenses’. The AER was amended with no impact on realisations charge.
 - Across all registered trustees and registered debt agreement administrators (apart from the sample group), the overall error rate was 0.17 per cent.

5. Independence and pre-insolvency advisors

In 2015–16 AFSA focussed on compliance with the Trustee Performance Standards and the ARITA and PIPA Codes of Professional Practice, to ensure practitioners remain at ‘arm’s length’ in relation to pre-insolvency dealings.

Ongoing concerns include:

- lack of independence and disclosure
- lack of material investigations into the debtor or bankrupt’s affairs—particularly where section 73 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 asked a selection of registered trustees and all registered debt agreement administrators to provide information on the written or informal arrangements that they had in place with third parties.

In total, 27 registered trustees and 37 registered debt agreement administrators were asked to provide a response on the level of interaction with pre-insolvency advisors or other referrers. Of those contacted, 98 per cent complied with the request for information. One administrator did not respond, however it is noted that their registration lapsed during the survey period.

Of the respondents, 18 per cent said they had some form of written or informal agreement with pre-insolvency advisors or referrers and 82 per cent stated they had no agreements in place.

AFSA is undertaking further investigations into 14 per cent of respondents (7 trustees and 2 administrators), based on the information provided. We will continue to monitor and investigate the level of independence associated with agreements provided by practitioners during the current 2016–17 compliance programme.

GUIDANCE

AFSA provided guidance to personal insolvency practitioners during 2015–16 through a number of different media.

Personal Insolvency Regulator newsletter

Four issues of the newsletter were published:

- PIR Volume 13 Issue 3 (Oct 2015)
- PIR Volume 13 Issue 4 (Dec 2015)
- PIR Volume 14 Issue 1 (Apr 2016)
- PIR Volume 14 Issue 2 (Jul 2016)

Inspector-General practice documents

Published directions, statements and guidelines

At 30 June 2016, AFSA had a total of 33 published Inspector-General practice documents providing guidance to personal insolvency practitioners and other stakeholders. The published documents comprised 17 practice directions (IGPD), 15 practice statements (IGPS) and one practice guideline (IGPG).

In 2015–16, external stakeholders viewed the Inspector-General practice documents a total of 22,694 times. The top 10 Inspector-General practice documents viewed are shown in Table 13.

Table 13: Top ten Inspector-General practice documents viewed in 2015–16

Inspector-General practice document	No. of views
IGPD 18 - Trustee remuneration notifications	2,086
IGPD 2 - Collection of realisations and interest charges	1,984
IGPD 14 - Proper performance of duties of a bankruptcy trustee	1,866
IGPD 9 - Standards for trustees and controlling trustees	1,654
IGPD 6 - Remuneration entitlements of a registered bankruptcy trustee	1,181
IGPS 7 – Annual estate returns	1,017
IGPS 14 - Referring offences against the Bankruptcy Act 1966 to the Inspector-General	978
IGPS 16 - Reviewing remuneration of trustees and costs of third party service providers	781
IGPS 12 - Statutory reviews of trustee decisions under the Bankruptcy Act 1966	750
IGPD 12 - Controlling trustees' roles and duties	749
Total	13,046

The top 10 Inspector-General practice documents were viewed a total of 13,046 times during the relevant period, representing 57 per cent of total Inspector-General practice documents viewed.

Revised Inspector-General practice guideline 1 – guidelines relating to advertising and marketing of debt agreements

Following extensive stakeholder consultation, AFSA revised and issued an updated IGPG 1 on advertising and marketing of debt agreements. IGPG 1 outlines the expectations and best-practice principles of the Inspector-General regarding advertising and marketing of debt agreements.

The update to the guideline was driven by issues relating to the marketing of debt agreements by brokers, including the risks of potential cold calling of debtors by overseas call centres on behalf of debt agreement administrators.

In response to stakeholder feedback, the guideline now includes a short, practical case study which helps illustrate specific concerns about representations and conduct of registered debt agreement administrators and brokers.

Revised Inspector-General practice statement 1 – regulatory framework

Following consultation with the professional bodies PIPA and ARITA, AFSA released an updated IGPS 1 on the regulatory framework. IGPS 1 outlines the expectations and best practice principles of the Inspector-General in relation to the way AFSA undertakes its regulatory role.

AFSA conducted a review of its regulatory practices and procedures earlier this calendar year to create a consolidated and internally facing Regulatory Compliance Framework (RCF). The RCF was approved in April this year and consolidates all of our regulatory policies and procedures in one place.

As a result of the development of the new internally facing RCF, a review was also undertaken of the externally facing Inspector-General Practice Statement 1, to ensure alignment and consistency with the internal framework and to ensure AFSA's current regulatory practices are accessible to stakeholders.

Stakeholder information sessions

Focus groups

AFSA's internal review of regulation included a series of focus groups with stakeholders including registered trustees, registered debt agreement administrators and representatives from ARITA. Delegates from ASIC and the Attorney-General's Department also attended. These focus groups were held in late 2015 and followed on from the stakeholder survey issued earlier that year. They provided stakeholders with a further opportunity to discuss issues raised in the survey and to provide more detailed feedback, particularly in the areas of regulatory reform and the efficiency and effectiveness of AFSA regulatory processes and guidance materials. Outcomes from those focus groups have been included in modifications to the way AFSA undertakes its regulatory work.

Trustee information sessions

In 2015–16, AFSA also provided targeted information sessions to registered trustees and their staff on offence referrals (IGPS 14) and the PRE process. AFSA visited eight firms to deliver information sessions and respond to practice enquiries about improving the quality and number of registered trustee 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.

Registered debt agreement administrator forum

In October 2015, AFSA facilitated the 10th annual registered debt agreement administrator forum on the Gold Coast. Over thirty administrators and their senior staff attended the day, representing over 80 per cent of all registered debt agreement administrator entities practising in Australia.

Feedback from participants indicated that the forum was successful in achieving its objectives – enabling registered debt agreement administrators to interact and discuss specific case studies which highlight and address current debt agreement practice and legal issues. Specific feedback indicated that participants felt relevant issues were raised, there was opportunity for participation and AFSA's response to questions was clear.

External stakeholder forums and conferences

In 2015–16, AFSA attended various forums and meetings, along with several conferences as part of its annual Stakeholder Engagement Framework and [corporate plan commitments](#).

A summary of AFSA's key state and national stakeholder engagement forums and meetings attended during 2015–16 is shown in Table 14.

Table 14: AFSA stakeholder engagement forums and meetings attended in 2015-16

Stakeholder forum/meeting	Frequency ¹¹
Australian Restructuring Insolvency & Turnaround Association (ARITA)	Bi-annual
Australian Securities and Investments Commission (ASIC)	Bi-annual
Australian Taxation Office (ATO)	Bi-annual
Commonwealth Director of Public Prosecutions (CDPP)	Bi-annual
Federal Circuit Court of Australia (FCtA)	Bi-annual
Law Council of Australia (LCA)	Monthly
Personal Insolvency Professionals Association (PIPA)	Bi-annual
RDAA Forum	Annual

11 As a minimum

COMPLAINTS

AFSA received 212 complaints against personal insolvency practitioners in 2015–16, 41 (16 per cent) less complaints than for the same period in 2014–15. Of these 189 (89 per cent) related to registered trustees while 23 (11 per cent) related to registered debt agreement administrators. Of the complaints received, 13 (6 per cent) were found to be justified in 2015–16.

In the five years from 1 July 2011 to 30 June 2016, AFSA received an average of 338 complaints annually of which 31 (9 per cent) were considered justified.

Table 15: Complaints received in 2015–16

Complaint type	Number of complaints received	Proportion of complaints received (%)
Complaints about registered trustees	189	89
Complaints about registered debt agreement administrators	23	11
Total	212	100

Of the 189 complaints received about registered trustees, 128 (68 per cent) were the subject of investigation with 10 (5 per cent) found to be justified. There were 37 (16 per cent) less complaint investigations conducted for registered trustees compared to 2014–15.

Of the 23 registered debt agreement administrator complaints received, 14 (61 per cent) were investigated and 3 (13 per cent) were found to be justified. There were 4 (15 per cent) less complaint investigations against administrators compared to 2014–15.

Table 16: RT and RDAA complaints in 2015–16

RT and RDAA complaints received	Received	Complaints investigated	Complaints not investigated	Complaints justified
Number of RT complaints	189	128	61	10
Proportion of RT complaints received (%)	89	68	32	5
Number of RDAA complaints	23	14	9	3
Proportion of RDAA complaints received (%)	11	61	39	13

Further information regarding complaints is detailed below.

Registered trustees

Table 17: Registered trustee complaint data for 2015–16

Complaint area	Complaints against registered trustees		Complaints found to be justified	
	Number	Percent (%)	Number	Percent (%)
Inappropriate conduct or conflict of interest	11	6	3	30
Fees and costs	14	7	2	20
Lack of information or communication	25	13	2	20
Decisions concerning assets	52	28	1	10
Delays in administration or lack of action	21	11	1	10
Income and contribution liability assessments	12	6	1	10
Other	8	4	0	0
General administration and accounting	38	20	0	0
Creditor claims and dividends	7	4	0	0
Continuing action by creditors	1	1	0	0
Total	189	100	10	100

The highest area of registered trustee complaints resulted from decisions concerning assets (28 per cent). The highest area of justified registered trustee complaints pertained to inappropriate conduct or conflict of interest (30 per cent). It should be noted, however, that there was only one justified complaint about a trustee's decision concerning assets and no justified complaints regarding general administration and accounting. As set out earlier

in the report, independence and pre-insolvency advisors is one of AFSA's key strategic focus areas and we will continue to work in this area.

Registered debt agreement administrators

The highest areas of registered debt agreement administrator complaints resulted from lack of information or communication (26 per cent) and general administration and accounting (22 per cent).

There were three justified complaints where it was identified that the administrator had engaged in inappropriate conduct or a conflict of interest was identified. Independence and pre-insolvency advisors remain a key strategic focus for AFSA and was a topic of discussion at the 10th annual registered debt agreement administrator forum in October 2015.

Table 18: Registered debt agreement administrator complaint data for 2015–16

Complaint area	Complaints against registered debt agreement administrators		Complaints found to be justified	
	Number	Percent (%)	Number	Percent (%)
Lack of information or communication	6	26	1	33
Creditor claims and dividends	3	13	1	33
Certification issues	1	4	0	0
Other	2	9	0	0
General administration and accounting	5	22	0	0
Fees and costs	2	9	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	4	17	1	33
Total	23	100	3	100

Complaint outcomes

The major outcomes achieved from AFSA's complaint handling process in 2015–16 are similar to those uncovered through the national inspection process and include:

- facilitating re-engagement between debtors, bankrupts, creditors and practitioners to ensure timely administration and communication of information.
- overseeing improvements to personal insolvency practitioner systems and controls, particularly in the area of disclosure and independence – including improvements to checklists and precedents.
- identifying specific instances of practitioner over-servicing or over-charging in personal insolvency administrations and facilitating the repayment of unapproved or excessive amounts back into the relevant administration.
- identifying systemic areas of non-compliance that resulted in prosecution action against a former personal insolvency practitioner for misappropriating client funds.
- identifying systemic areas of non-compliance resulting in further guidance being provided to practitioners by way of newsletter articles and revised Inspector-General Practice Statement 10
- identifying unbalanced or misleading advertising of debt agreements resulting in registered debt agreement administrators or brokers being contacted to remove or correct marketing material and referring breaches to ASIC.

These findings will help AFSA direct its compliance programme, including in relation to appropriate guidance.

INSPECTOR-GENERAL REVIEWS

AFSA received 246 requests for Inspector-General reviews¹² in 2015–16, of which 126 (51 per cent) related to registered trustee decisions and 118 (48 per cent) related to registered trustee remuneration determinations. There were 19 (8 per cent) more review requests received in 2015–16 compared to 2014–15, of which 31 related to RT remuneration determinations.

A total of 234 (95 per cent) review requests were finalised in 2015–16. Of those, 124 (53 per cent) were confirmed/granted while 19 (8 per cent) were cancelled/varied or not granted. Of the review requests confirmed/granted, the highest percentage pertained to remuneration determinations (81 per cent). Of the 19 review requests cancelled/varied, the highest percentage related to objections to discharge (42 per cent).

Table 19: Inspector-General review results in 2015–16

Review result	Number	Percent (%)
Registered trustee decision confirmed/remuneration granted	124	53
Plus: RT decision cancelled or varied/remuneration not granted	19	8
Plus: Review application withdrawn or refused	89	39
Total reviews finalised	232	100

Table 20: Inspector-General reviews of RT decisions in 2015–16

IG reviews	Income contribution assessments	Objections to discharge	Hardship applications	Remuneration			Total
				Reviews	Taxations	Determinations	
Review requests received	35	69	1	16	5	118	244
Proportion	14%	28%	0%	7%	2%	48%	100%
Reviews confirmed/granted	2	20	1	0	0	101	124
Proportion	2%	16%	1%	0%	0%	81%	100%
Reviews cancelled/varied/not granted	7	8	0	0	1	3	19
Proportion	37%	42%	0%	0%	5%	16%	100%
Review requests withdrawn/refused	27	34	0	17	3	8	89
Proportion	30%	38%	0%	19%	3%	9%	100%
Review requests finalised	36	62	1	17	4	112	232
Proportion	16%	27%	0%	7%	2%	48%	100%

12 This figure includes two 3rd party costs reviews conducted in 2015–16



AFSA rules on Trustee's remuneration

AFSA recently decided on a registered trustee's request for remuneration approval, under subsection 162(4) of the Bankruptcy Act 1966 (the Act).

Upon reviewing the request, a number of administrative errors were identified:

- The correct priority of payments under section 109 of the Act had not been followed.
- Creditors had not been given an opportunity to approve the trustee's remuneration before their debts were paid in full.
- The trustee had made errors in the estimate required to annul the bankruptcy. These errors were compounded by the trustee's objection to discharge and a caveat lodged on jointly owned property.

The request for remuneration approval also included charges for work that was not deemed necessary, reasonable or commensurate with the nature and complexity of the administration.

After discussions with the trustee, the request was withdrawn and a new request was submitted to AFSA for approximately 50 per cent of the original request—representing \$24,000 less than the original remuneration amount. This naturally increased the amount of the surplus returned to the bankrupt.

The trustee also agreed to withdraw both the objection to discharge and the caveat on the jointly owned property.

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

In 2015–16, AFSA deregistered five registered trustees, all of whom voluntarily resigned.

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

Registered debt agreement administrators

AFSA deregistered three registered debt agreement administrators in 2015-16, all of whom voluntarily elected not to renew their registrations.

In 2015–16, no registered or unregistered debt agreement administrators were declared ineligible to act or were subject to any disciplinary action for failing to properly perform their duties.

Table 21: Disciplinary action taken by AFSA in 2015–16

Registered trustee disciplinary action	Total
Voluntary resignation	8
Cancellation of registration	0
Show cause letters issued	1
Convening of committee	1

Registered debt agreement disciplinary action	Total
Voluntary resignation	3
Cancellation of registration	0
Declared ineligible	0
Show cause letters issued	0

INVESTIGATE AND PROSECUTE OFFENCES

A total of 366 offence referrals were received from registered trustees in 2015–16 of which 227 (62 per cent) were accepted for investigation¹³. Detailed information regarding offence referrals by location of administration are shown in Table 22.

Table 22: Registered trustee offence referrals in 2015–16 by administration location

RT offence referrals	NSW	ACT	Vic	Qld	SA	NT	WA	Tas	Total
	Numbers								
Referrals accepted	64	2	75	62	8	0	16	0	227
Referrals not accepted	55	2	39	27	9	0	4	3	139
Referrals received	119	4	114	89	17	0	20	3	366
	Proportion (%)								
Referrals accepted	54	50	66	70	47	0	80	0	62
Referrals not accepted	46	50	34	30	53	0	20	100	38
Referrals received	100	100	100	100	100	0	100	100	100

Table 23: National distribution (%) of registered trustee offence referrals in 2015–16 by administration location

RT offence referrals	NSW	ACT	Vic	Qld	SA	NT	WA	Tas	Total
Offence referrals accepted	28	1	33	27	4	0	7	0	100
Offence referrals not accepted	40	1	28	19	7	0	3	2	100
Referrals received	33	1	31	24	5	0	5	1	100

Of the registered trustee offence referrals received, 33 per cent related to administrations from NSW, followed by Victoria (31 per cent) and Queensland (24 per cent) as shown in table 23. The highest proportion of RT offence referrals accepted (33 per cent) related to Vic administrations while the lowest (0 per cent) related to Tas administrations.

Table 24: Number of pre-referral enquiries (PREs) from registered trustees in 2015–16 by administration location

Pre-referral enquiries	NSW	ACT	VIC	QLD	SA	NT	WA	TAS	N/A*	Total
PREs advised not to refer	127	5	92	125	21	1	11	6	1	389
PREs advised to refer	45	1	40	29	2	0	10	0	0	127
PREs registered as referrals	5	0	4	4	2	0	1	0	0	16
PREs received	177	6	136	158	25	1	22	6	1	532

*PREs without administration number

In 2015-16, 532 PREs were received and assessed. Of the 532 received in 2015-16, approximately 73 per cent (or 389) did not require a detailed offence referral from the registered trustee¹⁴. These statistics support a material reduction in the regulatory burden placed on practitioners in preparing a full offence referral when there is little likelihood of it being accepted for investigation and/or prosecution.

13 There was a total of 372 offence referrals received from all PIPs, of which 233 were accepted

14 There were also 6 PREs received from debt agreement administrators in 2015-16 with 83 per cent (or 5) requiring an offence referral

AFSA issued 18 media releases during 2015–16 regarding significant referrals accepted that resulted in successful prosecutions. These are available on our website. Three significant outcomes are detailed in the following media releases.

AFSA delivered eight information sessions to personal insolvency practitioners and their staff on offence referrals.



MEDIA RELEASE: Smith—discharged bankrupt faces court and imprisonment for failing to disclose financial details and withdrawing cash of \$72,600

Thurs 6 August 2015

A dairy farmer formerly of King Island, Dominic Luke Smith was prosecuted in the Launceston Court of Petty Sessions on 24 July 2015 for removing \$72,600 from his bank accounts in 2012, prior to and just after the date of bankruptcy.

Mr Smith also failed to keep appropriate books and records relating to his business transactions for five years prior to his bankruptcy and failed to disclose information as required by the trustee.

Mr Smith was not able to account for how he spent a \$100,000 loan and failed to produce bank account statements and cheque butts when requested by his bankruptcy trustee.

Mr Smith pleaded guilty to 15 offences under the Bankruptcy Act and was sentenced to a total effective sentence of 4 months' imprisonment, released on a \$1,000 two-year good behaviour bond.

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



MEDIA RELEASE: Brewster—bankrupt couple faces court after wife withdraws \$44,500 which husband claims he lost gambling

Thurs 18 February 2016

After voluntarily becoming bankrupt on 15 July 2013, Diane Mary Brewster withdrew \$44,500 in cash from a business transaction account.

Her husband, Grant Donald Brewster, also bankrupt, informed investigators that he had gambled and lost the money removed by Mrs Brewster. Mr Brewster also removed an additional \$18,000 from a line of credit which was never recovered by the Official Trustee.

On 21 January 2016, Mr and Mrs Brewster appeared in the Southport Magistrates Court. Both entered a plea of guilty.

Mrs Brewster was convicted and sentenced to six months imprisonment, released forthwith on a recognisance of \$2500 and placed on a good behaviour bond for two years.

Mr Brewster was sentenced to two months imprisonment, released forthwith on a recognisance of \$2500 and placed on a good behaviour bond for two years.

In passing sentence, the Magistrate took into account the guilty pleas entered by Mr and Mrs Brewster and their lack of prior criminal history.

The Magistrate noted the couple would have suffered embarrassment as a result of their actions and that a number of creditors would be angry as a consequence of their actions.

The Magistrate described the couple's actions as foolish, wrong and criminal.

The matter was referred by the Official Trustee and prosecuted by the Commonwealth Director of Public Prosecutions.



MEDIA RELEASE: Cruickshank—bankrupt pleads guilty to two offences under the Bankruptcy Act

Thurs 23 June 2016

Mr Cruickshank omitted to disclose that he had been a director of SYMFY Pty Ltd and had earned an income from the company.

Mr Cruickshank failed to disclose information about 'A Window to Your Womb', a business carried on by SYMF Pty Ltd.

Mr Cruickshank was convicted on both charges.

He was sentenced to 10 months imprisonment for failing to correctly disclose to his trustee, information relating to his company and the income he received from this and 8 months imprisonment for failing to disclose his directorship of SYMF Pty Ltd.

Mr Cruickshank was ordered to serve both sentences concurrently by way of an Intensive Corrections Order.

In passing sentence, Magistrate Huntsman emphasised the need to deter other bankrupts from engaging in the same conduct, noting that bankrupts failing to disclose information to their trustees could bring the whole system 'grinding to a halt'.

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

INFRINGEMENT NOTICES

AFSA issued a total of 98 infringement notices in 2015–16 of which 16 (16 per cent) were issued to registered trustees. Overall there were 26 (20 per cent) less infringement notices issued in and 13 (55 per cent) fewer issued to registered trustees as compared to 2014–15.

Of the 98 infringement notices issued, 14 were withdrawn by the Inspector-General. As a result, 84 net infringement notices were issued during 2015–16. Of the 16 infringement notices issued to registered trustees, three were withdrawn by the Inspector-General, resulting in 13 net infringement notices being issued to registered trustees during 2015–16.

Table 25: Infringement notices issued in 2015–16

	Notices issued		Notices withdrawn		Net notices issued	
	Number	Percent (%)	Number	Percent (%)	Number	Percent (%)
Registered trustees	16	16	3	21	13	15
Others*	82	84	11	79	71	85
Total	98	100	14	100	84	100

* Others includes petitioning creditors, registered debt agreement administrators, controlling trustees and executors for deceased estates.

Table 26: Infringement notices issued to registered trustees by offence section in 2015–16

Offence section	Infringement notices issued	
	Number	Percent (%)
218(2)	4	25
153A(2)	2	13
74(5A)	6	38
73(1A)	2	13
153B(3)	1	6
224A(4)	1	6
Total	16	100

Of the total infringement notices issued to registered trustees, 38 per cent related to failure to give the Official Receiver written notice of a bankrupt's annulment under s74(5A) and failure to file a copy of executed personal insolvency agreements with AFSA under s218(2) (25 per cent).

FEEDBACK

We are 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 5442.

ANNEXURE A: AFSA INSOLVENCY PRACTITIONER COMPLIANCE PROGRAMME 2015–16

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 programme 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)
- 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, we continued to undertake the review of practice and procedure in 2015–16, and, after external consultation, implement any recommendations for change to improve efficiency and effectiveness. This will include the continued pilot of our eInspection initiative which was commenced in 2013. eInspections are a potentially significant regulatory reform initiative which allow us 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, we will focus on the following five areas in its compliance programme. 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 programme, 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 programme.

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 programme.

3) AFSA'S INSOLVENCY PRACTITIONER COMPLIANCE ACTIVITIES

The six strategic focus areas in 2015–16 are complemented by AFSA's eight core insolvency compliance roles. These core roles and AFSA's strategic focus within each role in 2015–16 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 2015-16
1	Trustee (RT) and debt agreement administrator (RDAA) registrations	<ul style="list-style-type: none"> IGPS 4—Guidelines and processes for registration of debt agreement administrators IGPS 13— Trustee registration application process under the Bankruptcy Act 1966 	A focus to ensure any deviation from practice is remediated effectively and efficiently to maintain high standards of regulation.
2	Inspections	IGPS 11—Monitoring and inspection of bankruptcy trustees and debt agreement administrators	Ongoing pilot of AFSA's eInspections initiative.
3	Proactive monitoring	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.
4	Guidance	<ul style="list-style-type: none"> Personal Insolvency Regulator (PIR) newsletter AFSA practices and policies 	<p>Quarterly issues of the Personal Insolvency Regulator newsletter.</p> <p>Review, consultation and update of IGPS where necessary.</p> <p>Facilitate practitioner information sessions when deemed necessary.</p> <p>Produce and publish new guidance series via podcast.</p>
5	Complaints	IGPS 10—Complaints handling process for complaints bankruptcy trustees and debt agreement administrators	<p>Ongoing focus to ensure complaints are outcome focussed and resolved at source wherever possible.</p> <p>Emphasise gatekeeper approach to identify issues early for debtors and creditors - either resolve or direct to another appropriate agency.</p>
6	Inspector-General Reviews	<ul style="list-style-type: none"> IGPS 12—Statutory reviews of trustee decisions under the Bankruptcy Act 1966 by the Inspector-General IGPS 15—Assessment by the Inspector-General of a trustee remuneration approval requests IGPS 16—Reviewing remuneration of trustees and costs of third party service providers 	<p>Focus on solutions and guidance to systemic issues identified through Inspector-General reviews of:</p> <ul style="list-style-type: none"> practitioner remuneration objections to discharge income assessments.
7	Disciplinary action	<ul style="list-style-type: none"> IGPS 9—Involuntary cancellation of registration of debt agreement administrators and ineligibility process 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 Bankruptcy Act 1966	<ul style="list-style-type: none"> IGPS 18—Issuing of infringement notices by the Inspector-General in Bankruptcy IGPS 14—Referring offences against the Bankruptcy Act 1966 to the Inspector-General 	<p>A focus on the quality of practitioner's offence referrals.</p> <p>Implement short form referral process.</p> <p>Ongoing focus to ensure timely lodging of documents with the Official Receiver in accordance with time-frames stipulated in the Act.</p>

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

ANNEXURE B: AFSA REGULATION AND ENFORCEMENT

BUSINESS INFORMATION 2011–16

Business information	2011–12	2012–13	2013–14	2014–15	2015–16	5 year mean
Registrations						
Trustee applications received	4	12	14	12	10	10
Number of RTs at end of period	205	205	208	212	215	209
Administrator applications received	9	3	3	11	8	7
Number of RDAAs at end of period	61	63	60	69	76	66
Total PIPs at end of period	266	268	268	281	291	275
Inspections						
RT administrations examined	688	344	388	277	228	385
RT errors identified	238	152	216	155	138	180
RDAA administrations examined	447	254	251	76	55	217
RDAA errors identified	19	23	35	15	22	23
Total PIPs administrations examined	1135	598	639	353	283	602
Total PIP errors identified	257	175	251	170	160	203
Percentage of errors identified	23	29	39	48	57	39
Proactive reviews						
Part X & section 73 proposals reviewed	587	553	333	316	426	443
Part X & section 73 creditor meetings attended	66	89	106	32	59	70
Proposals/meetings—AFSA intervention	12	44	32	8	25	24
Percentage of AFSA intervention	2	8	10	3	6	6
Complaints						
RT complaints received	313	455	311	226	189	299
RT complaints justified	24	38	35	16	10	25
RDAA complaints received	72	50	24	27	23	39
RDAA complaints justified	8	4	9	6	3	6
Total PIP complaints received	385	505	335	253	212	338
Total PIP complaints justified	32	42	44	22	13	31
Percentage complaints justified	8	8	13	9	6	9
Inspector-General reviews						
Income assessment reviews received	33	32	46	48	35	39
Income assessment reviews varied	16	16	19	14	7	14
Objection to discharge reviews received	39	31	52	53	69	49
Objection to discharge reviews varied	13	8	10	13	8	10
Hardship application reviews received	4	10	11	11	1	7
Hardship application reviews varied	0	1	2	0	0	1
RT remuneration reviews received*	19	64	87	115	139	85
RT remuneration reviews varied*	4	5	9	11^	4	7
Total I-G reviews received	95	137	196	227	246	180
Total I-G reviews varied	33	30	40	38^	19	32
Percentage I-G reviews varied	35	22	20	17^	8	20

Business information	2011-12	2012-13	2013-14	2014-15	2015-16	5 year mean
Bankruptcy Act Offences#						
Referrals received	1498	1262	1332	1183	1015	1258
Accepted for investigation	962	719	665	696	648	738
CDPP briefs prepared	216	200	122	154	106	160
CDPP briefs accepted ^{##}	[^] 200	[^] 118	[^] 95	128	87	126
Total persons successfully prosecuted ^{**}	154	148	116	81	110	122
Dollar value of fraud proven	\$4.06m	\$3.26m	\$1.42m	\$1.30m	\$3.30m	\$2.67m

* Legislation commenced 1 December 2010.

All figures in this table include matters referred by the Official Trustee and Official Receiver

** 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	IGPG:	Inspector-General Practice Guidelines
ACL:	Australian Consumer Law	IGPS:	Inspector-General Practice Statement
AER:	annual estate return	IRLC:	Insolvency & Reconstruction Law Committee
AFSA:	Australian Financial Security Authority	ITSA:	Insolvency and Trustee Service Australia
ARITA:	Australian Restructuring Insolvency & Turnaround Association	LCA:	Law Council of Australia
ASIC:	Australian Securities and Investments Commission	NPII:	National Personal Insolvency Index
ATO:	Australian Taxation Office	NZITS:	New Zealand Insolvency and Trustee Service
CAANZ:	Chartered Accountants Australia and New Zealand	PIA:	personal insolvency agreement
CDPP:	Commonwealth Director of Public Prosecutions	PIP:	personal insolvency practitioner
CIR:	Compliance information request	PIPA:	Personal Insolvency Professionals Association
CPA:	certified practising accountant	PIR:	Personal Insolvency Regulator
FCA:	Financial Counselling Australia	PPSR:	Personal Property Securities Register
FCTA:	Federal Court of Australia	PRE:	pre-referral enquiry
IAIR:	International Association of Insolvency Regulators	RDAA:	registered debt agreement administrator
IG:	Inspector-General	RPF:	Regulatory Performance Framework
IGPD:	Inspector-General Practice Directions	RT:	registered trustee
		SCT:	solicitor controlling trustee
		UDAA:	unregistered debt agreement administrator

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