

# Parliamentary Joint Committee on Corporations and Financial Services

**Inquiry into corporate insolvency in Australia**

## **Australian Financial Security Authority Submission**

**incorporating responses to Questions on Notice**

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# A strong credit system for Australia

## Background

The Australian Financial Security Authority (AFSA) is an executive agency in the Attorney-General's portfolio responsible for Australia's personal insolvency, personal property securities and criminal asset management systems. Personal insolvency plays an important role in Australia's \$3.5 trillion credit system supporting the flow of credit in the economy by allowing people in financial distress to get a fresh start while providing a remedy for those who are owed money.

These systems provide Australian consumers and businesses with tools to manage financial risk; contribute to investor and business confidence; and provide enhanced access to finance within the economy.

AFSA is an insolvency system stakeholder and practitioner, as well as a regulator. We have around 400 staff and offices in every capital city (except Darwin).

AFSA is a visible, modern, and contemporary regulator. Our holistic approach to regulation improves access to credit and increases financial stability, contributing to economic and social outcomes. We anticipate and respond to our operating environment to safeguard a strong credit system for Australia.

We constantly survey the credit system through our regulatory programs and act decisively when we identify system vulnerabilities, inefficiencies, and misuse. We are broadening our regulatory toolkit to respond to new and emerging harms, combining our regulatory expertise, market surveillance and data analytics to balance the interests of debtors, practitioners and creditors, and deliver firm and fair outcomes for Australians.

There are 3 main forms of personal insolvency:

1. Bankruptcy – which is the most equivalent to liquidation in a corporate context. Unsecured creditor returns in bankruptcy, are on average, between 1 and 2 cents in the dollar.
2. Debt Agreements – which are more akin to a regulated debt repayment plan. In 2021-22 the average return to creditors was 55.4 cents in the dollar.
3. Personal insolvency agreements – of which there are very few each year, are generally used for personal insolvencies that have a higher level of assets and liabilities.

Debt agreements and personal insolvency agreements are usually sought out as an alternative to bankruptcy, typically when debtors seek to retain assets or business interests.

AFSA contributes to Australia's economic and social prosperity and plays an important role in Australia's economy and credit system. We offer expertise to the community,

business sector and government to help people in financial distress. Our administration of insolvent estates upholds the integrity of the personal insolvency system.

The personal insolvency system includes individuals and business-related insolvencies such as sole traders and partnerships. This may include company directors and/or secretaries who have given personal guarantees. Personal insolvency provides a remedy for those who are owed money but also a safety net for people with unmanageable debt.

In 2021-22 we had active regulatory oversight of \$17.7 billion in liabilities, of which \$11.3 billion was business-related debt, with \$10 billion addressed through bankruptcy. Business-related personal insolvencies have accounted for close to 38% of all bankruptcies since 2007. This has ranged from around 6,000 – 9,000 bankruptcies over the decade or so prior to COVID.

The Personal Property Securities regime, which includes the PPS Register, or PPSR, provides protection and peace of mind to consumers and businesses while also making access to credit easier and wider.

The PPSR is a national online register that provides information to help protect consumers when they are buying personal property such as cars, caravans and equipment. We estimate that the potential value of the PPSR is \$400 billion or around 20% of Australia's GDP.

January 2022 marked 10 years of the PPSR. More than 35 state and national registers, including state-based vehicle security registers and the ASIC Register of Company Charges, were brought together to create one easy-to-access online noticeboard of security interests in personal property. Since its inception, more than 22 million registrations have been created and 87 million searches undertaken, reflecting the PPSR's role as a critical risk protection tool for consumers and businesses across Australia.

AFSA works closely with other Australian credit system regulators, including the ATO, ASIC, ACCC, AFCA and others.

AFSA is a member of the International Association of Restructuring, Insolvency and Bankruptcy Professionals, known as INSOL. INSOL has ancillary groups that represent the judiciary, regulators, lenders and academics and AFSA is a member of the Legislative and Regulatory Group. AFSA is also a member of the International Association of Insolvency Regulators (IAIR), an association that meets annually to share practical examples of innovation in regulatory approaches to enable learnings between different jurisdictions.

AFSA supports the Commonwealth by taking possession of, managing and disposing of assets confiscated as a result of criminal activity. We work closely with the Australian Federal Police's litigation teams and in accordance with the Proceeds of Crime legislation. Our Criminal Assets Management function allows for the caretaking

and disposal, including liquidation by sales, of cash and other assets including real estate, vehicles, artworks, jewellery, aircraft and other vessels such as boats and yachts.

## Statutory Roles and Functions

AFSA's Chief Executive, Tim Beresford, is appointed as Inspector-General in Bankruptcy and the Registrar of Personal Property Securities. Officials within AFSA also fulfil the functions of Official Trustee and Official Receiver.

Inspector-General in Bankruptcy - responsible for overseeing the administration of bankruptcies and the conduct of trustees in bankruptcy (Official Trustee as well as registered trustees); as well as debt agreement administrators (also considered a 'trustee' in this document).

This includes investigating complaints made against trustees, monitoring trustee compliance with laws and regulations, reviewing certain decisions made by trustees, investigating allegations of offences and taking action to protect the interests of creditors and bankrupts. The Inspector-General also has the power to remove trustees who are found to be not acting in the best interest of creditors and bankrupts. For completeness, the Inspector-General has powers to investigate and report on any matter that relates to the administration of bankruptcies and the conduct of trustees in bankruptcy.

Official Receiver – responsible for providing information to debtors about options to deal with unmanageable debt and provides Australia's bankruptcy registry service including the exercise of powers to:

- assess and register bankruptcies, debt agreement proposals and personal insolvency agreements
- maintain the National Personal Insolvency Index (NPII), the public register of personal insolvencies
- issue bankruptcy notices on the application of judgment creditors
- exercise Official Receiver powers to assist trustees obtain information, recover property and/or moneys (for example issue Official Receiver notices).

The Official Receiver also has compliance and coercive powers to assist bankruptcy trustees to discharge their responsibilities. Official Receiver notices help trustees to gather information or recover assets. The Official Receiver issued 670 notices in 2021–22. The most common type of notice is s. 77CA Obtain statement of affairs (34% of total notices in 2021–22).

The Official Receiver also has the power to investigate any conduct by the bankrupt that may be a contravention of an Official Receiver Notice and other offences under the Bankruptcy Act identified by the Official Trustee or a registered trustee and to refer any suspected offences to the Director of Public Prosecutions.

Official Trustee in Bankruptcy - administers bankruptcies and other personal insolvency arrangements (debt agreements, personal insolvency agreements and

deceased estates) when a private (registered) trustee or other administrator is not appointed.

The Official Trustee also has responsibilities under the *Proceeds of Crime Act 2002*, the *Proceeds of Crime Act 1987*, the *Mutual Assistance in Criminal Matters Act 1987*, the *Crimes Act 1914* and the *Customs Act 1901* to control and deal with property under court orders made under those statutes.

The Official Trustee is a body corporate (and Corporate Commonwealth Entity) created under the Bankruptcy Act and AFSA provides personnel and resources to ensure that the Official Trustee can fulfil its responsibilities.

Registrar of Personal Property Securities - maintains the PPSR in compliance with the Personal Property Securities Act and associated regulations. This includes responsibility for ensuring the register is operational and accessible. The Registrar has various powers in relation to the PPSR, such as refusing access to the PPSR or suspending its operation, in certain circumstances; removing or reinstating data on the PPSR; and conducting investigations into matters to perform their functions.

## Stakeholders and clients

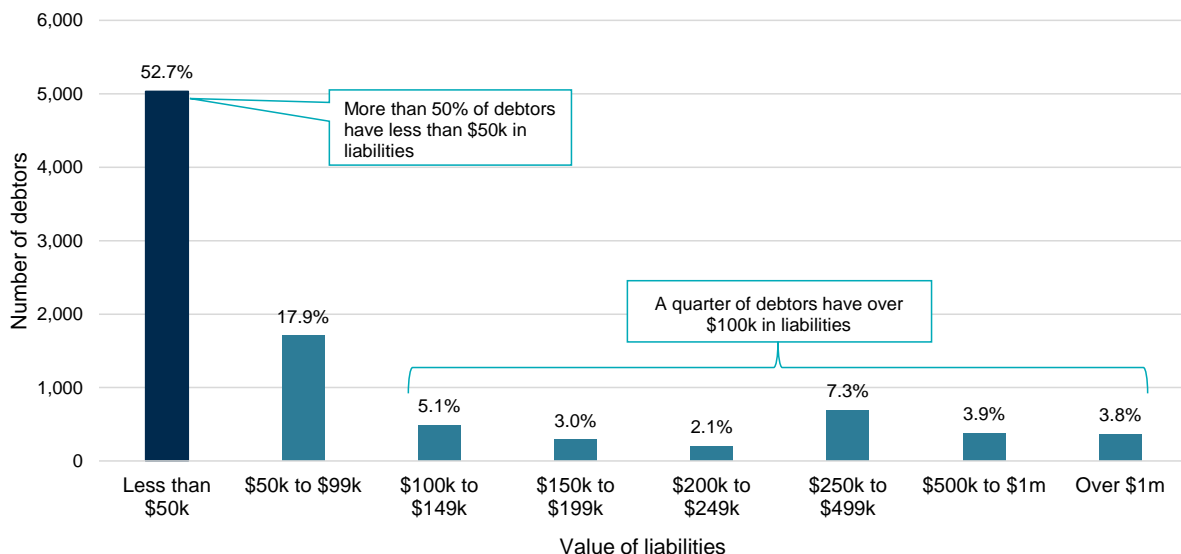
As the national regulator for personal insolvency and personal property securities, we engage and interact with a wide range of stakeholders and clients.

Our stakeholders and clients fall into 4 key categories:

- **Creditors** encompass organisations or people who are owed money and who are considering taking bankruptcy action against a person experiencing financial hardship, or who are currently involved in a bankruptcy case.
- **Debtors** include people who owe money and are considering, or currently using, one of the options provided by the Bankruptcy Act.
- **PPSR clients** include anyone who transacts on the Personal Property Securities Register, such as finance providers, businesses, consumers, legal practitioners, accountants, business advisers and government agencies.
- **Practitioners** and industry professionals include registered trustees, registered debt agreement administrators, financial counsellors, accountants and legal practitioners.

In 2021-22 we had active regulatory oversight of \$17.7 billion in liabilities for 58,255 clients. The majority of people who entered into personal insolvency during this period had low levels of debt. Most people (52.7%) had less than \$50,000 in liabilities, with a quarter of people (25.2%) having debts totalling over \$100,000.

Figure 1: Debtor concentration by liabilities in 2021–22



Note: Percentages don't sum to 100% as some debtors are yet to disclose the value of their liabilities at the time of reporting.

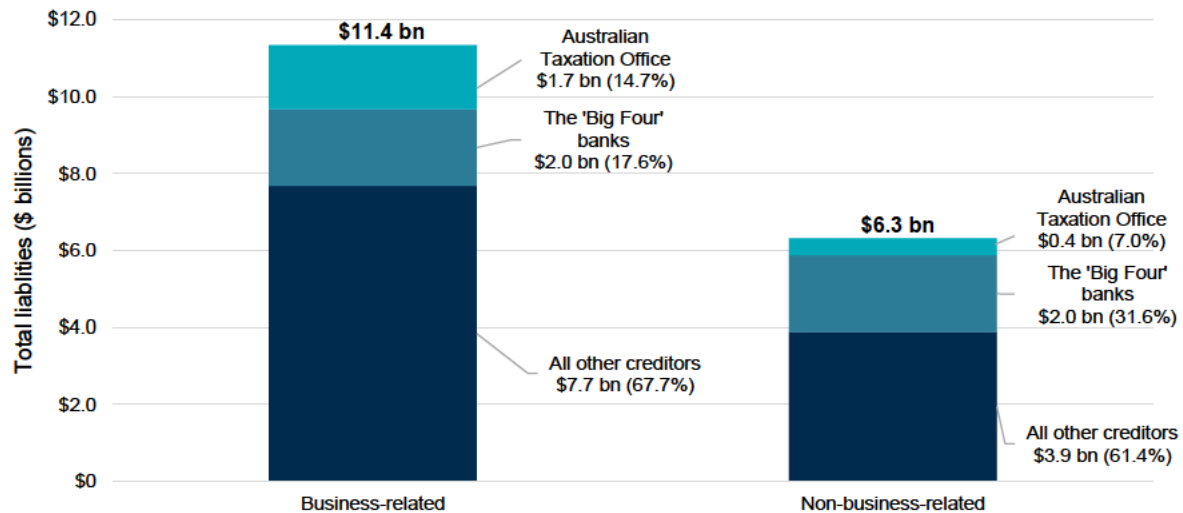
Source: AFSA

The value of this \$17.7 billion debt is concentrated on a few large creditors, with the Australian Taxation Office and the 'Big Four' banks collectively owed \$3.7 billion in business-related and \$2.4 billion in non-business-related personal insolvencies. As a



result, the recovery and collection behaviours by the Australian Taxation Office and the 'Big Four' banks have a significant impact on system outcomes.

Figure 2: Creditor concentration in active personal insolvencies in 2021–22



Note: The 'Big Four' banks are the Commonwealth Bank of Australia, National Australia Bank Limited, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited

Source: AFSA

AFSA has increased its focus on raising awareness of our role in the Australian credit system and the services we provide.

We hosted 8 program-level stakeholder forums in 2021–22, with 2 events for each of the following:

- Personal Insolvency Stakeholder Forum
- PPSR Stakeholder Forum
- PPSR Technical Forum, for business-to-government clients of the PPSR
- PPSR Financiers Forum, a new initiative in 2021–22 for PPSR clients from the banking and finance sector.

This engagement enables our stakeholders to contribute and co-design as experts in their field, have their issues heard, and participate in the decision-making process. The PPSR-related forums deliver on a number of recommendations made in the 2015 *Review of the Personal Property Securities Act 2009* (Whittaker review).

We hosted 4 specialised educational information sessions for financial counsellors. Topics included a basic introduction to bankruptcy and a session focused on issues of small business and personal insolvency.

We are involved in regular liaison meetings with stakeholders across industry and government, attending several ad hoc meetings throughout 2021–22. Key stakeholder groups we meet with regularly include:

- Australian Restructuring Insolvency and Turnaround Association

- Association of Independent Insolvency Practitioners
- Personal Insolvency Professionals Association
- Australian Taxation Office
- Australian Securities and Investments Commission
- Financial Counselling Australia
- Consumer Action Law Centre (Victoria)
- Australian Competition and Consumer Commission
- Australian Small Business and Family Enterprise Ombudsman
- Australian Financial Complaints Authority
- Council of Small Business Organisations Australia
- Major creditors, including representatives of NAB, CBA, ANZ and Westpac

We have recently increased our media presence, publishing 35 proactive media releases and news items in 2021–22. This activity resulted in 1,564 media mentions, with a potential reach of 61.1 million. Popular areas of media interest included bankruptcy proceedings against high-profile Australians, prosecutions for contravening the Bankruptcy Act, and proceeds-of-crime activity.

## Personal insolvency trends

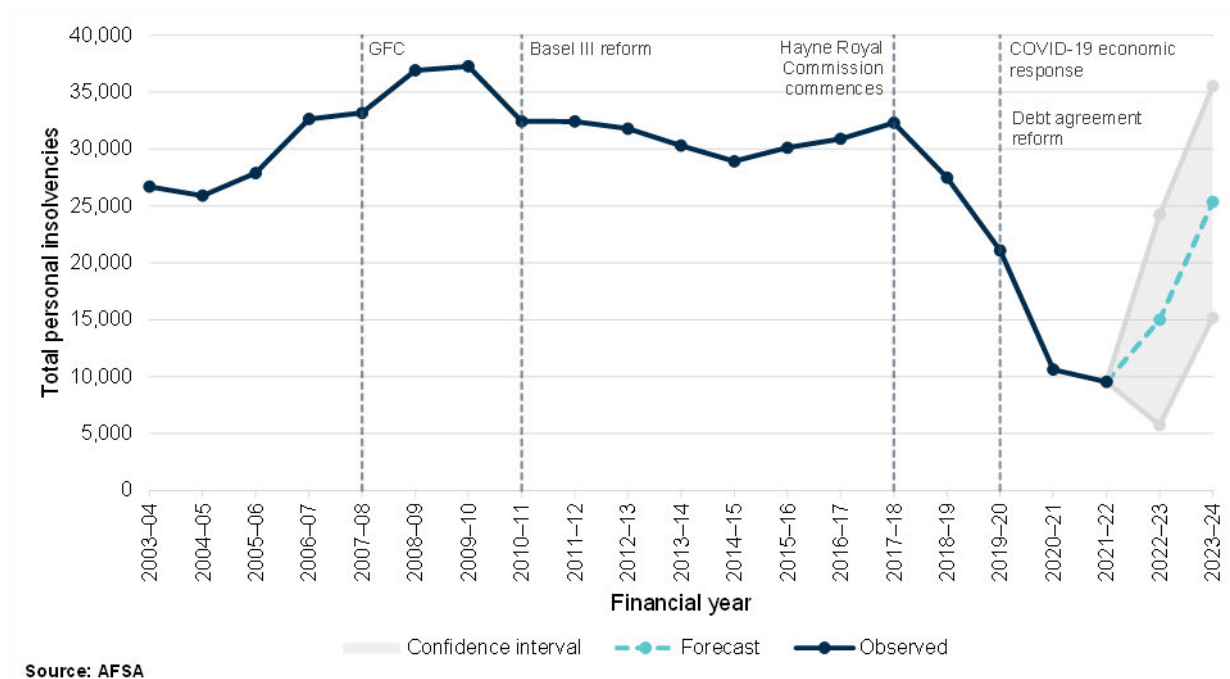
*This part of the submission provides a response to the following General Question on Notice:*

*d. Have the COVID-19 emergency measures had a distortionary effect on available data from the past three years and broader trends over the past decade?*

Australian households are currently experiencing financial stress. Unemployment remains low but the risk of insolvency is rising as household saving buffers decline and cost of living pressures increase. Other adverse macroeconomic factors such as rising interest rates, high inflation, ongoing supply chain pressures and rising energy prices will put those vulnerable under more financial stress.

Individuals can enter personal insolvency due to several social, health and economic factors. Over the past 20 years, Australia has averaged over 28,000 personal insolvencies each year. Volumes hit a high of 37,263 in 2009–10, 2 years after the Global Financial Crisis (GFC). Numbers have steadily declined since then, falling to historic lows during 2021–22 following the targeted and collective economic response to the pandemic from industry and government.

Figure 3: Personal insolvency trends



Several factors are associated with the decline in numbers, with multiple significant structural changes occurring in the personal insolvency system over the last 15 years:

- credit lending standards and practices continue to be affected by the Basel III regulations introduced in 2011 following the GFC

- the Hayne Royal Commission influenced further changes to creditor lending and recovery behaviours
- amendments to the Bankruptcy Act changed the eligibility requirements for people to enter into a debt agreement and restricted the length of an agreement
- the response to the COVID-19 pandemic introduced temporary debt relief legislation, government stimulus, debt repayment holidays from industry and other coordinated measures to reduce financial hardship on businesses and individuals.

Personal insolvency volumes are expected to revert towards the 10-year average (25,300 per year) over the next 2 years as the full impact of recent quantitative tightening and other macroeconomic factors hits households. Early 2022–23 data suggests that volumes are tracking moderately below forecasts but remain within expectations given the heightened economic uncertainty (Figure 1). Other factors observed in AFSA’s market surveillance will impact the speed of reversion.

## Business-related personal insolvency

*This part of the submission provides a response to the following General Questions on Notice:*

*8. Harmonisation of corporate, personal, trust, & partnership insolvency law*

*c. What are the differences in insolvency law for partnerships?*

*13. Recommendations in submissions and timing of reforms:*

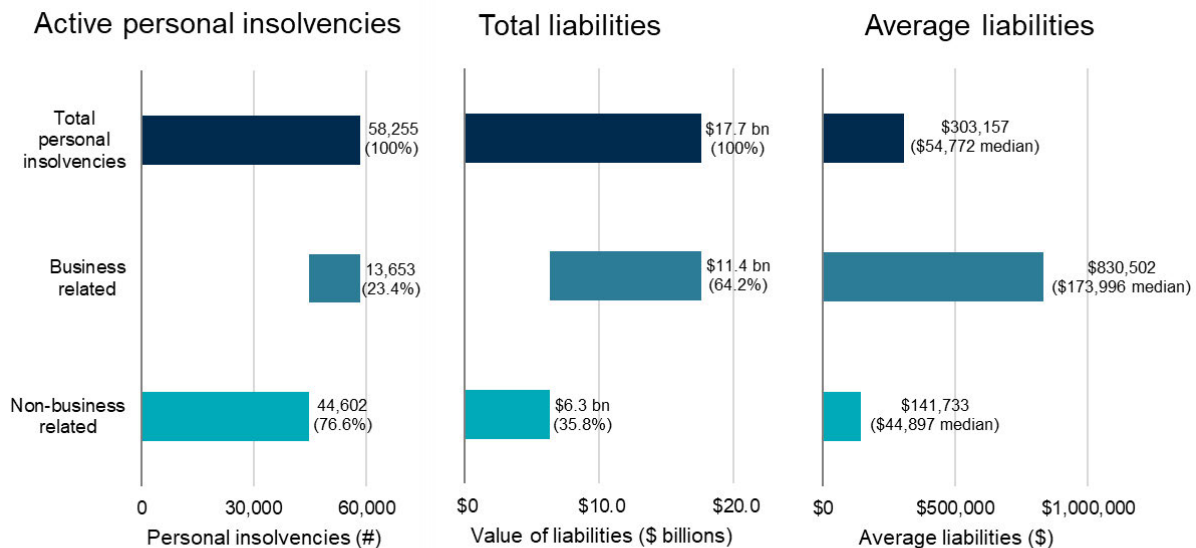
*a. The committee has received many recommendations for reforms in written submissions... Do you wish to comment on recommendations made thus far by any other inquiry participant, either in a written submission or in a hearing?*

Individuals who operate sole trader businesses and business partnerships, as well as company directors and/or secretaries with personal guarantees, who are going through insolvency are subject to the Bankruptcy Act and the personal insolvency system regulated by AFSA.

Proprietary Companies (Pty Ltd) companies - including those that are otherwise simple and/or low-value businesses that are in other ways comparable to sole trader or partnerships - are subject to the Corporations Act and regulated by ASIC.

As outlined in Figure 4, 23.4% of active personal insolvencies are business-related; however, these insolvencies contribute to nearly two-thirds of total system debt (\$11.4 billion). The average debt for a business-related personal insolvency is \$830,502 – over 5.8 times larger than a non-business-related personal insolvency (\$141,733).

Figure 4: Distribution of debtor liabilities by business-related personal insolvencies



Source: AFSA

Table 1: Volume and values of the different types of personal insolvency administrations available to individuals 2021-22

| Type of administration        | Business-related | Number of debtors | Percentage of debtors | Value of liabilities | Percentage of liabilities | Maximum liabilities | Minimum liabilities | Average liabilities | Median liabilities |
|-------------------------------|------------------|-------------------|-----------------------|----------------------|---------------------------|---------------------|---------------------|---------------------|--------------------|
| Bankruptcy                    | No               | 18,333            | 62%                   | \$3.234 b            | 24.5 %                    | \$224.8 m           | \$1                 | \$0.176 m           | \$0.044 m          |
|                               | Yes              | 11,247            | 38%                   | \$10.007 b           | 75.5%                     | \$349.6 m           | \$1                 | \$0.890 m           | \$0.199 m          |
|                               | Total*           | 29,580            | 50.8%                 | \$13.241 b           | 75%                       | \$349.6 m           | \$1                 | \$0.447 m           | \$0.069 m          |
| Debt agreement                | No               | 25,774            | 93%                   | \$2.824 b            | 90.2%                     | \$5.1 m             | \$3,937             | \$0.110 m           | \$0.045 m          |
|                               | Yes              | 1,936             | 7%                    | \$308.1 m            | 9.8%                      | \$2.1 m             | \$8,052             | \$0.159 m           | \$0.062 m          |
|                               | Total*           | 27,710            | 47.6%                 | \$3.132 b            | 17.7%                     | \$5.1 m             | \$3,937             | \$0.113 m           | \$0.046 m          |
| Deceased estate               | No               | 89                | 35%                   | \$130.1 m            | 23.3%                     | \$43.6 m            | \$2,465             | \$1.462 m           | \$0.263 m          |
|                               | Yes              | 166               | 65%                   | \$432.9 m            | 76.7%                     | \$62.2 m            | \$1                 | \$2.608 m           | \$0.638 m          |
|                               | Total*           | 255               | 0.4%                  | \$563.0 m            | 3.2%                      | \$62.2              | \$1                 | \$2.207 m           | \$0.441 m          |
| Personal insolvency agreement | No               | 406               | 57.2%                 | \$133.3 m            | 18.5%                     | \$5.1 m             | \$16,412            | \$0.328 m           | \$0.150 m          |
|                               | Yes              | 304               | 42.8%                 | \$590.8 m            | 81.5%                     | \$104.4 m           | \$20,634            | \$1.943 m           | \$0.441 m          |
|                               | Total*           | 710               | 1.2%                  | \$724.1 m            | 4.1%                      | \$104.4 m           | \$16,412            | \$1.020 m           | \$0.294 m          |
| Total personal insolvencies   | No               | 44,602            | 76.6%                 | \$6.322 b            | 35.8%                     | \$224.8 m           | \$1                 | \$0.142 m           | \$0.045 m          |
|                               | Yes              | 13,653            | 23.4%                 | \$11.339 b           | 64.2%                     | \$349.6 m           | \$1                 | \$0.831 m           | \$0.174 m          |
|                               | Total            | 58,255            | 100%                  | \$17.660 b           | 100%                      | \$349.6 m           | \$1                 | \$0.303 m           | \$0.055 m          |

\*Total percentages of debtors and liabilities for each type of arrangement are calculated against the total for all personal insolvencies



Small businesses frequently lack the resources and expertise to effectively understand and navigate complex and, in particular for small creditors, costly insolvency systems.

The insolvency system currently differentiates between incorporated and unincorporated business types, rather than value, size, risk or complexity or type of debt.

The personal insolvency part of the system deals with 'business-related bankruptcy' - where an individual's bankruptcy is directly related to his or her proprietary interest in a business.

Debtors that report operating a business in the last 5 years (2 years for debt agreements) are counted as business-related personal insolvencies. Debtors can report operating as a sole trader, in a business partnership, a director/secretary of a company or any combination of these businesses.

Table 2: Type of business as reported by insolvent individuals financial year 2021–22

| Type of business  | Number of personal insolvencies | Proportion of total personal insolvencies |
|---|---------------------------------|---|
| Sole trader/partnerships only                           | 1,148                           | 12.0%                                     |
| Company director/secretary only                         | 781                             | 8.2%                                      |
| Sole trader/partnership and company director /secretary | 398                             | 4.2%                                      |
| Total   | 2,327                           | 24.4%                                     |

The failure of small businesses – whether incorporated businesses or not – has a social as well as financial impact on the owners or (if incorporated) the directors of that business, as well as the creditors. These consequences can lead to subsequent personal insolvency of a business's owners, directors and/or its creditors.

#### *Small businesses and the National Personal Insolvency Index*

AFSA notes that the submission to the inquiry from the Australian Small Business and Family Enterprise Ombudsman made the following recommendation:

#### **Recommendation 4. Review and improve the small business restructuring provisions**

*...consideration should also be given to...expanding the eligibility of the provisions to sole traders.*

#### *ASBFEO Case Study 5: Sole traders not covered by corporate insolvency law*

*A small business paid \$3,800 to a sole trader for goods they did not end up receiving. The small business tried to contact the sole trader directly, however did not receive any response. They then sought assistance from the ASBFEO and, after discussing possible options with our office, were informed through word of mouth that the sole trader had been forced into bankruptcy (the small*

*business was unable to verify this). Because sole traders are not covered under corporate insolvency law, the small business had little chance of recovering monies owed.*

The National Personal Insolvency Index (NPII) is a publicly available electronic record of some personal insolvency proceedings in Australia from August 1928. If an individual operated a sole trader business, there won't be a record of a business insolvency. However, searches of the NPII can be undertaken for records for the individual who operated the sole trader business.

The following are the types of matters recorded on the NPII:

- creditors' petitions
- bankruptcies (debtors' petitions and sequestration orders)
- debt agreement proposals, where the proposals are accepted for processing
- debt agreements
- section 188 authorities (personal insolvency agreement proposals)
- personal insolvency agreements
- Part XI administration orders (bankrupt deceased estates)
- section 50 orders (pre-bankruptcy property control orders).

Public searches of the NPII are available through the Bankruptcy Register Search. AFSA operates this service on a cost recovery basis in accordance with Australian Government policy. Information about search fees and methods of payment can be found on AFSA's website.

The types of NPII extracts that may be purchased are:

- an extract for a single matching name. The extract will display details of the person, the proceeding or administration and the trustee, administrator or other contact.
- where a search of the NPII results in no matching record, an extract stating that no matching record was found may be purchased.
- where a search finds 2 or more matches or close name matches, a Search Result Summary may be purchased to assist with selection of the exact record that is being sought. The Search Result Summary will display summary data of up to 50 matches and/or near matches to the search criteria.

A creditor's recovery of money during a bankruptcy will depend upon the assets available to the bankruptcy trustee. If, for instance, the sole trader had a house property, stock, debts owed to him or her etc then (broadly) such property would vest in the trustee and could be sold by the trustee for the benefit of creditors (by way of payment of a dividend). Creditors of a bankrupt sole trader could recover some, or indeed all, of the money owed by virtue of the administration of the bankrupt estate.



A trustee is entitled to carry on the business of the sole trader bankrupt 'so far as may be necessary to dispose of it or wind it up for the benefit of creditors' (s134(1)(b) of the Bankruptcy Act).

## Market surveillance

*This part of our submission responds to the following Questions on Notice:*

*1. In its submission, AFSA indicated that it maintains systems surveillance of the intersections between the personal insolvency, personal properties securities and corporate insolvency frameworks.*

- a. Could you tell the committee what systems surveillance involves?*
- b. What findings does AFSA have from that surveillance?*
- c. Are there reforms that could be made to address difficulties arising from the intersection of the three regimes?*

The economic landscape is quickly evolving. In 2022 AFSA engaged its Principal Economist to provide key insights and analyses of current and future global and domestic, macro and micro economic trends. Such analyses are helpful in drawing out implications for AFSA's operations and regulatory stewardship.

As part of our commitment to credit system stewardship, we are stepping up our stakeholder engagement program. Through this program, we observe that:

- more people will experience an increase in their mortgage and loan repayments as a number of fixed interest periods come to an end in March–July 2023
- the number of people calling debt helplines to talk through options for credit card and mortgage repayments has moderately increased, and
- uptake of informal insolvency arrangements has increased (from a low base).

We are concerned about the impact of untrustworthy advisers who operate outside current legislative boundaries and contribute to system misuse. We remain vigilant through our compliance program, using our education and outreach programs to inform debtors, creditors, practitioners and other government agencies when we identify issues outside our regulatory remit.

We use data and intelligence and consult widely to identify systemic risks and harms in Australia's credit and insolvency environments. This includes working closely with our co-regulator ASIC and other key stakeholders such as financial counsellors and insolvency professional associations through regular liaison meetings and workshops aimed at targeting system wide issues such as dealing with people experiencing vulnerability.

This leads into our annual compliance program, where all AFSA statutory roles play a part. The current program has 3 focus areas:

1. Support at risk users
2. Drive willing compliance and engagement
3. Address misuse in the system

The priority areas are:

- disrupting the activities of untrustworthy advisors, including those who may take advantage of vulnerable users of the system
- targeting practitioners that claim unnecessary remuneration
- targeting debtors where assets or income may have been concealed or disposed before bankruptcy
- taking strong action against those lodging unlawful PPSR registrations.

We adopt a risk-based model to proactively address emerging issues and ensure compliance with the Bankruptcy and PPS Acts.

AFSA has a complaints mechanism and a tip-off process to allow anybody to raise concerns about the administration of any individual estate or other matter relating to the personal insolvency and personal property securities system. We review every complaint or tip-off, assess the risk, and use our powers to address wrongdoing. We also review all complaints from a holistic perspective to identify trends and patterns that then feed into compliance program and regulatory work we do.

AFSA's surveillance activities are carried out under our [statutory roles](#).

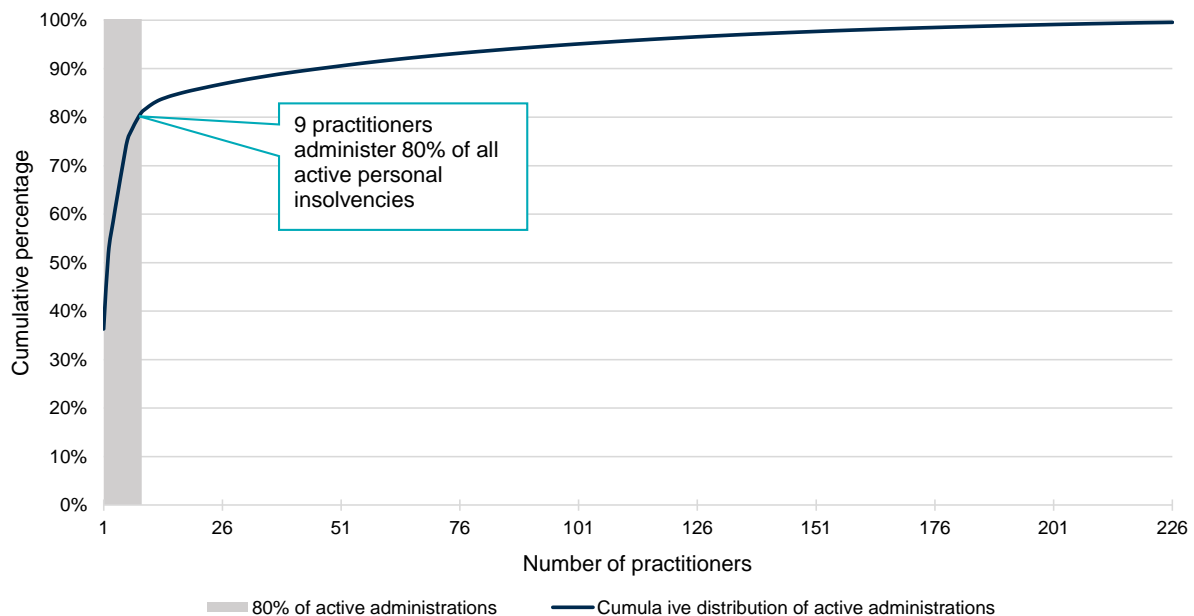
[Inspector-General Practice Statement 11](#) (IGPS11) explains the monitoring and inspection of bankruptcy trustees and debt agreement administrators. This surveillance can include:

- inspecting administrations, systems and practices
- attending creditor meetings
- reviewing the quality of trustee decisions
- reviewing and approving trustee remuneration in certain instances
- targeted or strategic compliance monitoring
- reviewing complaints made against a practitioner, and
- surveying debtors and creditors.

To reflect the way that risks are distributed across the personal insolvency system, AFSA uses a harms-based approach that best reflects the fact that system-wide influence is concentrated with a small number of practitioners. To better focus our compliance and stakeholder engagement programs, we classify practitioners into tiers based on risks factors.

The majority of debtor and creditor experiences in the personal insolvency system are highly dependent on the practices and behaviours of a small group of practitioners. In 2021–22, 9 practitioners (including the Official Trustee) were responsible for administering 80% of all active personal insolvencies.

Figure 5: Practitioner concentration by active personal insolvencies in 2021–22



[Official Receiver notices](#) are used to require the production of information, gain access to relevant premises or accounting records, or recover unpaid funds owed to creditors. Requests may come from the Official Trustee or a Registered Trustee seeking the information to properly manage an administration. This is a critical function in ensuring the integrity of the personal insolvency system in Australia.

The Official Trustee’s main priority is to focus on matters that are in the public interest and to build confidence in the personal insolvency system. Put simply, the Official Trustee focuses on investigating and administering estates that will deliver system wide benefits, even if the administration may not result in a financial return to creditors or cover our administration costs.

The Official Trustee undertakes this work on the basis that there is no guarantee of recovering assets / income to cover investigation expenses, but the outcomes are critical to maintaining public confidence in the system. In order to prioritise resources for this task as a regulator, the majority of estates with assets / income of commercial value are immediately transferred to private trustees for administration. Exceptions include when creditors object to the appointment of a private trustee, or when a bankruptcy could easily be annulled (paid out in full) for less cost by the Official Trustee, thereby preserving any surplus refund available to the debtor

The Official Trustee’s surveillance activities include:

- conducting compliance checks on a random sample of estates (not based on information provided, meaning anyone who submits a bankruptcy application may be scrutinised)

- harms-focused discovery work, aligned with the annual compliance program focus areas.

With regards to the Registrar Personal Property Securities, the PPSR is a real time public noticeboard and there is a balance between providing transactional efficiency and minimising inappropriate registrations. AFSA has processes in place to identify and take swift action to remedy misuse. This includes transactional surveillance activities such as proactive key word monitoring, data amendment or removal, and access restrictions.

#### *System surveillance findings*

AFSA publishes an annual [Personal Insolvency Compliance Report](#) (PICR). This report sets out key compliance activities and findings against our strategic focus and priority areas. These findings are used to inform future focus areas and priority surveillance activities. The report also includes case studies to demonstrate AFSA's regulatory presence and the outcomes achieved.

We use insights from our compliance program to feed into service design as we want to make compliance easy and design non-compliance out.

We have found that the majority of bankrupts and insolvency practitioners want to do the right thing, with a small number being prosecuted or subject of disciplinary action every year.

However, financial hardship may impact on a person's ability to make well-informed decisions about their unmanageable debt. We recently delivered our [Vulnerability Framework 2022-25](#) which sets out how we will prioritise and support people experiencing vulnerability in our system across 6 focus areas over the next 3 years.

We want people who use our services to receive the information that's right for their situation. Being flexible and providing extra support by providing simple information and intuitive systems will ensure we do not create additional stress for people experiencing vulnerability.

Unfortunately, we continue to see evidence of some advisors preying on the people seeking financial relief and the threat they pose to Australia's financial system. Misleading advice is hard to eradicate because prosecution typically relies on the testimony of victims who may fear incriminating themselves. These 'high risk' advisors often operate in both personal and corporate insolvency which can lead to jurisdictional challenges between agencies.

#### *Intersection of regulatory regimes*

Information sharing can be challenging when it comes to matters impacting our mutually inclusive regulated population. Regulation of activities earlier in the credit system can also affect whether an individual needs to access the personal insolvency system.

Areas of cross-over that pose difficulties include:

- regulation of practitioners that are both registered liquidators and registered trustees
- responding to individuals identified as being untrustworthy advisors
- identifying adverse creditor behaviour
- identifying poor quality, inaccurate and/or inconsistent financial guidance
- identifying root cause of personal insolvency, and
- dealing with the behaviour of bankrupts.

Although there are some legislated powers for information sharing, it is a cumbersome and bureaucratic process. This point relates to *all* information sharing, however disciplinary matters is one key example. Should a member of a regulated population be subject to an ongoing disciplinary process, this may be kept internally discrete for logical and/or legal reasons. The difficulty is then another agency may allow contrary conduct to continue from the subject due to being unaware of the ongoing disciplinary issues.

AFSA shares an interest in the pre-insolvency space, along with a range of other agencies. One example is dealing with misleading advertising, whereby the material belongs (either directly or through affiliated companies) to entities registered through AFSA, but prosecution of such matters rests with other agencies.

We have seen over the last few years the growth of pre-insolvency advice and debt management firms and the importance of the operation of related legislation (e.g. consumer credit legislation regulated by ASIC) and how it impacts on whether bankruptcy and debt agreements is the most appropriate option.

Despite challenges, we continue to work to share information and collaborate with other government agencies and private sector stakeholders. This is particularly the case as not all issues we identify are within our regulatory remit.

There are multiple government agencies involved in the credit system (not just the insolvency system). This includes the ATO, ASIC, ACCC and AFSA. They may have different regulatory requirements relating to business processes that are of mutual interest. For example, a practitioner that is both a registered liquidator and a registered trustee will need to meet standards and requirements around accreditation and professional development; IT systems; accounting and funds handling that are more likely to be different across each regime than the same. AFSA works collaboratively with other regulators to ensure that different approaches to, and resourcing for, supervision/oversight of practitioners does not give mixed messages or undermine the other regulator in the mind of the regulated individual.

#### *Stakeholder calls for reforms*

Our stakeholder engagement and system surveillance activities suggest a program of significant legislative reform will be supported. There is an appetite to:

- streamline requirements for people struggling with small amounts of debt to allow practitioner and regulatory activity to focus on significant risks to the credit system and allow debtors and creditors to swiftly return their focus to more productive economic activities
- enhance access to quality pre-insolvency advice to increase a person's chances of managing their financial obligations and making informed decisions best suited to their needs and raise awareness of fee-free advisors such as Financial Counsellors
- expand the range of tools available to monitor and dissuade system misuse to reduce the harm it causes to individuals and the economy.

We are alert to calls to rebalance the interests of debtors and creditors, and harmonise personal and corporate insolvency laws, regulations and administrative frameworks.

There remains a social stigma associated with personal insolvency, irrespective of the reasons (which are often outside the control of the individual involved). Stakeholders have reported to us that this can provide a disincentive for individuals to address their financial situation early and pro-actively, such as by entering into a Debt Agreement, which is still legally classed as being 'an act of bankruptcy'.

There is a need for clear and accessible information to enable people (debtors, creditors and including those in business) to understand the personal insolvency system, and that is an issue that AFSA has and is giving attention to (such as through our website and our guidance documents).

Amendments have helped restate, reorganise, and modify legislative provisions, but the pace of change in the credit system and evolving societal expectations of creditors, regulators, and government present a challenge.



## Data collection and collation

*This part of the submission provides a response to the following Questions on Notice:*

*To the Attorney-General's Department:*

- 1. Does AGD, Treasury or some other Commonwealth entity collate data about both corporate and personal insolvencies?*
- 2. What data does AGD collate with respect to personal bankruptcy? Does this get updated regularly?*

*General questions:*

*7. Data and research: Submitters to this inquiry and many previous inquiries and reviews have recommended that better data, statistics, and research is needed on corporate insolvency.*

*b. To assist insolvency reform in a root and branch review, what are the research questions for which better data is needed?*

*c. Are there sources of data that exist, but are not publicly available?*

*d. Have the COVID-19 emergency measures had a distortionary effect on available data from the past three years and broader trends over the past decade?*

AFSA collects and collates data on personal insolvencies, including business-related personal insolvencies. Much of this data is protected personal information and is not able to be made publicly available except in aggregate.

An extract of the business-related data collected from individuals completing the 'Bankruptcy Form' is at [Appendix A](#).

This form also captures data on whether individuals who are insolvent are directors of an incorporated company at the time of their insolvency. A key consequence of becoming bankrupt (which includes entering into a debt agreement, which is legally considered an act of bankruptcy) is that for the duration of a bankruptcy (which generally last 3 years) bankrupts are not able to be a director of, or manage, a company without the permission of a court.

In contrast, sole traders are able to continue to run their business, with some restrictions and requirements, including notifying all people you do business with that you are bankrupt (this may be via the NPII, depending on the name of the business).

However, in many instances there is a lack of root cause information – for example whether a sole trader or partnership becomes insolvent as a result of being a creditor in a corporate insolvency process. This means we are missing an opportunity to gain insights to strengthen regulation and support earlier in the credit or insolvency system.

AFSA publishes a range of data-based reports at regular intervals, including quarterly and annually <https://www.afsa.gov.au/about-us/statistics> and set out in detail below:

- [Monthly personal insolvency statistics](#)
- [Quarterly personal insolvency statistics](#)
- [Regional personal insolvency statistics](#)
- [Annual administrations](#)



- [Practitioner supervision statistics](#)
- [Enforcement statistics](#)
- [Personal insolvency compliance report](#)
- [Debts in business-related personal insolvencies](#)
- Monthly personal insolvency statistics highlights report (not publicly available)

At the beginning of the COVID-19 pandemic, we provided additional fortnightly aggregations of personal insolvency statistics. These statistics tracked numbers by type of administration and industry if the insolvency was business-related. The frequency of the statistics and the additional information provided valuable insights into how the pandemic was impacting the economy. From April 2022, we released statistics monthly, ensuring our clients can continue monitoring the impacts of insolvency on the economy.

Historical and discontinued releases of aggregated data by AFSA are available on [data.gov.au](https://data.gov.au).

AFSA also includes a range of data-based information in its annual reports: <https://www.afsa.gov.au/about-us/corporate-information/annual-reports>

Professional associations, academics, statisticians and other government agencies use our statistics to support policy choices and research. AFSA has established relationships with a range of insolvency researchers and is a member of the Insolvency Academics Network. We regularly consider what sort of research we can partner with experts and academics on and have been able to work directly on a number of projects that have relied on data held by AFSA. These opportunities provide us with insights into what better data could be needed for.

## Managing Risk

*This part of the submission provides a response to the following General Questions on Notice:*

*12. Regulation of pre-insolvency advisors*

- a. What data and research are available on the impacts of the unregulated environment for pre-insolvency advisors?*
- b. What would be the benefits and disadvantages of regulating pre-insolvency advisors?*
- c. What approaches are taken overseas or in the UNCITRAL principles to the regulation of pre-insolvency advisors?*

AFSA is responsible for achieving balance in the personal insolvency system, protecting those at risk of harm, ensuring compliance is the easiest option and acting decisively against those doing deliberate harm.

We use our expertise and networks to inform legislative and administrative solutions that will provide Australian borrowers and lenders with effective, contemporary options to deal with unmanageable personal debt.

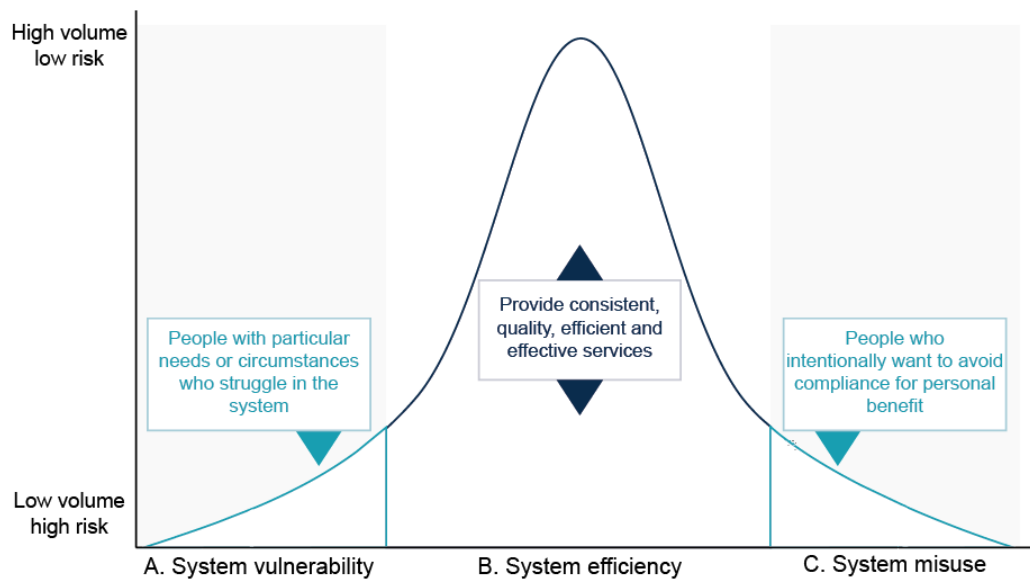
Most people who enter the personal insolvency system simply need access to effective systems and processes to achieve good outcomes. As a modern regulator we are:

- investing in business enablers that increase our internal efficiency and developing our staff to deliver world-class government services
- shifting commercially viable trustee work to market and focusing on matters that have the potential to cause the most harm or are otherwise in the public interest for the Official Trustee to administer, and
- focusing on people-centred design to develop a suite of digital technologies that reduce the compliance burden on our clients.

Most harms that undermine an effective credit system occur on the edges of our client profile where people are struggling in the system and have increased support needs or they are deliberately misusing the system.

Our approach to managing risk is visually represented in a conceptual bell-curve model. This conceptual model highlights how risks are disproportionately spread across 3 groups in the personal insolvency system. We tailor our approach for these different groups to deliver positive outcomes for stakeholders and the community.

Figure 6: Conceptual model of risk concentration in the personal insolvency system



### *System vulnerability*

Our vulnerability framework supports individuals most at risk of unintentional noncompliance and exploitation by unscrupulous agents in the system. As a contemporary regulator we:

- engage with our regulatory community to deliver balanced outcomes through good leadership, clear outreach and active listening
- work with behavioural economists on touch points to ‘nudge’ people to make decisions that support their long-term financial wellbeing
- use a regulatory ‘sandbox’ to pilot new approaches in a low-risk environment to ensure the impact on stakeholders of policies and programs is considered and intentional.

### *System efficiency*

Most people who enter the personal insolvency system simply need access to effective systems and processes to get good outcomes. As a modern regulator we:

- invest in business enablers that increase our internal efficiency and identifying opportunities to upskill our staff to continue delivering world-class government services
- promote public good with the Official Trustee taking on matters where the initial assessment of a bankrupt’s estate indicates there are no or negligible assets, and referring estates that are assessed as having assets to registered trustees to manage

- apply people-centred design to develop a suite of digital technologies that reduce the compliance burden on our clients.

### *System misuse*

Deliberate system misuse undermines confidence in the insolvency system.

Our compliance program drives willing compliance and engagement and addresses intentional misuse using innovative and collaborative regulatory practices. As a visible regulator we:

- uplift data sharing and analytics capabilities to focus on oversight of the system and target emerging risks and harms at the edges of the bell curve
- keep watch through our surveillance program, encouraging positive conduct, highlighting good behaviours, sharing proven practices, and taking strong and decisive action against those that deliberately misuse the system
- work closely with the department to identify potential reforms, including with regard to 'high risk' advisers

High risk advisors are a key harm for both personal and corporate insolvency can directly and indirectly influence system misuse and cause harm to individuals, the economy and undermine the system. High risk advisors are unregulated people or businesses who seek to exploit people and businesses who are in financial difficulty.

On 4 July 2022, we published our report on [Untrustworthy Advisors](#).

A copy of this report has been provided to the Committee separately.

The report highlights the prevalence of 'high risk' advisors, discusses the consequences of misleading advice and also details the common tactics which may be a sign of high risk advisor activity.

When people are in financial distress, they can be targeted by unregulated and advisors who provide unethical advice that can result in individuals unwittingly committing criminal actions.

Such advisors aggressively market their services to distressed debtors (for example through high ranking Google advertising), and unlike financial planners and credit providers, operate in a regulatory 'limbo', where there are currently very limited statutory remedies available to AFSA and ASIC.

The credit profession has an important role to play in helping to disrupt the activities of high risk advisors. Such action can itself prove beneficial for creditors given that some of the activity of concern impacts the ultimate return to creditors.

For example, an advisor may suggest underhand ways to protect property from becoming available to creditors. This might include hiding assets or using the PPSR to make false registrations.

Another illegal tactic is recording a high number of friendly creditors as holding unsecured debts. This use of fictitious creditors stacks the voting numbers in a creditors' meeting in favour of accepting a proposal that disadvantages genuine creditors.

AFSA actively encourages information about untrustworthy advisors so we can take what action we can to minimize the harm they can cause.

We also collaborate with other Commonwealth agencies on phoenixing activities, recognising that untrustworthy advisors often sit behind such activity. While phoenixing may not occur in the same way for business-related personal insolvency as for Director-run companies, common issues relating to hiding assets from creditors remain.

We also collaborate with stakeholders in the private sector to disrupt untrustworthy advisor behaviour and seek to influence stakeholders in the private sector to take action themselves to address this harm.

## Regulated practitioners

The Bankruptcy Act sets out that the Official Trustee becomes trustee by default in any estate where a registered trustee has not been originally appointed.

The role of the Official Trustee within AFSA is an important regulatory tool that helps ensure insolvency administrations have appropriate scrutiny where a Registered Trustee has not been appointed.

The Official Trustee's work is primarily geared towards delivering system wide benefits, addressing harms and non-compliance, as opposed to benefits that accrue to creditors in particular bankrupt estates. It will administer estates when no registered trustee is willing to administer it due to a lack of realisable assets or income in which to draw remuneration from the estate. This assessment is made on the basis of information provided by a debtor in their Bankruptcy Form.

There are often instances where the reality of a debtors financial circumstances is not accurately captured in the Bankruptcy Form, and registered trustees can still be responsible for administering an estate that is found to have limited or no realisable assets or income.

The Official Trustee will accept a bankrupt estate from a registered trustee if the initial prospect of commercial realisations does not come to fruition, and there is still regulatory or public interest work to be undertaken on the matter.

The Official Trustee may administer bankruptcies, personal insolvency agreements and debt agreements where the originally appointed registered trustee or debt agreement administrator are no longer able to do so (through retirement, death or deregistration).

It will also investigate and administer matters in the public interest to ensure public and industry confidence in the insolvency system.

The Official Trustee applies two principles when considering the work that it should undertake.

1. The Official Trustee will not administer matters where it is apparent at the onset that a registered trustee may consent to act in the matter/administration.
2. The Official Trustee will investigate and administer matters where there is a public interest in doing so and to maintain stakeholder confidence in the insolvency system although the administration may not result in a financial return to creditors.

Where a registered trustee is not originally appointed, AFSA routinely transfers estates based on this breakdown to trustees to ensure appropriate balance in the system.

Transferring matters from AFSA as the Official Trustee to registered trustees is a routine part of the bankruptcy system. The key benefits of this approach are:

- it supports a viable and innovative private insolvency profession, including through confidence in the supply of work to the profession
- it limits instances where AFSA, as a fully cost recovered agency, administers estates primarily for the purposes of raising revenue or where there is no public interest
- it ensures the Official Trustee's limited resources are applied effectively to deliver the greatest public value.

Table 4: Personal insolvency statistics by type of practitioner and business-related characteristics, financial year 2021-22

|  |                               | Business-related |        |             |        | Non-business-related |         |             |         | Totals  |         |             |         |
|--|-------------------------------|------------------|--------|-------------|--------|----------------------|---------|-------------|---------|---------|---------|-------------|---------|
|  |                               | Debtors          |        | Liabilities |        | Debtors              |         | Liabilities |         | Debtors |         | Liabilities |         |
| Practitioner   | Type of administration        | Number           | % *    | Value       | % *    | Number               | % *     | Value       | % *     | Number  | % *     | Value       | % *     |
| Official Trustee   | Bankruptcy                    | 6,964            | 62 %   | \$2.550 b   | 25 %   | 15,686               | 85.5 %  | \$1.764 b   | 54.5 %  | 22,650  | 76.6 %  | \$4.31 b    | 32.5 %  |
|  | Debt agreement                | 4                | 0.2 %  | \$0.3 m     | 0.1 %  | 7                    | 0.03 %  | \$1.2 m     | 0.04 %  | 11      | 0.04 %  | \$1.5 m     | 0.05 %  |
|  | Deceased estate               | 31               | 18.7 % | \$148 m     | 34 %   | 34                   | 38 %    | \$20.6 m    | 15.8 %  | 65      | 25.4 %  | \$168.6 m   | 30 %    |
|  | Personal insolvency agreement | 3                | 1 %    | \$6.3 m     | 1 %    | 3                    | 0.7 %   | \$1.3 m     | 1 %     | 6       | 0.8 %   | \$7.6 m     | 1 %     |
|  | Total                         | 7,002            | 51.2 % | \$2.704 b   | 23.9 % | 15,730               | 35.3 %  | \$1.787 b   | 28 %    | 22,732  | 39 %    | \$4.49 b    | 25.4 %  |
| Registered trustees/<br>Registered debt agreement administrators | Bankruptcy                    | 4,283            | 38 %   | \$7.458 b   | 75 %   | 2,647                | 14.5 %  | \$1.470 b   | 45.5 %  | 6,930   | 25.4 %  | \$8.93 b    | 67.5 %  |
|  | Debt agreement                | 1,932            | 99.8 % | \$307.8 m   | 99.9 % | 25,767               | 99.07 % | \$2.823 b   | 99.06 % | 27,699  | 99.06 % | \$3.13 b    | 99.05 % |
|  | Deceased estate               | 135              | 81.3 % | \$285.2 m   | 66 %   | 55                   | 62 %    | \$109.5 m   | 84.2 %  | 190     | 74.6 %  | \$394.7 m   | 70 %    |
|  | Personal insolvency agreement | 301              | 99 %   | \$584.5 m   | 99 %   | 403                  | 99.3 %  | \$132 m     | 99 %    | 704     | 99.2 %  | \$716.5 m   | 99 %    |
|  | Total                         | 6,651            | 48.8 % | \$8.635 b   | 74.1 % | 28,872               | 64.7 %  | \$4.535 b   | 72 %    | 35,523  | 61 %    | \$13.17 b   | 74.5 %  |

\* Percentage is calculated on the basis of total numbers for the type of administration across both types of practitioner



## Trustee remuneration, tax liability and financial assistance

A basic principle of the personal insolvency regime is that creditors (as the ordinary cost bearers) should have primary control over trustee remuneration in the administration of a regulated debtor's estate.

In March 2020, AFSA released its first in-depth market report, *Registered trustee remuneration in the personal insolvency system – Best practice report 2020*.

A copy of this report has been provided to the Committee and is [available on AFSA's website](#).

While the report did not identify any systemic issues, it did identify instances of poor practice that could be addressed with a higher rate of involvement from creditors and made the following key findings:

1. Applications to the Inspector-General of Bankruptcy to approve trustee remuneration had more than doubled since 2015
2. Increasing numbers of creditors were abstaining from voting
3. Pockets of poor practice, including over-servicing, unnecessary travel and excessive time charged for standard correspondence

Trustees are entitled to be paid reasonably for the work they perform and be reimbursed for out-of-pocket costs. Creditors have the complementary right to determine if the proposed payment is fair for the work completed.

Information on trustees' obligations in relation to remuneration, including Inspector-General Practice Statements 15 and 16 and Inspector-General Practice Directions 6 and 18 is available on [AFSA's website](#).

AFSA has also worked with the Australian Restructuring, Insolvency and Turnaround Association (ARITA) to develop a [Creditor Information Sheet](#) to improve creditor understanding of the process of approving a trustee's remuneration and their rights in this process.

The information sheet sets out:

- What is a trustee, what are a trustee's remuneration and costs, and how these are calculated
- What role do creditors play and what information will they receive
- How creditors should decide whether remuneration is reasonable and what to do if they think it is unreasonable
- What happens if remuneration is not approved by creditors
- What rights of review are available to creditors and what their options are to make enquiries or a complaint

Where it may not be practical or cost-effective for the trustee to seek creditors' approval of remuneration; or the trustee and creditors disagree about the amount of

remuneration sought; or none of the creditors vote in respect to a trustee's proposal for remuneration, trustees can apply to the Inspector-General of Bankruptcy for determination of their remuneration.

Where a bankrupt is litigious the remuneration and costs associated with the activities undertaken by the trustee would be very high, particularly if the litigation is repeated and unsuccessful, as it often is.

Whether the costs in an estate would differ if administered by the Official Trustee or a registered trustee is dependent on the circumstances of the individual matter.

- The remuneration of the Official Trustee is set by bankruptcy legislation and is usually a minimum amount plus a percentage of the amount realised.
- Registered trustee fees are usually subject to approval by creditors and based on time-costing.

### *Tax liability*

A trustee (whether the Official Trustee or a registered trustee) is personally liable for the tax payable on a bankrupt's estate if the ATO determines there is an assessed tax liability and the trustee fails to retain enough money to pay the assessed tax liability.

A trustee's exposure to personal liability is limited to the amount of assessed tax that the ATO may legally recover, and that is available to the trustee at the time of the relevant assessment and that subsequently goes to them.

In 2021, the ATO ruling on the treatment of capital gains tax (CGT) was clarified for trustees.

Where a trustee has disposed of a CGT asset and has derived a net capital gain, the trustee is responsible for the payment of the tax.

Trustees had previously acted on the basis that a capital gain or loss was attributable to the bankrupt individual instead of the trustee for CGT purposes. However, the 2021 clarification makes a trustee answerable – and liable – as the individual taxpayer.

This means that the trustee will need to:

- report the net capital gain by lodging a return in their representative capacity and be assessed thereon;
- retain the requisite amount of CGT upon being issued a notice of assessment; and
- pay tax on the relevant capital gains.

The ATO has published guidance material to support insolvency trustees in understanding their obligations and AFSA continues to work with trustees on their awareness of these.

### *Financial Assistance*

Trustees (the Official Trustee and registered trustees) are indemnified for their costs from the assets in the estate. Their solicitor/client expenses are generally able to be recovered from the estate, so long as the costs are reasonably and honestly incurred.

Where there is uncertainty as to the value of assets in the estate and immediate costs relating to legal proceedings are to be incurred by a trustee, section 305 of the Bankruptcy Act allows the Commonwealth to underwrite the cost of proceedings or enquiries about the estate or the examinable affairs of a bankrupt or personal insolvency agreement debtor.

Section 305 allows the Minister or delegate to direct the Commonwealth to underwrite the cost of the following activities:

- a. inquiries in relation to the estate or examinable affairs of a bankrupt, a debtor under Part X or a deceased person whose estate is being administered under Part XI
- b. instituting, continuing or defending legal proceedings relating to the estate or examinable affairs of a bankrupt, a debtor under Part X or a deceased person whose estate is being administered under Part XI
- c. participation by the trustee in proceedings before the Administrative Appeals Tribunal reviewing a decision or determination by the trustee, or reviewing a decision of the Inspector-General on a review of such a decision or determination.

Section 305 funding is intended to facilitate the proper carrying out of the trustee's statutory and fiduciary duties. It covers costs and expenses to be incurred in the future (i.e. these future costs are underwritten) – funding cannot be provided for actions or inquiries that have been completed.

Funding may only be approved if the Minister or the delegate is satisfied that the estate of the bankrupt, the debtor or the deceased person has or may have insufficient moneys to meet the costs of the proposed proceedings or inquiries. Approved expenditure is not classified as a grant or as procurement under the PGPA Act as the authority is provided by the Bankruptcy Act.

In 2021–22, there were 12 applications for s 305 funding assistance approved, with \$42,905 underwritten. Applications for funding under section 305 may be submitted by both the Official Trustee and registered trustees.

Table 5: Section 305 approvals 2017-18 to 2021-22

|                        | 2017-18   | 2018-19   | 2019-20   | 2020-21  | 2021-22  |
|------------------------|-----------|-----------|-----------|----------|----------|
| Applications received  | 19        | 21        | 21        | 22       | 11       |
| Applications approved* | 15        | 15        | 20        | 8        | 12       |
| Amount underwritten    | \$125,996 | \$171,139 | \$121,108 | \$37,023 | \$42,905 |
| Expenditure            | \$70,970  | \$116,214 | \$46,534  | \$43,506 | \$12,601 |

\* All applications approved in that financial year, irrespective of when they were received

## Personal Property Securities Register - Overview

The Personal Property Securities Register (PPSR) is a single national register of security interests in any asset that is not real estate. The register commenced operation on 30 January 2012 and replaced many state-based registers, such as REVS and other vehicle registers, as well as the ASIC Register of Company Charges, to form one national register. It is underpinned by the PPS Act and Regulations, collectively known as the PPS regime. The 2 main purposes of the PPS regime are:

1. to support risk management and consumer protection, and
2. to support access to finance

The PPSR is the official government register of security interests in personal property – these are debts or other obligations that are secured by personal property. Personal property includes things like cars, company assets, boats, used goods and intellectual property; it doesn't include land or fixtures. Assets may be tangible, intangible, current or future (NB – small number of exceptions under s8).

It is not a register of property ownership and registration also does not 'prove' an interest exists. It's an online noticeboard accessible by the general public 24/7 and delivers two main functions – search and registration.

### *Search*

Conducting a PPSR search assists a current or prospective creditor understand the potential exposure of their client before entering into a transaction, and allow the creditor to understand what priority ranking they may receive should they choose to register a security interest over collateral

Searches also assist consumers to understand if a creditor has a claim over an asset when purchasing second hand goods – like a car. A consumer purchasing a car who searches the PPSR and receives a clear result receives legal protection from possible repossession by an unsecured creditor.

AFSA has also included additional consumer protection mechanisms by introducing stolen, written off status and safety recall information for cars.

### *Registration*

Registration provides the creditor clear protections and priority ranking as a secured creditor when combined with an appropriately constructed set of terms and conditions.

The benefits of registering on the PPSR to become a secured creditor is demonstrated with comparison of data on recovery rates for secured versus unsecured creditors. Whilst every case will be different, World Bank reports show returns for secured creditors in insolvency at 82.7 cents in the dollar (Doing Business 2020). In contrast, AFSA data shows average returns for unsecured creditors in bankruptcy at 1.6 cents in the dollar.

When someone registers a security interest on the PPSR, they are letting the world at large know that they claim to have a security interest over certain personal property. The PPSR applies to security agreements covering personal property regardless of the form of the transaction or identity of the grantor (corporation, an individual or other entity).

The PPSR is therefore a procedural tool rather than a substantive register of interests - similar to a caveat on the lands title register (noting of course that a secured party must believe on reasonable grounds that they have a security interest (s151 of the PPSA).

It reduces information asymmetries for lenders and broadens the opportunity for creditors to register a security interest in all assets.

It also increases opportunities for prospective lenders to create and publicise their security rights, creating opportunities to increase access to finance, particularly for those who may not have access to real property to offer as collateral.

## Use and misuse of the PPSR

We know that there is a big difference in the user experience between frequent and infrequent users of the PPSR. Our research shows that infrequent users find it hardest. Regular users are generally satisfied with the ease of use.

AFSA has been collaborating with the Behavioural Economics Team of the Australian Government (BETA) and made a number of changes to simplify its services, reducing administrative burden and improving the client experience. Independent evaluation of this work shows errors by infrequent users of our systems reduced by about half following changes to layout and prompts, from an error rate of 22.3% to 12.8%.

The operation of the PPSR is overseen and managed by the Registrar of Personal Property Securities, who is appointed by the Attorney General. The Registrar ensures the PPSR is managed responsibly, made available to use and contains information that is reliable.

The Registrar makes decisions about whether a registration should remain on the PPSR, when the PPSR needs to be made unavailable (for example to undertake routine maintenance), and monitors for misuse of the PPSR. The Registrar can also delegate these powers to others as necessary.

The Registrar has the power to issue Practice Statements that provide guidance as to how they will perform the functions and exercise the powers conferred on them under the PPS Act and Regulations. There are currently 10 Practice Statements available on the [PPSR website](#).

The PPS regime adopts a 'functional' approach – where an agreement in substance secures payment or performance of an obligation. Functional equivalents to security interests include items such as retention of title claims, leases and assignment of receivables.

The purpose of the functional approach is to increase transparency of the obligations of the debtor (business or individual), reducing information asymmetry in lending decisions through minimising the potential for 'secret liens'.

A secured party is not compelled to engage with the PPS framework (for example by registering its security interest on the PPS Register), however the benefits of the protections and priority afforded by the framework include application of consistent set of rules to determine priority of secured creditors. The highest priority secured party has the first right to enforce their security interest.

AFSA is currently undertaking a targeted program of actively raising awareness of the PPSR amongst small businesses. We:

- target specific industries through social media
- have started an email campaign aimed at new business start-ups
- present at industry conferences



- share education and awareness material with industry associations to distribute through their networks.

We engage with business advisors to help amplify messages, including accountants and bookkeepers who are trusted sources of information for small businesses.

We share information and raise awareness of the PPSR through collaborations with a range of government and industry groups that have programs to assist small businesses – such as MoneySmart, the ATO, ASBFEO, Financial Counsellors Australia and small business commissioners.

#### *Ending or removing PPSR registrations*

Registrations should be ended as soon as practicable - generally within 5 business days after there is no longer a security interest in the collateral. Failure to do so risks breaching legal obligations and can attract a civil penalty.

If someone becomes aware that a registration should never have been made, or is no longer valid, there is a dispute process available to help them have the registration removed if the secured party will not take action. This process is known as the [Amendment Demand](#) process.

Only people with a PPSR account can end a registration. A PPSR account can be set up at no cost. There's no fee to end a registration and only one registration can be ended at a time.

Ending a registration is final – if a registration has been ended by accident you will need to apply to have it restored.

#### *Misuse of the PPSR*

Because the PPSR is a real time public noticeboard, there is a balance between providing transactional efficiency to ensure credit can flow smoothly and minimising inappropriate registrations.

AFSA is aware that the PPSR can be used to frustrate third parties and we take swift action to identify and remedy misuse. This includes transactional surveillance activities such as proactive key word monitoring, data amendment or removal, and access restrictions.

Where warranted, AFSA has regulatory powers to act against vexatious users.

In the 2021-22 financial year we used these powers to remove 197 registrations, including where an individual made registrations as 'payback' against the public figures and institutions they believed had wronged them.



## Perfecting a security interest

Perfection protects a security interest from "vesting" in the person who has granted the security interest if that person goes into administration, is wound up or, in the case of an individual, goes into bankruptcy.

There are 3 forms of perfection: registration, possession and control.

### 1. Registration - the most common form of perfection

Registering is just one component of "perfecting" a security interest. There must also be an underlying document evidencing that the owner of the personal property (or a buyer on credit) is granting a security interest to the secured party (i.e. contractual terms and conditions).

A security interest is perfected if all of the following apply:

- The security interest is attached to collateral
- The security interest is enforceable against a third party, and
- A registration is effective with respect to the collateral (unless the security interest could be perfected by possession or control).

### 2. Possession relates to situations where the secured party exclusively possesses the asset for a time; for example, a common carrier transporting goods, or a financial institution holding assets to secure a customer's loan.

Possession because of a seizure or repossession action by a secured party alone cannot result in perfection of a security interest. A secured party must have actual or apparent possession of the property. A contractual right to possess is not enough.

### 3. Control - limited to satellites, space objects, and some kinds of financial property (including regulated bank accounts).

## Whittaker Review recommendations and changes to date

On 4 April 2014, the then Attorney-General announced a review of the PPS Act as required by section 343 of the Act.

The review was completed by Mr Bruce Whittaker and the Final Report, containing 394 recommendations, was published on 18 March 2015.

AFSA has worked closely with the Attorney-General's Department to support a response, including the 2017 legislative amendment to the definition of a PPS Lease (recommendations 19, 21, 22 and 23).

The review highlighted a number of operational activities that could be improved to reduce complexity and improve awareness of the PPSR, particularly for small business. These recommendations have guided efforts by AFSA to improve the operation, accessibility and awareness of the PPSR in the aftermath of the report's release.

### Reduce complexity

- Review and redesign of the PPSR transactional website.
- Partnership with the Behavioural Economics Team of the Australian Government (BETA) to help remove complexity and reduce errors made by infrequent users.
- Streamlining account creation process based on recommendations from independent user research.
- Creation of a simplified car search for users seeking to purchase a used car privately.
- Creation of new resources and supporting content to help small businesses understand some of the unfamiliar and complex concepts, such as:
  - small business guide – comprehensive guide for businesses and their advisors
  - how to get your invoices paid – guide to show small business how to be a secured creditor
  - how to enforce your security agreement – practical tips to help small business when their customer defaults
  - case studies
  - myth vs fact series to target common misconceptions by small business
- Simplification and streamlining of the dispute process, including the creation of templates and a simple process guide to help users navigate the necessary steps

### Increase awareness

- Built awareness among business advisers that most small businesses commonly have contact with – such as accountants and bookkeepers.

- Worked closely with other government agencies and groups who have programs to assist establishing small businesses – such as ASIC and the ATO. This amplifies PPSR messaging through their channels.
- Increased social media, including paid campaigns targeting flood and storm damaged vehicles.
- Engagement with school education and driving programs to reach new drivers.
- Engaging with peak bodies and trusted advisors such as accountants and bookkeepers to collaborate and amplify awareness raising activities
- Convened a small business roundtable to hear directly from advocates and champions about the issues and barriers they experience with the PPSR
- Targeted outreach relevant to specific events, such as identifying industries most impacted by Covid-19 and disseminating tailored information through relevant national peak bodies and industry associations (eg the Housing Industry Association and the Master Builders Association).

Table 6: Implementation of Whittaker recommendations to date

| Recommendation |   | What AFSA has done  |
|----------------|---|---|
| 85             | That the layout of the Register, and the order and manner in which it asks questions of a registrant or a searcher, be reviewed in order to make the Register as simple and easy to use as possible, particularly from the perspective of an unsophisticated user.                                  | Ongoing enhancement work has been undertaken, including collaboration with the Behaviour Economics Team of the Australian Government to test changes to the layout of the register to help improve accuracy for infrequent users                                    |
| 150            | That AFSA be asked to incorporate suggestions in the submissions that go to the supporting functionalities of the Register into its current planning processes, and to discuss them with AFSA's consultative forums, as appropriate.  | All enhancements are discussed at 6 monthly stakeholder forums which included representation from relevant peak and industry bodies.  |
| 166            | The Registrar be asked to maintain a “business day calendar” on the Registrar’s website   | <a href="https://www.ppsr.gov.au/business-days-calculator">Business days calculator   Personal Property Securities Register (ppsr.gov.au)</a>   |
| 391            | That Government develop and implement steps to raise awareness among consumers of the importance of searching the Register before purchasing a motor vehicle or boat, particularly in a private transaction.  | Social media campaigns<br>Collaboration with school drivers ed programs<br>Working with digital marketplaces to include PPSR information (eg Gumtree, CarSales)   |
| 392            | That Government develop and implement a campaign to increase understanding among businesses and their advisers of the detailed effect of the Act, and take other steps that could assist businesses on an ongoing basis to understand how the Act affects them and how best to take advantage of it | Development of a range of content including a comprehensive guide for small business and their advisers.<br>Ongoing engagement with bookkeepers, accountants, lawyers and their peak bodies<br>Participation in National Government Roadshow, industry conferences. |

AFSA continues to work with the Attorney-Generals Department on progressing all remaining recommendations as appropriate.

We have close and productive relationships with a number of key industry stakeholder groups, practitioners, academics and consumer groups, including through the following:

- Stakeholder forum – membership includes representatives of peak industry and business groups
- Operational forum – membership is open to industry representatives that are closely involved with operational aspects of the PPSR
- Technical forum – membership includes key technical staff that support different sectors of the economy.

These stakeholders continue to advocate for implementation of those recommendations they view as still being able to deliver the most valuable outcomes for those who use and rely on the PPSR.

## Case studies

### High cost and protracted legal case managed by the Official Trustee

Prior to bankruptcy in 2014, a property developer (Mx K) became involved in a dispute, after signing a contract to purchase an 'off the plan' development.

After years of self-represented litigation against the developer, the developer obtained a sequestration order against Mx K, with debts totalling several hundred thousand dollars.

At bankruptcy Mx K held some \$2m in equity across several real property assets. The Official Trustee's policy at the time was to retain bankruptcies when an annulment was likely.

Annulment means that a bankruptcy comes to an end if a certain event occurs during the bankruptcy period (generally 3 years). There are three ways that a bankruptcy can be annulled:

- under a formal composition or arrangement with creditors (this option is not available to bankrupts after they have been discharged)
- by payment of debts in full, or
- by the Court.

Under the current policy, this estate would have been offered to a registered trustee, assuming creditors consented.

Mx K was a challenging and litigious bankrupt. All attempts at reasonable engagement with Mx K to accept and resolve his bankruptcy have so far been unsuccessful.

Mx K has, since 2014, made a dozen court applications (and subsequent appeals) against the Official Trustee, AFSA and its individual employees, to effectively dispute every decision made by the agency and its entities. Mx K has also submitted numerous FOI requests seeking documents held by AFSA and the Official Trustee on their bankruptcy proceedings.

To date, all of Mx K's applications and appeals to date have failed. Legal and other costs incurred by the Official Trustee and AFSA to defend itself and the employees Mx K has attempted to individually sue have so far mounted to approximately \$500,000.

In an attempt to restrain Mx K from further detrimental legal action, the Official Trustee initiated a vexatious litigant application against them. This was to try and constrain the resource drain on the agency and Official Trustee, as well as to try and preserve an annulment surplus for Mx K from the assets of the estate. This application is ongoing.

## International business interests

Mx P became bankrupt in 2019 upon the acceptance of his Debtor's Petition.

The Official Trustee's investigation revealed that Mx P had an interest in a sole trader business in Australia with records confirming the bankrupt exported to their overseas entities; several international businesses and personal assets. These included:

- A company incorporated in the USA, which manufactures and sells products to numerous customers in the US, including online distributors such as Amazon, retail pharmacies and the general public. This business was incorporated in 2010 and Mx P was the agent. According to the Statement of information in 2022, seven days before discharge, Mx P was listed as the CEO, secretary and CFO. According to Dun & Bradstreet, the US business was estimated to generate more than \$1m AUD in annual sales
- A company incorporated in the UK with Mx P as the sole shareholder and director. According to financial statements, the company generated a net profit of nearly \$35,000 AUD in FY2020
- Overseas' real property, in 2022 Mx P left a review on an online real estate site as a person who bought a single-family home in the US in the same year
- A Personal Property Securities Register (PPSR) search confirming that Mx P had a vehicle registered in their name. This new motor vehicle was financed by the US company and the security interest was registered in 2021. Therefore, this would be an after acquired property. The new vehicle was financed by the US company

In 2022 the Official Trustee conducted a section 77C examination under the *Bankruptcy Act 1966* of Mx P. The examination was only partially completed because Mx P insisted on leaving for personal reasons.

Mx P denied that they were a director, secretary or shareholder of the US company and initially denied that they had shareholdings in any overseas companies. They claimed that the US company was a client of theirs until recently and they bought a lot of their products.

Mx P only admitted to being a director of the UK company when provided with a copy of the Certificate of Corporation. They have not notified the authorities in the UK of their bankruptcy status.

AFSA is of the view that Mx P has business dealings overseas which they have not fully disclosed and that they have structured their affairs in a way to keep them outside of their bankruptcy.

AFSA is unable to prosecute any offences in relation to foreign corporations. This would require the use of the *Mutual Assistance in Criminal Matters Act 1987* (Cth).

The Official Trustee has requested creditor funding (\$50,000 - \$100,000) to apply to the relevant courts to have the Australian bankruptcy recognised overseas.

## Repeat and non-compliant bankrupt

Mx N was made bankrupt in 2019 by Sequestration Order (i.e. creditor-led) and the estate was initially administered by a registered trustee.

In 2022 the estate was transferred to the Official Trustee due to compliance issues and the deterioration of the relationship between the registered trustee and Mx N.

Mx N was previously made bankrupt in 2015 by Sequestration Order on the petition of a major Bank. The bankruptcy was annulled two years later.

The Official Trustee was the trustee for this first bankruptcy. As part of the management of Mx N's estate, an official caution was issued in 2018.

One of the relevant offences involved Mx N entering a contract to purchase a property for more than \$5m without informing the vendor that they were undischarged.

That vendor is the petitioning creditor of the second bankruptcy. In 2018 legal action was commenced by the vendor against Mx N.

In 2022 it was determined that AFSA would not pursue separate legal action against Mx N as “[they are] already the subject of a current police prosecution for serious fraud offending. There is no utility in commencing a further investigation in relation to bankruptcy offences which carry less weight and are unlikely to increase any penalty [Mx N] is already facing.”

Mx N has instigated numerous proceedings against various parties, as a result of a criminal charge brought against them relating to an investment they received for the development and marketing of a product.

The Commonwealth Director of Public Prosecutions has also commenced proceedings against Mx N for multiple offences under the *Criminal Code*.

In court documents Mx N claimed at all material times that they were the key person and sole director of several incorporated companies; and the business owner who had licenced the use of the intellectual property to the IP Companies (amongst other claims).

The registered trustee had deemed income from one of these incorporated companies as part of Mx N's income assessment.

Mx N's solicitors have not provided any documents requested by the registered or Official Trustee, claiming legal privilege.

There is also non-compliance with the s 77A notice (Obtain statement of affairs) issued to the incorporated company providing income to Mx N. The notice was served on the sole current director, Mx N's spouse.

Significant compliance challenges remain with the administration of this estate.



## State of disrepair

In a bankruptcy administration, the petitioning creditor was the Owners Corporation of a strata plan where a person in debt (Mr D) lived. The total debt Mr D owed to the Owners Corporation was \$76,072, related to unpaid strata levies and debt recovery costs. One other unsecured creditor was identified in Mr D's estate, a debt of \$3,496 related to unpaid electricity and gas fees.

The trustee had difficulty contacting Mr D via phone or post. Within 1 month of the sequestration order, Mr D visited the trustees' office unannounced as he was unable to access his bank account and the bank referred him to the trustee. The trustee discovered that he had no contact with next of kin or close friends and had ignored the various demands and claims served against him from the Owners Corporation.

Shortly after the visit, the trustee inspected the strata property and found that it was in a significant state of uncleanness.

Mr D had his assets tied up in the strata property and his only source of income was a government pension. Mr D had no means to pay out his creditors without realising the equity available in the property.

In conjunction with Mr D, the trustee made enquiries on alternative finance and provided him with contacts to seek advice on the options available to him. Mr D decided to take up residence in an aged care village. The trustee provided the aged care facility assurance that there would be sufficient funds available to pay accrued rent and to provide for the purchase price of the aged care residence following the sale of the strata property.

The trustee's staff assisted Mr D to pack and move personal items. Mr D expressed his gratefulness to the trustee for the assistance he was given.

AFSA is working to raise awareness of the seriousness of using the insolvency system for unpaid debts, particularly debts accrued through strata arrangements and other Owners Corporation models.

## Catching fraud

Prior to bankruptcy, the person in debt (Mr M) was a professional person. Mr M was charged and found guilty of several counts of fraud and was subsequently sentenced to jail. Soon after Mr M went to jail, he entered into Family Law Consent Orders with his former partner to distribute the vast majority of the matrimonial assets - including a 100% interest in the jointly owned matrimonial home.

Mr M was subsequently declared bankrupt by sequestration order following an application filed by one of the victims of his fraud.

The trustee's investigations identified that a significant amount of funds had been fraudulently obtained by Mr M, especially from elderly clients. As a result, the trustee and his solicitor visited Mr M in jail to conduct an interview. They also interviewed several of the victims of Mr M's fraud to obtain further information.

The trustee then conducted public examinations in the Federal Court of Australia of Mr M, his former partner, the former solicitor who was acting on the Family Law Consent Orders and others. This process also included the trustee issuing 'Notices to Produce' to various financial institutions and other parties to obtain documentation relating to Mr M's affairs, assets and financial transactions.

The former partner then sold the former matrimonial home and moved interstate. Accordingly, the trustee commenced proceedings to have the Family Law Consent Orders set aside and successfully obtained a freezing/preservation undertaking. After extensive negotiations, the matter was settled on a commercial basis at a Court Mediation.

As a result of the settlement, a dividend was available for the unsecured creditors of the bankrupt estate, including the victims of Mr M's fraudulent activities. However, and largely due to the amount of time that had expired, some of the correspondence addressed to creditors had been returned to the trustee's office.

The trustee then conducted further searches, including death notices searches, which identified several of the victims of Mr M's fraud who had since passed away. Accordingly, he wrote to the funeral homes that conducted the funerals and requested the details of the next of kin or the solicitors of the deceased.

The executors of the deceased estate subsequently contacted the trustee's office and after obtaining appropriate supporting evidence, the trustee updated the creditors' information. A dividend was declared and paid to all proved creditors including the deceased estates. The executors and beneficiaries of the deceased estates provided positive feedback on the work undertaken by the trustee and his staff in this matter, including successfully locating the creditors to pay them their dividends.

### Being mindful of individual circumstances

A person in debt, Ms R was a professional person, married with two children. It soon became apparent from initial investigations that while she was asset rich, Ms R had minimal savings and struggled to cope with a large debt arising from a failed managed investment scheme.

Upon realizing Ms R's circumstances, the trustee put investigations on hold and provided a short window for her to arrange funds to pay her creditors in full. In addition, the trustee suggested she pay the funds from a third (related) party via a section 73 composition, providing a better outcome for her. Processes were put in place to ensure no new credit was incurred in her existing business in line with the *Bankruptcy Act 1966*, but at the same time to allow the business to continue to operate.

Given the quick dividend process and willingness of Ms R to resolve the bankruptcy, the trustee elected to cap their total fees to provide certainty for everyone involved.

The outcome was a report to creditors providing a section 73 proposal to pay all debts in full (inclusive of interest). That proposal was accepted by all creditors and the section 73 finalised.

## Supporting people struggling within the system

A husband and wife (Mr and Mrs G) were made bankrupt on a low-value debt. Prior to bankruptcy, they sought assistance from a credit repair agency who did not assist them in their bankruptcy proceeding.

Mr and Mrs G owned their own home which was in a very poor condition. There were only 2 debts identified – the small debt owed to the petitioning creditor and another debt of \$2,500.

Mr G operated a small business on limited income and Mrs G was unemployed. After a long period in bankruptcy and at a time when a sale of the property was being considered, the trustee learned of significant health challenges in the family. Mrs G was significantly mentally unwell with a considerable documented list of mental illnesses and independent professional assessments indicated real risk of self-harm. In addition, the couple had 3 autistic children. The family was also in receipt of counselling services and voluntary legal assistance.

The trustee identified the extreme vulnerability of Mr and Mrs G, noting that there were significant emotional, mental and personal risks associated with the usual bankruptcy process of having a family removed from their home in order for the property to be sold. In this matter, the trustee responded by providing additional support and by taking a more holistic view in delivering a fair and equitable outcome to all stakeholders through a process involving compromise by all parties.

The trustees assisted Mr and Mrs G by:

- negotiating a monetary contribution into the bankrupt estate from a third party which would not ordinarily be sufficient to annul the bankruptcy
- working with the petitioning creditor who agreed on compassionate grounds to accept 100% of its costs as petitioning creditor and approximately 30% of its debt
- applying for relief from paying realisation charges
- engaging with the other creditor, which agreed to withdraw its proof of debt for approximately \$2,500

The trustees were able to annul Mr and Mrs G's bankrupt estates, helping a vulnerable couple start afresh.

## Appendix A – Bankruptcy Form extracts


**16** How are you applying to become bankrupt? *Select **one** only*

- ☐ As an individual
- ☐ Jointly with someone else – Give their name(s)

*The other person / people must submit their separate paper Bankruptcy Form(s) at the same time as you.*

- ☐ As a member of a business partnership – Other business partner's name(s)

*Separate paper Bankruptcy Forms must be submitted by all, or the majority of, partners resident in Australia.*

 You must attach the most recent balance sheets and profit and loss statements of the business partnership when you submit this Bankruptcy Form.

**18** What do you believe is / are the cause(s) of your insolvency? *Select **ALL** that apply*

- ☐ Excessive borrowing / credit
- ☐ Unemployment
- ☐ Reduction in personal / family income, other than by unemployment
- ☐ Marriage / relationship breakdown
- ☐ Business failure
- ☐ Debts due to injury / ill health of yourself or a family member
- ☐ Legal action or potential legal action
- ☐ Losses from gambling or speculation


Describe the circumstances of what you believe is / are the cause(s) of your insolvency 

### **Money owed to you**

**48** Does anyone owe you money, including public / private companies, friends, relatives or family trusts?

No ☐ **Go to question 49**

Yes ☐ Give details

| Details of person who owes you money |   | Amount owed | Date of debt<br>(dd/mm/yyyy) | What is it owed for? |
|--------------------------------------|---|-------------|------------------------------|----------------------|
| Name                                 | Email  |             |                              |                      |
|                                      |   | \$          |                              |                      |
|                                      |   | \$          |                              |                      |
|                                      |   | \$          |                              |                      |
|                                      |   | \$          |                              |                      |
| Total                                |   | \$          |                              |                      |

**SECTION H – Businesses and companies**

**53** In the last 5 years, have you traded as a sole trader, including as a contractor, sub-contractor or similar, or been involved in a partnership?

No ☐ **Go to question 54**

Yes ☐ **Give details**

Business name

Business address

Postcode

Australian Business Number (ABN) if applicable ---

What industry is or was the business in (e.g. manufacturing, transport)?

Is the business still trading?

No ☐ Date ceased trading / sold (dd/mm/yyyy)

What was the estimated annual turnover? \$

Yes ☐ What is the estimated annual turnover? \$

Does the business have any assets?

No ☐

Yes ☐ **Give details**

| Type of asset | Estimated resale value | Tick if asset on consignment or owned by someone else | Name of any creditor or owner / supplier with a charge |
|---------------|------------------------|---|--|
|               | \$                     | <input type="checkbox"/>                              |  |
|               | \$                     | <input type="checkbox"/>                              |  |
|               | \$                     | <input type="checkbox"/>                              |  |
|               | \$                     | <input type="checkbox"/>                              |  |
|               | \$                     | <input type="checkbox"/>                              |  |
|               | \$                     | <input type="checkbox"/>                              |  |
| <b>Total</b>  | \$                     |   |  |

Have you sold or disposed of any business assets worth over \$5,000 in the past 12 months?

No ☐

Yes ☐ **Give details**

| Description of asset | Sale price | Name of purchaser |
|----------------------|------------|-------------------|
|                      | \$         |                   |
|                      | \$         |                   |
|                      | \$         |                   |

Is / was this business conducted through a partnership?

No ☐

Yes ☐ **Give details of the other partner(s)**

| Partner's name | Email or postal address ☒ | Telephone ☒ |
|----------------|---------------------------|-------------|
|                |                           |             |
|                |                           |             |

Are there any current employees?

No ☐

Yes ☐ **Give details**

| Employee's name ☒ | Email or postal address ☒ | Telephone ☒ |
|-------------------|---------------------------|-------------|
|                   |                           |             |
|                   |                           |             |



54 Are you currently, or in the last 5 years have you been, a director / secretary or held a management role in a company?

No ☐ Go to question 55

Yes ☐ Give details

Company name

Australian Company Number (ACN) --

What industry is or was the company in (e.g. manufacturing, transport)?

Your role in the company *Select ALL that apply*

- ☐ Current director / secretary ☐ Previous director / secretary  
☐ Current shareholder ☐ Previous shareholder  
☐ Other – Details

Status of the company *Select one only*

- ☐ Never traded
- ☐ Currently trading Estimated annual turnover of the company \$   
 Estimated value of company: Assets \$  Liabilities \$
- ☐ Ceased trading Date ceased trading (dd/mm/yyyy)   
 Estimated value of company: Assets \$  Liabilities \$
- ☐ Liquidator / Receiver / Administrator appointed to manage the company  
☐ Liquidator ☐ Receiver ☐ Administrator

Name and email of the person appointed

Appointment date (dd/mm/yyyy)

Has a liquidator made a claim against you?

No ☐ Yes ☐

Is this a trustee company?

No ☐

Yes ☐ Name of trust

Does the company owe you wages, loans or any other money not already noted in question 48?

No ☐

Yes ☐ How much?

\$

What for

Details of the person who prepares the financial statements and tax returns

Name

Email or postal address