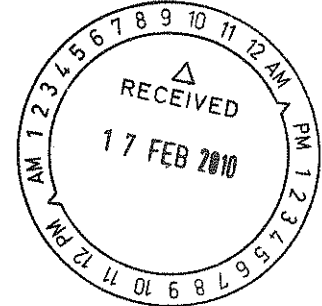




**Australian Government**

**Insolvency and Trustee Service Australia**  
Chief Executive & Inspector-General  
in Bankruptcy



2010/10

11 February 2010

Mr John Hawkins  
Committee Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Hawkins

### **Inquiry into Liquidators and Administrators**

I wish to make a submission to the above Inquiry.

### **Background**

The Insolvency and Trustee Service Australia (ITSA) is the executive agency responsible for the administration and regulation of the personal insolvency system in Australia. ITSA operates the bankruptcy registry, where debtors petitions are lodged, debt agreement proposals are processed and public records on insolvency are maintained, and acts as a trustee in bankruptcy. The Official Receiver exercises powers to assist trustees to obtain information and recover property.

ITSA also has responsibility for the regulation of personal insolvency practitioners (trustees in bankruptcy and Debt Agreement Administrators) and for the investigation of bankruptcy offences. ITSA's purpose is to provide a personal insolvency system that minimises the impact of financial failure on the community, produces equitable outcomes for debtors and creditors and enjoys public confidence through application of bankruptcy laws, regulation and trustee services.

The rising level of personal insolvency activity during the last 20 years has meant an increased demand for ITSA's services. Personal insolvency activity has increased by an average of 6.24% per annum since 1988. In 1989 personal insolvency numbers were 8, 230. In the last financial year they were 36,479. This is the highest ever level of personal insolvency activity, and represents an increase of 11 per cent on the 2007-08 financial year level of personal insolvency activity. The vast majority of these are non-business related consumer bankruptcies. ITSA has responded to these demands with business improvement measures focusing on electronic solutions to assist clients.

## Submission

I refer to the Inquiry's Terms of Reference, namely to 'investigate the role of liquidators and administrators, their fees and their practices, and the involvement and activities of the Australian Securities and Investments Commission, prior to and following the collapse of a business'. In line with these parameters, a number of the submitters to the Inquiry have commented upon ASIC's regulatory and enforcement role. As noted, one of ITSA's core functions is the regulation of personal insolvency practitioners and the investigation of bankruptcy offences. Accordingly, the Committee may find the following outline of ITSA's regulatory and enforcement activities of interest. This outline focuses in particular on that role as it relates to the on-going monitoring of personal insolvency practitioners.

Separately, I have also included a brief summary of matters arising from the interaction between the *Bankruptcy Act 1966* and the *Corporations Act 2001*; and on Commonwealth funding in relation to a current bankruptcy.

### *ITSA's Regulation and Enforcement Business Line*

ITSA's Regulation and Enforcement business line comprises the Regulation area (ITSA Regulation), which fulfils my statutory responsibilities in relation to the regulation of personal insolvency practice and procedure; and the Enforcement area, which is primarily responsible for investigation of the offence provisions contained in the Bankruptcy Act.

### *Monitoring of practitioners*

One strategy employed by ITSA Regulation is to monitor the standard of bankruptcy trustees and debt agreement administrators and their administrations through an annual inspection program. A Practice Statement on this program is attached. This proactive approach includes annual inspection of administrations, systems and practices<sup>1</sup>; attendance at some meetings of creditors; reviewing the quality of trustee decisions; targeted or strategic investigation; review of the complaints made against the practitioner in the period; and/or surveying debtors and creditors.

The sample and scope of the annual inspection program is determined by undertaking a risk assessment of the personal insolvency practice. Practitioners are allocated a rating in accordance with the current and prior quality of their systems and controls, and practices and procedures. Key elements of the practitioner's risk assessment that will be used to determine the size and scope of the sample include the structure of firm; its history of justified complaints; and prior inspection results.

Sampling is also based upon a computerised selection of files. The methodology for that process is based on a number of risk attributes including, for example:

- Estates where the extent of assets realised is greater than a certain amount;
- Estates where the percentage of practitioner remuneration is greater than a certain amount;
- Estates where dividends have been paid;
- Estates with high level of liabilities; and/or

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<sup>1</sup> Submission number 3 to the Inquiry suggests that ASIC 'undertake an annual review or audit of practitioners files as Insolvency Trustee Service Australia does with Registered Bankruptcy Trustees'.

- Part X administrations with a low % dividend.

Notwithstanding the above, every inspection program also includes files which are randomly chosen by ITSA Regulation during inspection of the selected sample. These may display no identifiable attributes and may include estates previously examined.

The annual inspection program is primarily aimed at providing constructive feedback to practitioners to improve compliance and practice. The majority of practitioners welcome this feedback and are willing to rectify any identified non-compliance. However, further investigation may be warranted in certain cases, and more reactive strategies may need to be initiated. The action pursued will depend on whether the breach is classified as a Category A, B or C, with A being the most serious errors or breaches which require immediate attention. The most significant sanction able to be initiated by Regulation is involuntary cancellation of the practitioner's registration.

The benefits of this pro-active approach are demonstrable. Recent examples include the identification of a major systemic error in the practice of a debt agreement administrator through the annual inspection program in August 2009. That practitioner has since been de-registered by ITSA Regulation. Disciplinary proceedings are also currently on foot in relation to a Registered Trustee. The relevant breaches by the practitioner were identified as a result of annual inspections.

The preventative nature of the approach is also significant. The risk of fraud is minimised where practitioners are randomly subject to inspection and review.

#### *Interaction between the Bankruptcy Act 1966 and the Corporations Act 2001*

The Committee may be interested to note the issues that can arise where there is both a bankruptcy and liquidation on foot in relation to the same individual. A recent example concerned where an individual was made bankrupt by virtue of a sequestration order in circumstances where, on application of ASIC, the Federal Court had already appointed a receiver and manager of the individual's property and the property of a scheme which the bankrupt operated.

The Court had ordered that the scheme was to be wound up pursuant to s601EE of the Corporations Act and a liquidator of the company was appointed. The Court ordered that the winding up of the scheme was to be conducted as if the scheme were for the purposes of the Corporations Act a 'company'.

The complexities in the trustee's administration of the bankrupt estate arose because, in the bankruptcy trustee's view, the bankrupt's creditors and the scheme's creditors were one and the same; and that the claims of these creditors should be dealt with in accordance with the provisions of the Bankruptcy Act. The trustee noted that the Federal Court in making its August 2005 orders did not appear to foresee or address the possible bankruptcy of the individual. The trustee contended that the Court's view of how to administer the scheme would have been different had that been the case. The trustee was unable to resolve the interaction between the two administrations with the liquidators, and was advised by the regulatory authorities to apply to the Court for directions on the issue.

This is an area of potential conflict that does not seem to have been addressed either in the two Acts or in the Codes of Practice promulgated by the relevant professional bodies.

*Section 305 funding in the bankruptcy of Stuart Ariff*

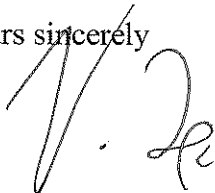
I note that the bankruptcy of former liquidator Stuart Ariff has been mentioned in submissions to the Inquiry. Mr Ariff was made bankrupt on 19 October 2009 on petition of Tooheys Pty Ltd. In the matter of *ASIC v Stuart Karim Ariff* (2009), the Court made consent orders that Mr Ariff pay approximately \$5 million in compensation to various companies, on the basis that he had wrongfully taken monies from these companies when he acted in his professional capacity (as Liquidator, Voluntary Administrator/ Deed Administrator). The Court also ordered that Mr Ariff be prohibited for life from holding the office of official liquidator or registered liquidator.

The Committee may be interested to note the recent grant of funding to the trustee of the bankrupt estate pursuant to section 305 of the Bankruptcy Act. That provision authorises the Attorney-General, on application of a bankruptcy trustee, to direct that the costs of certain bankruptcy proceedings or inquiries be paid by the Commonwealth. On 19 January 2010, the trustee of the bankrupt estate applied for and was granted funding under section 305 of the Bankruptcy Act by me as delegate of the Attorney-General, to publicly examine the bankrupt and his sister.

**Contact**

Thank you for the opportunity to comment. The contact person for this submission in ITSA is Amanda Pearce, 02 6270 3400.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V. Ingram', followed by a horizontal line.

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**Australian Government**

**Insolvency and Trustee Service Australia**

**INSPECTOR-GENERAL  
PRACTICE STATEMENT NO. 11**

**Monitoring and Inspection  
of Bankruptcy Trustees  
and  
Debt Agreement Administrators**

Release Date 1 September 2008

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## **Introduction**

1. The regulatory responsibilities of the Inspector-General in Bankruptcy are aimed at ensuring high national standards of bankruptcy practice and procedure. These functions are undertaken by ITSA Bankruptcy Regulation Branch (BR), which oversees registered trustees in private practice, ITSA's trustee function (the Official Trustee), registered and unregistered debt agreement administrators, and solicitors who act as trustees in personal insolvency agreements. The BR branch acts independently from the Official Trustee and reports directly to the Chief Executive and Inspector-General in Bankruptcy.
2. One strategy employed by Bankruptcy Regulation Branch, as delegate of the Inspector-General, is to monitor the standard of bankruptcy trustees and debt agreement administrators and their administrations through an annual inspection program. This may include for example:
  - An annual inspection of administrations, systems and practices;
  - Attending some meetings of creditors;
  - Reviewing the quality of trustee decisions;
  - Targeted or strategic investigation;
  - Reviewing the complaints made against the practitioner in the period; and/or
  - Surveying debtors and creditors.
3. This document articulates the Inspector-General's practices and expectations when monitoring practitioners through the annual program of inspection of administrations, systems and practices and attending meetings of creditors.

## **Inspection of Administrations & Systems**

4. The purpose of Bankruptcy Regulation's annual inspection program is to examine the quality of administration by practitioners with particular emphasis on:
  - (i) Compliance with legislation and common law requirements;
  - (ii) Proper performance of statutory and fiduciary duties and functions in accordance with legislation and standards;
  - (iii) Financial records, billing and money handling practices; and
  - (iv) Control and system weaknesses and other areas of risk.
5. This is a pro-active process aimed at providing constructive feedback to practitioners to improve compliance and practice. However it should be recognised that on occasion issues may be identified that warrant further investigation and the adoption of more reactive strategies, including disciplinary proceedings, to obtain compliance and remedial action.

## ***Fraud Control Issues***

6. An important benefit of this program is that, while an inspection of a sample of administrations cannot be expected to identify all instances of defalcation, it is a valid preventative control to minimise the risk of fraud.

7. Accordingly BR has inbuilt into its inspection program tests of the systems and controls of trustees. The following aspects of BR's annual inspection program should be noted:
  - The BR file sample is computer generated and, whilst targeted to higher risk estates, includes a sizable computer based random sample. As a consequence any file, including one inspected in previous periods, could be selected.
  - The random sample can include estates where no assets were shown as realised and no funds recorded and therefore include estates where there may have been deliberate omission.
  - Estates with assets, contributions or dividends are closely examined and the transactions followed through the course of the administration to final payments/dividend. This may well include tracing a series of cheques to the account to which they are presented.
  - On a sample basis contributions may be reconciled with the bankrupt's payment records.
  - BR may contact both creditors and debtors on a sample basis (and in some cases banking institutions) to verify transactions and that claims are properly recorded and authentic.
  - Practitioners will be required to reconstruct any files unable to be located and BR will treat the inability to do so, within reasonable time, as a serious breach of duty.
8. As an added deterrent to possible employee fraud it is the Inspector-General's expectation that practitioners will inform their employees of these aspects of the BR program.

### ***Arranging the Inspection***

9. Bankruptcy Regulation aim to provide practitioners with at least 7 days notice of the date of its attendance for inspection. A mutually convenient date and time to inspect will be co-ordinated with the practitioner. At this time the practitioner will be requested to complete and provide either a summary of their systems and controls or an update of changes since the date of last inspection.
10. As a control to minimise the incidence and risk of fraud, Bankruptcy Regulation branch's policy regarding the timing of notice provided to trustees and debt agreement administrators is to provide details of the specific files to be inspected 24 hours before the commencement of the inspection. If BR identifies older files that may be archived, 48 hour notice will be provided to allow for file retrieval.
11. This practice is used with all practitioners including the Official Trustee. BR previously identified fraud where a longer time frame adopted provided a trustee's employee the time to remove, alter and forge records prior to the inspection.
12. ITSA is required to comply with the Occupational Health and Safety Legislation in providing its employees with a healthy and safe work environment. With this and to ensure both privacy and efficiency in undertaking the inspection practitioners are requested to provide either an office with a workstation and office chair, or a workstation and chair with some privacy, both with access to a power point outlet.



## ***Determining the Sample and Scope of the Inspection***

13. In determining the size of the sample of files to inspect, Bankruptcy Regulation will undertake a risk assessment of the practice. Practitioners are rated in accordance with the quality of their systems and controls and the prior quality of practices and procedures.
14. An evaluation is undertaken of a practitioner's systems and controls in the first year of inspection and details maintained on the practitioner's file. During the second and third year of inspection the evaluation is updated. During the fourth year of inspection a complete re-evaluation will be undertaken to ensure any significant changes have been documented and included in the assessment.
15. Key elements of the practitioner's risk assessment that will be used to determine the size and scope of the sample include:
  - The structure of firm
  - The qualifications and experience of support staff
  - An assessment of systems and controls
  - Their history of justified complaints
  - Their prior inspection results
  - The quality of prior decisions subject to Inspector General review (for trustees only).
16. The rating defines the minimum number of administrations to be sampled and will also be used to identify issues or the attributes BR wishes to more closely examine.
17. The second element of the sampling is the computerised selection of the files to inspect. BR's methodology is based on a number of risk attributes. For example attributes in a Part X personal insolvency agreement or a Part IV bankruptcy might include:
  - Estates where the extent of assets realised is greater than a certain amount;
  - Estates where the percentage of remuneration is greater than a certain amount;
  - Estates where dividends have been paid;
  - Estates with high level of liabilities; and/or
  - Part X's with a low % dividend;
18. While the Part IX sample is largely random in nature some attributes may be examined. For example BR will include in its inspection sample administrations where:
  - the debt agreement proposal (DAP) has been rejected or cancelled by ITSA's Debt Agreement Service (DAS);
  - practice queries were raised on processing of the DAP by the DAS;
  - variations and terminations have occurred; and
  - the level of fees is outside normal ranges.
19. It should be noted that in every inspection there will also be some files which will be randomly chosen. These may display no identifiable attributes and may include estates previously examined.

## ***Undertaking the inspection***

20. The inspection commences with an entrance interview with the registered practitioner. This interview is an opportunity for the practitioner to discuss matters or technical areas of interest

with the Bankruptcy Regulation Inspector, particularly if there is an area where the practitioner seeks additional feedback. The practitioner's response to the systems and controls questionnaire will also be discussed at the entrance interview. It is therefore important that the practitioner is present at this interview.

21. It is preferable that queries be informally discussed and, where possible, clarified with the practitioners or their nominee during the inspection. To minimise any disruption to workflow the practitioner should outline the protocols they require of BR, including who BR inspectors should contact for clarification of issues during the interview. If the practitioner feels this may be too disruptive, arrangements can be made to collate queries for discussion at the exit interview for response either at that time or later.
22. BR inspectors are required to maintain a professional, independent and courteous approach. If during the inspection a practitioner is concerned as to the conduct of the officer or the inspection process they should raise these concerns directly either with the local BR Director or the BR National Manager.
23. If a possible error is found, (see later sections "Reporting of non-compliance"), further testing may be carried out to determine whether the error is a one-off occurrence, a systematic problem or identifies a weakness in supervision or training.
24. Bankruptcy Regulation will inspect each estate or administration for compliance. It will then compile and analyse the results to assess whether there are systemic issues or control weaknesses.
25. The inspection at the practitioner's office will be completed by way of exit interview. Feedback will be given on the quality of administration inspected. Any preliminary errors and observations noted and discussed throughout the inspection will be raised at the exit interview and the practitioner given opportunity to comment. BR will also provide comments on any issues identified by the practitioner at the entrance interview plus any issues of best practice where greater efficiencies could be achieved.
26. Records are made and retained of discussions and comments made both at the entrance and exit interviews.

### ***Reporting of non-compliance***

27. In providing feedback and to make overall conclusions as to the standard of practice any identified areas of non compliance, referred to as errors, are compiled and reported based both on the level of seriousness (category) and their descriptive nature.
28. If any breach or non compliance with the law is identified BR will consider:
  - (a) the nature of the breach;
  - (b) the seriousness of the effect of a failure to comply, including the impact on a particular estate or individual; and
  - (c) whether the practitioner has previously failed to comply and the practitioner's performance history.
29. The majority of practitioners are willing to comply, and view the inspection program as an opportunity to obtain feedback on the quality of administration. However there is an expectation that practitioner's who regularly fail to comply with the Bankruptcy Act and Regulations without a reasonable explanation, or who regularly diverge from acceptable

practice or their behaviour/conduct brings the integrity of the profession in disrepute will be subject to disciplinary action.

30. To assist in assessing the seriousness and relevant regulatory response and 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. These include any repeat occurrences of serious breaches identified in previous inspections as category B errors. These matters will generally give rise to legal action, referral to fraud investigators, considering whether the practitioner should have their registration cancelled under sections 155H, 186K or 186L or at least have their registration suspended or conditions placed on it. In the case of a solicitor controlling trustee or unregistered debt agreement administrator this would result in action which could result in them being declared ineligible to act.

#### **Category B**

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. These include where in prior inspections breaches were identified and either not remedied or repeat errors are made in the same area.

#### **Category C**

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

### ***Finalising the Inspection***

31. After attending the offices of the practitioner Bankruptcy Regulation may write to a sample of creditors in administrations identified during the inspection where the practitioner's records show a dividend has been paid to creditors. This verification is to ensure that the creditors are bona fide and that they received and banked dividend cheques. BR may also sample and seek verification from debtors as to the amount paid to the practitioner.
32. Once information is complete the practitioner will be provided with a draft inspection report seeking comments on any issues raised. The report will outline the overall results of the inspection; any provisional errors or systemic issues as discussed at the exit interview; any observations of significance discussed at the exit interview; and any remedial action that may be required. In cases where serious or systemic issues appear to have been identified the report will be reviewed and issued by the BR Director responsible.
33. The practitioner's response is generally expected within 14 days. The inspection is completed once the practitioner either responds to the inspection report or elects not to respond.
34. The practitioner's risk assessment rating is then updated for future inspections and Bankruptcy Regulation will monitor any specific administrations requiring remedial action.

35. The Inspector-General is bound by the Privacy Act and will maintain the confidentiality of individual inspection results unless Privacy Act exceptions apply. Exceptions allowed for under Privacy legislation of where Bankruptcy Regulation is able to provide specific details to others include: where the information has been obtained for a specific purpose and allowed for under Bankruptcy legislation, (an example of this would be provision of information to Parliament); where there has been consent by the practitioner; information required by a law enforcement agency; and where the information has become public knowledge, for example through publishing of a Court or AAT judgment.

### ***Possible action when breaches are identified***

36. There is a range of strategies available to Bankruptcy Regulation should it determine that a breach of legislation, duty or other non compliance has occurred (see IGPS 1- Regulatory Framework). These relate to all practitioners and include.
- (i) Education – making practitioners aware of systemic problem areas and the correct practice or law individually and collectively;
  - (ii) Individual feedback– by far the most effective means to achieve timely remedial action;
  - (iii) Counselling of the practitioner;
  - (iv) Change in the risk classification of a practitioner. This will lead to a larger sample of files being selected for future annual inspections;
  - (v) Formal investigation and reporting under section 12, for example, to creditors, police or professional bodies such as IPA, ICAA, CPA or Law Council;
  - (vi) Special Audit of accounts;
  - (vii) Imposition of penalties for Realisation and Interest Charge breaches;
  - (viii) Litigation; and
  - (ix) Involuntary cancellation or registration proceedings (or illegibility proceedings in the case of unregistered debt agreement administrators and solicitors who act as controlling trustees). See also IGPS 8 and IGPS 9 dealing with involuntary cancellation of registration.

## **Attending meetings of creditors**

### ***Introduction***

37. Bankruptcy Regulation, as delegate of the Inspector-General, attend a sample of meetings of creditors in both Part X matters and section 73 proposals for all trustees involved, as part of its inspection program, irrespective of whether there are matters warranting attendance by BR.
38. Attendance at a sample of meetings provides Bankruptcy Regulation with an opportunity to monitor and report on the standard of controlling trustees in Part X administrations and trustee meeting practices generally. It also provides an effective and efficient method of monitoring debtor's Part X proposals and addressing creditor queries and perceptions.
39. In addition BR examines both section 189A and section 73(2) reports and if it has any queries or concerns will discuss matters with the trustee and may attend the meeting taking an active role if needed. Often issues are clarified or problem areas rectified before creditors are asked to vote at the meeting.

40. Irrespective of whether a criteria detailed below is evident or not, as part of BR's normal inspection program, where trustees are conducting meetings, BR will endeavour to attend not less than 1 meeting for every trustee each year.
41. The issues and performance of trustees in Part X matters generally is analysed by the Inspector-General and reported to Parliament annually.
42. The following documents the criteria that BR is to utilise in determining which creditors' meetings are attended and the protocols and processes to be used.
43. The term "trustee" is utilised in this practice statement to represent registered trustees, Official Trustee and solicitor controlling trustees.

### **The legislative framework**

44. Subsection 12(4) of the Act provides authority for the Inspector-General to attend and participate in meetings of creditors. This subsection states:

*"The Inspector-General:*

- (a) is entitled to attend any meeting of creditors held under this Act; and*
- (b) subject to section 64ZA, is entitled to participate in any such meeting as the Inspector-General thinks fit."*

### **Criteria for attending**

#### **General criteria**

45. BR may attend where there appears to be an inherent risk to the credibility of the personal insolvency system posed by the administration in which the meeting is being held. This would be the case where:
  - (i) It is suspected that creditors have not been properly informed, either because the debtor has not provided complete or accurate information or the trustee's report is deficient;
  - (ii) The debtor is high profile with sizeable debts and there is public interest; or
  - (iii) BR has concerns as to the validity of a creditor's claims and the creditor can affect the outcome of the meeting.

#### **Trustee specific criteria**

46. Meetings may also be attended when:
  - (i) The trustee has a history of poor standard reports and meeting practices or is inexperienced in chairing meetings;
  - (ii) The trustee is inexperienced and has not conducted a creditors' meeting in the last 12 months;
  - (iii) The debtor's statement of affairs, or information from some other source, indicates:
    - the debtor may have been involved in a high income occupation such as doctor or barrister but displays little in the way of assets or income and the offer to

- creditors is relatively small;
- antecedent transactions; or
- the debtor may have recently possessed substantial income, assets or that they controls trusts or private companies.

**AND** the s189A report contains no or inadequate discussion of those issues,

**AND** the trustee has been requested to provide further advice but a satisfactory response has not been provided.

### **Creditor specific criteria**

47. Meetings may also be attended when:

- (i) A creditor lodges a complaint prior to the meeting; or
- (ii) If there are related party creditors whose vote can effect the outcome or if there is a high number of creditors who may vote but don't wish to participate in a dividend particularly where there is a substantial creditor likely to be effected.

### **Debtor specific criteria**

48. Meetings may also be attended when:

- (i) The debtor has been bankrupt or entered into a Part IX or Part X twice or more in the 10 years preceding the current s188 authority;
- (ii) The debtor's creditors exceed \$1M and their proposal would provide an insignificant return; or
- (iii) BR has reason to suspect that full and true disclosure of information was not made.

49. In regions where a large number of meetings are held per annum it may not be possible to attend all meetings exhibiting one or more of the above criteria. In these circumstances BR will exercise judgement as to which meetings are attended.

### ***Prior to the meeting***

- 50. Attendance is likely to be in person but may at times occur through teleconference, if those facilities are available.
- 51. Bankruptcy Regulation will inform the controlling trustee or trustee of the meetings it will be attending prior to the meeting. Where possible at least 24 hours notice will be given.
- 52. BR will consider whether the issues identified warrant attendance at the meeting or can be resolved through prior discussion (either by telephone, email or direct meeting) and action. Bankruptcy Regulation will consult with the trustee and raise queries and concerns privately prior to the meeting if possible. Every attempt will be made to resolve these issues prior to the meeting. Intervention may lead to a supplementary report or clarification of contentious issues at meeting.

### ***At the Meeting***

- 53. Usually two BR representatives will attend the meeting although each case will be treated on its merits.

54. Should matters not be addressed to Bankruptcy Regulation's satisfaction, BR inspectors may intervene in meetings, raise issues, and may seek clarification from the debtor, the creditor or the trustee.
55. Confrontational and/or adversarial behaviour by parties at the meeting will not result in any reaction from BR at the time of the meeting. However, where appropriate, feedback will be provided at a later opportunity.
56. If questions are to be asked at the meeting by BR, every effort will be made to provide a list of those questions to the trustee prior to the meeting. The aim is not to "ambush" the trustee at the meeting although issues may arise or events occur at the meeting that require immediate BR intervention. This would be the case with non-compliance with the law where immediate remedial action is necessary by the trustee.
57. A record will be made of those cases where the trustee, or their staff, has attempted to hinder BR's proper involvement at the meeting. Consideration will be given to further action if warranted after the meeting.

### ***Post-Meeting***

58. As part of BR's educative role, where appropriate, feedback will be provided to trustees on the quality of the meeting processes.
59. Any specific patterns of inappropriate meeting process will be recorded and any requirement for remedial action communicated to the trustee.

### **Conclusion**

60. To contribute to the transparency of decision making in the Australian Public Service this practice statement has outlined the proactive annual inspection and meeting attendance strategies used by ITSA Bankruptcy Regulation branch to monitor the quality of registered practitioners operating under the Bankruptcy Act. It has set out what ITSA undertakes to do, the basis of related decisions and what ITSA expects of practitioners in these areas.
61. Any party who believes ITSA Bankruptcy Regulation is not complying with this practice statement is requested to contact BR's Practice Manager. Contact details are shown on the internet page used to access this document.